

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States – Korea Free Trade Agreement and Estimate of Burden for Collection of Information

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice of Interim Procedures and Request for Comments; Estimate of Information Collection Burden.

SUMMARY: This notice sets forth the interim procedures the Committee for the Implementation of Textile Agreements (“CITA”) will follow in implementing certain provisions of the United States – Korea Free Trade Agreement Implementation Act (the “Act”). Section 202(o)(3)(F) of the Act provides that the President shall establish procedures to govern the submission of requests to modify the list of fibers, yarns, or fabrics not available in commercial quantities in a timely manner in the United States as set out in Annex 4-B-1 of the United States-Korea Free Trade Agreement (the “Agreement”). The President has delegated to CITA the authority to determine whether fibers, yarns, or fabrics are not available in commercial quantities in a timely manner in the United States and has directed CITA to establish procedures that govern the submission of a request and provide the opportunity for interested entities to submit comments and supporting evidence in any such determination pursuant to the Act and the Agreement. CITA hereby gives notice to interested entities of the procedure CITA will follow in considering such requests and solicits public written comments on these interim procedures.

In accordance with the Paperwork Reduction Act, this notice further provides an estimate of the burden to the public to collect and submit information as required by Section 202(o)(3)(F) of the Act and CITA’s interim procedures. CITA hereby gives notice of the estimated burden to the public.

DATES: As of **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, CITA intends to use these interim procedures to process requests from the public. CITA solicits public written comments on the interim procedures. Comments must be received no later than **[insert 30 days after FR publication date]** in either hard copy or electronically.

ADDRESSES: If submitting comments in hard copy, an original, signed document must be submitted to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. If submitting comments electronically, an electronic copy, via electronic mail (“email”) must be submitted to OTEXA.KOREA@trade.gov. All submitted comments will be posted for public review on the website dedicated to U.S.-Korea FTA commercial availability proceedings. The website is located on the U.S. Department of Commerce’s Office of Textile and Apparel website (www.otexa.ita.doc.gov), under “Commercial Availability”/“Korea FTA.” Additional instructions regarding the submission of comments may be found at the end of this notice.

FOR FURTHER INFORMATION CONTACT: Maria D'Andrea, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-1550.

SUPPLEMENTARY INFORMATION: Legal Authority: Section 202(o) of the Act; Proclamation No. 8783 (77 FR 14265, March 9, 2012); and the United States-Korea Free Trade Agreement.

Background

The Agreement provides for a list in Appendix 4-B-1 for fibers, yarns, and fabrics that the United States has determined are not available in commercial quantities in a timely manner from suppliers in the United States. A textile or apparel good imported into the United States containing fibers, yarns, or fabrics that are included on the list in Appendix 4-B-1 of the Agreement will be treated as if it is an originating good for purposes of the specific rules of origin in Annex 4-A of the Agreement, regardless of the actual origin of those inputs, in accordance with the specific rules of origin of Annex 4-A. Section 202(o)(3)(F) of the Act provides that the President shall establish procedures under sections 202(o)(3)(C) and (E) in order to determine whether fibers, yarns, or fabrics are not available in commercial quantities in a timely manner in the United States, and whether a fiber, yarn, or fabric should be removed from the list in Appendix 4-B-1 when it has become available in commercial quantities.

In accordance with Annex 4-B-5 of the Agreement, the preferential tariff treatment accorded to a good provided in Harmonized Tariff Schedule of the United States (HTSUS) Chapters 51, 52, 54, 55, 58, or 60 that contains fibers, yarns, or fabric that are included in Appendix 4-B-1 of the Agreement and that satisfies the requirements of Rule 1 of Section XI of Annex 4-A, is limited to 100 million square meter equivalents in each of the first five years in which the Agreement is in force.

In accordance with Annex 4-B-6 of the Agreement, the preferential tariff treatment accorded to a good provided in HTSUS Chapters 61 or 62 that contains fibers, yarns, or fabric that are included in Appendix 4-B-1 of the Agreement and that satisfies the requirements of Rule 2 or 3 of Section XI of Annex 4-A, is limited to 100 million square meter equivalents in each of the first five years in which the Agreement is in force.

To determine the quantity of square meter equivalents that is charged against the annual quantities described above, CITA shall apply the conversion factors listed in, or utilize a methodology based on, the *Correlation: U.S. Textile and Apparel Category System with the Harmonized Tariff Schedule of the United States of America*, U.S. Department of Commerce, Office of Textiles and Apparel (2007), or a successor document.

Unless the United States and Korea otherwise agree, these procedures implementing Annex 4-B of the Agreement shall cease to apply beginning on January 1 of the sixth calendar year in which the Agreement is in force.

In Proclamation No. 8783, (77 FR 14265, March 9, 2012), the President delegated to CITA his authority under the commercial availability provision to establish procedures for modifying the

list of fibers, yarns, or fabrics not available in commercial quantities in a timely manner, as set out in Annex 4-B of the Agreement.

Pursuant to that delegation, CITA provides below its interim procedures governing the submission of requests under Section 203(o) in the Act. As of **[insert date of publication of the FR]**, CITA intends to use these procedures to process requests for modifying the list of fibers, yarns, or fabrics not available in commercial quantities. CITA intends to publish its final procedures after considering any public comments received pursuant to its request for comments.

INTERIM PROCEDURES:

1. Introduction

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.

2. Definitions

(a) *Commercial Availability Request.* A Request for a commercial availability determination submitted by an interested entity requesting that CITA place a fiber, yarn, or fabric on the Commercial Availability List in Appendix 4-B-1 of the Agreement because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a U.S. supplier.

(b) *Commercial Availability List.* The list of products (fibers, yarns, and/or fabrics) contained in Appendix 4-B-1 of the Agreement that have been determined to be not commercially available from U.S. suppliers in commercial quantities in a timely manner.

(c) *Fiber, Yarn, or Fabric.* A single product or a range of products, which meet the same specifications provided in a submission, and which may be only part of a Harmonized Tariff Schedule of the United States (“HTSUS”) classification.

(d) *Interested Entity.* The government of Korea, a potential or actual purchaser of a textile or apparel good, or a potential or actual supplier of a textile or apparel good. CITA recognizes that a legal or other representative may act on behalf of an interested entity. See Section 202(o)(3)(B)(i) of the Act.

(e) *Interested Party*. A person that requests to be included on the email notification list for commercial availability proceedings. Any person may become an interested party by contacting CITA either by sending an email to Otexa.KOREA@trade.gov, or through the website dedicated to commercial availability proceedings under the Agreement (“KOREA FTA Commercial Availability website” or “website”). The website is located on the U.S. Department of Commerce’s Office of Textiles and Apparel website (www.otexa.ita.doc.gov), under “Commercial Availability”/“Korea FTA.”

(f) *Official Receipt*. CITA’s email confirmation that it has received both the email version and the original submission signed by the interested entity delivered via express courier.

(g) *Rebuttal Comment*. A submission from an interested entity providing information in response to evidence or arguments raised in a Response. A Rebuttal must be limited to evidence and arguments provided in a Response.

(h) *Request to Remove*. A submission from an interested entity requesting that CITA remove a product from the Appendix 4-B-1 list pursuant to Section 202(o)(3)(C)(iii) of the Act.

(i) *Requestor*. The interested entity that files, for CITA’s consideration, a Commercial Availability Request or a Request to Remove under the commercial availability provision of the Act.

(j) *Response with an Offer to Supply*. A submission from an interested entity to CITA objecting to the Request and asserting its ability to supply the subject product by providing an offer to supply the subject product described in the Request.

(k) *U.S. Business Day*. Any calendar day other than a Saturday, Sunday, or a legal holiday observed by the Government of the United States. See section 202(o)(3)(B)(ii) of the Act.

(l) *U.S. Supplier*. A potential or actual manufacturer of a textile or apparel good in the United States.

3. Submissions for Participation in a Commercial Availability Proceeding.

(a) *Filing a Submission*. All submissions for a commercial availability proceeding pursuant to these procedures (e.g., Commercial Availability Request, Response, Rebuttal, and Request to Remove) must be in English. If any attachments are in a language other than English, a complete translation must be provided. Each submission must be submitted to the Chairman of CITA, in care of the U.S. Department of Commerce’s Office of Textiles and Apparel (“OTEXA”) in two forms: email and an original signed submission.

(1) An email version of the submission must be either in PDF or Word format, must contain an adequate public summary of any business confidential information and the due diligence certification, and should be sent to OTEXA.KOREA@trade.gov. The email version of the submission will be posted for public review on KOREA FTA Commercial

Availability website. No business confidential information should be submitted in the email version of any document.

(2) The original signed submission must be sent via express courier to -- Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. Any business confidential information upon which an interested entity wishes CITA to rely must be included in the original signed submission. Except for the inclusion of business confidential information and corresponding public summary, the two versions of a submission should be identical.

(3) Brackets must be placed around all business confidential information contained in submissions. Documents containing business confidential information must have a bolded heading stating "Confidential Version." Attachments considered business confidential information must have a heading stating "Business Confidential Information." Documents, including those submitted via email, provided for public release must have a bolded heading stating "Public Version" and all the business confidential information must be deleted from public versions, and substituted with an adequate public summary.

(4) Generally, details such as quantities and lead times for providing the subject product can be treated as business confidential information. However, the names of suppliers who were contacted, general information about the capability to manufacture the subject product, and the responses thereto should be included in public versions.

(b) *Due Diligence Certification.* Each submission containing factual information for CITA's consideration must be accompanied by the appropriate certification regarding the accuracy of the factual information. An interested entity must file a certification of due diligence as described below in subsection (b)(1) with each electronic and original signed submissions that contains factual information. If the interested entity has legal counsel or other representative, the legal counsel or other representative must also file a certification of due diligence as described in subsection (b)(2) with each electronic and original signed submissions that contains factual information. Accurate representations of material facts submitted to CITA for the Commercial Availability Proceeding are vital to the integrity of this process and are necessary for CITA's effective administration of the statutory scheme. Each submission containing factual information for CITA's consideration must be accompanied by the appropriate certification regarding the accuracy of the factual information. Any submission that lacks the applicable certifications will be considered an incomplete submission that CITA will reject and return to the submitter. CITA may verify any factual information submitted by interested entities in a Commercial Availability Proceeding.

(1) For the person responsible for presentation of the factual information: I, (name and title), currently employed by (interested entity), certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

(2) For the person's legal counsel or other representative: I, (name), of (law or other firm), counsel or representative to (interested entity), certify that (1) I have read the attached submission, and (2) based on the information made available to me by (person), I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

(c) *Official Receipt.* A submission will be considered officially submitted to CITA only when both the email version and the original signed submission have been received by CITA. For Commercial Availability Requests, CITA will provide email confirmation to the requestor that both versions were received. CITA's email confirmation shall be considered the "official receipt" of the Request, which will begin the statutory 30 U.S. business day process for CITA's consideration. CITA will confirm official receipt of any Response and Rebuttal by posting the submissions on the KOREA FTA Commercial Availability website.

4. Submitting a Request for Consideration in a Commercial Availability Proceeding.

(a) *Commercial Availability Request.* An interested entity may submit a Request to CITA alleging that a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a U.S. supplier.

(b) *Contents of a Commercial Availability Request.*

(1) *Detailed Product Information.* The Commercial Availability Request must provide a detailed description of the subject product, including, if applicable, fiber content, construction, yarn size, and finishing processes; and the classification of the product under the HTSUS. All measurements in the entire submission must be stated in metric units. If the English count system is used in any part, then a conversion to metric units must be provided. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and finishing processes, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as those used by American Society for Testing and Materials ("ASTM") or the American Association of Textile Chemists and Colorists ("AATCC").

If any aspect of the Commercial Availability Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide U.S. suppliers with detailed explanations and measurable criteria for the specification or term at issue. In the course of its review of the Commercial Availability Request, CITA will consider record evidence to determine whether such specifications and terms are reasonable.

The requestor must clearly describe the unique characteristics of the subject product that distinguish it from other similar or potentially substitutable products. In addition, the requestor must also explain why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria.

(2) *Quantity.* The Commercial Availability Request must provide the specific quantity of the product needed by the requestor, in standard units of quantity for production of the subject product in the United States.

(3) *Due Diligence.* The Commercial Availability Request must provide a complete description of the due diligence undertaken by the requestor to determine the subject product's availability in the United States. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from U.S. suppliers.

(i) *Generally:* The requestor must provide the names and addresses of suppliers contacted, the name and position of the individuals specifically contacted, the exact request that was made, the dates of those contacts, whether a sample of the subject product was provided for review, and the exact response given for the supplier's inability to supply the subject product under the same conditions as contained in the Commercial Availability Request submitted to CITA, in addition to any other information the requestor believes is relevant. The requestor must submit copies or notes of relevant correspondence, both inquiries and responses, with these suppliers. Relevant correspondence includes notes of telephone conversations.

(ii) *Identification of U.S. suppliers:* Requestors must make reasonable efforts to identify U.S. suppliers. Requestors should identify U.S. suppliers through a number of means, including the requestor's knowledge of the industry, industry directories, and industry association memberships. For instance, an email from a requestor with a general inquiry to all manufacturers in the United States may not constitute due diligence. Rather, reasonable efforts must be taken to identify U.S. suppliers who are generally known to produce the class or type of product at issue. Requestors must provide an explanation in their Request as to why their efforts to identify U.S. suppliers were reasonable given the product at issue.

(iii) *Use of Third Parties and Business-to-Business Contact:* Due diligence includes substantive and direct contact, indicating a legitimate intent to do business, between requestors and U.S. suppliers. Third party communications are no substitute for meaningful dialogue between appropriate officials. Once interest is expressed between a requestor and a U.S. supplier, subsequent communications should be conducted by appropriate officials of the requestor and U.S. supplier based on normal business practice. A lack of appropriate business-to-business contact may be deemed to be insufficient due diligence.

(iv) *Description of the Subject Product:* In undertaking due diligence, requestors must provide a detailed description of the product to U.S. suppliers. The description must include reasonable product specifications, including, if applicable, fiber content, construction, yarn size, and may include a finishing process or operation, as well as timelines and quantities. Reasonable product specifications include the use of accepted terminology and standards, such as

those used by ASTM or AATCC. If any aspect of the Request is outside the normal course of business (e.g., tight deadline, higher standards of performance, requirements to match existing specifications), requestors must provide U.S. suppliers with detailed explanations and measurable criteria for the specification or term at issue that would render such aspects as reasonable for the product in question. CITA will consider record evidence to determine whether such specifications and terms are reasonable.

(v) *Provision of Samples:* In undertaking its due diligence, a requestor must clearly communicate to U.S. suppliers its standard business practice with respect to the provision of samples. While requestors may request a sample, a U.S. supplier is not required to provide a sample under CITA's procedures. However, CITA notes that U.S. suppliers must meet certain requirements with respect to the provision of samples and/or information demonstrating their ability to supply the subject product in commercial quantities in a timely manner. See Section 6(b)(3) and Section 6(b)(4).

(vi) *Substitutability of Products:* In undertaking its due diligence, a requestor must clearly communicate information regarding the substitutability of the product in question to U.S. suppliers. In its inquiries to U.S. suppliers, the requestor must clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. In addition, the requestor must provide U.S. suppliers with information why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product. However, all characteristics and specifications must be supported by measurable criteria. If, in the course of due diligence, a U.S. supplier proposes a substitutable product, the requestor must provide reasonable justifications to the U.S. supplier for rejecting potentially substitutable products.

(vii) *Treatment of Business Confidential Information:* Specific details of correspondence with suppliers, such as quantities and lead times for providing the subject product, can be treated as business confidential information. However, the names of U.S. suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be available for public review to ensure proper public participation in the process. "Lead times" refers to supplying the subject product within normal business time frames for the subject product once an order is received. Specific delivery dates are not necessary. Required delivery dates that fall within the time needed to complete the commercial availability determination process are not acceptable.

(4) *Substitutable Products.* The Commercial Availability Request must provide information on whether the requestor believes that other products supplied by the U.S. supplier are not substitutable in commercial quantities in a timely manner for the product(s) that is (are) the subject of the Request for purposes of the intended use.

Clearly describe the unique characteristics of the subject product that distinguishes it from other similar or potentially substitutable products. Describe why such characteristics are required for the purposes of the end-use of the product and cannot be substituted by another product available from a U.S. supplier.

(5) *Additional Information.* The Commercial Availability Request may provide any additional evidence or information believed to be relevant for CITA to determine whether a fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a supplier in the United States.

5. Consideration and Acceptance of a Commercial Availability Request.

In considering whether to accept a Commercial Availability Request, CITA will consider and determine whether the Request provides all the required information specified in Sections 3 and 4 of these Interim Procedures. CITA will determine whether to accept the Request for consideration and investigation not later than two U.S. business days after the official receipt.

(a) *Request Rejected.* If CITA determines that the Commercial Availability Request does not contain the required information, the requestor will be notified promptly by email that the Request has not been accepted and the reasons for the rejection. A Commercial Availability Request may be resubmitted with additional information for the subject product and CITA will reevaluate it as a new Request.

(1) *Requests for Downstream Products with Inputs Not Commercially Available.* If, in its initial review of a Commercial Availability Request, CITA determines that a subject product would be commercially available but for the commercial unavailability of a certain input of the subject product, CITA will reject the Commercial Availability Request. The requestor may submit a Commercial Availability Request for the input in question rather than the downstream product.

(2) *Requests for Products with Prohibited Inputs, Specifications, and/or Processes.* If, in its initial review of a Commercial Availability Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will reject the Commercial Availability Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(b) *Request Accepted.* If CITA determines that the Commercial Availability Request contains the required information, CITA will notify interested parties by email that the Commercial Availability Request has been accepted and filed and will assign a File Number. CITA will post the accepted Commercial Availability Request on its website for public notice. The email notification and the website posting will indicate the calendar date deadlines for submitting Responses and Rebuttals.

6. Submitting a Response with an Offer to Supply.

Responses must meet the requirements outlined in Section 3 of these Procedures. General comments in support of or opposition to a Request do not meet the requirements of a Response. A Due Diligence Certification must accompany a Response with an Offer to Supply.

(a) *Response with an Offer to Supply Submission.* An interested entity may file a response objecting to a Commercial Availability Request by providing an offer to supply the subject product as described in the Commercial Availability Request. An interested entity will have 10 U.S. business days after official receipt of a Request to submit a Response with an Offer to Supply. If good cause is shown, CITA may extend this deadline, but CITA will still meet the statutory deadlines.

(b) *Contents of a Response with an Offer to Supply.*

(1) *File Number.* The Response with an Offer to Supply must reference the CITA File Number assigned to the particular Request being addressed.

(2) *Quantity.* The Response with an Offer to Supply must contain the quantity of the subject product that the respondent is capable of currently supplying, in standard units of quantity. All measurements must be in metric units. If the English count system is used in any part, then a conversion to metric units must be provided.

(3) *Production Capability/Demonstration of Ability to Supply.* A Response with an Offer to Supply must contain information, as described below, supporting the respondent's claim that it is able to supply the subject product, or a substitutable product, in commercial quantities in a timely manner.

(i) The Response with an Offer to Supply must report the quantity, in metric units, that the U.S. supplier produced of the subject product, or a substitutable product, in the preceding 24-month period.

(ii) For products that have experienced cyclical demand or are not currently produced, the U.S. supplier must indicate the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iii) If the subject product involves a style, weight, or other variation that is new to the market or new to the U.S. supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce.

(iv) A U.S. supplier may support its claim to be able to produce the subject product through provision of a sample meeting exactly the specifications as

presented in the Commercial Availability Request. However, the provision of a sample is not required. Regardless of whether a sample is provided, a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding its production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(v) The Response with an Offer to Supply must include, as applicable, the rationale, supported by measurable criteria, for the U.S. supplier's assertion that other products that are supplied by the U.S. supplier in commercial quantities in a timely manner are substitutable for the subject product(s) for purposes of the intended use.

(vi) In its review of a Response with an Offer to Supply, CITA will consider whether the U.S. supplier was responsive to the efforts employed by the requestor to obtain the subject product in the course of due diligence. In the event that a U.S. supplier was not responsive, a U.S. supplier must provide a reasonable explanation in its Response with an Offer to Supply as to why it did not respond to earlier inquiries by the requestor in the course of due diligence. CITA will reject a Response with an Offer to Supply if it does not include such explanation.

(4) *Due Diligence.* The Response with an Offer to Supply must provide a complete description of the due diligence undertaken by the U.S. supplier to substantiate the ability to supply the subject product. If a U.S. supplier has participated in the requestor's undertaking of due diligence, the supplier must provide certain information in response to the requestor's inquiries.

(i) If a U.S. supplier has been responsive to a requestor in the undertaking of due diligence, the U.S. supplier must have stated its ability to supply or not supply the subject product. If the product can be supplied, the response to the inquiry must contain information supporting the U.S. supplier's claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(ii) If a U.S. supplier offers to supply the subject product, the supplier may support its offer by reporting the quantity, in metric units, that it has produced of the subject product, or a substitutable product, in the preceding 24-month period. If the U.S. supplier does not provide such information, it must explain why the information it has provided sufficiently supports its offer to supply.

(iii) In response to a requestor's inquiry, for products that have experienced cyclical demand or are not currently produced, the U.S. supplier must provide the requestor the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or offered.

(iv) If the subject product involves a style, weight, or other variation that is new to the market or new to the U.S. supplier, then the supplier must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce the subject product.

(v) A U.S. supplier may support its claim to be able to produce the subject product through provision of a sample meeting the specifications as presented in an inquiry. However, the provision of a sample is not required. Regardless of whether a sample is provided, the U.S. supplier must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability. Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product. If some operations, such as finishing, will be completed by other entities, the name of the facility and contact information must be provided.

(vi) A response to a requestor's inquiry must provide, as applicable, the basis for the U.S. supplier's rationale that other products that are supplied by the U.S. supplier in commercial quantities in a timely manner are substitutable for the subject product for purposes of the intended use, supported by measurable criteria.

(vii) Nothing in these procedures shall require any U.S. supplier to provide business confidential or other commercially sensitive information to a requestor. However, a U.S. supplier must provide the requestor a reasonable explanation why such information was not provided and why the information it has provided sufficiently supports its offer to supply.

(5) *Location of the U.S. supplier.* The Response with an Offer to Supply must provide the name, address, phone number, and email address of a contact person at the facility claimed to be able to supply the subject product.

7. Submitting a Rebuttal Comment.

A Rebuttal Comment must meet the requirements outlined in Section 3 of these procedures. General comments in support of or opposition to a Commercial Availability Request or a Response do not meet the requirements of a Rebuttal Comment. A Due Diligence Certification must accompany a Rebuttal Comment.

(a) *Rebuttal Comment.* Any interested entity may submit a Rebuttal Comment. An interested entity must submit its Rebuttal Comment not later than 4 U.S. business days after the deadline for a Response. If good cause is shown, CITA may extend the time limit, but CITA will still meet the statutory deadlines.

(b) *Contents of a Rebuttal.* The Rebuttal Comment may respond only to evidence or arguments raised in a Response and must identify the Response, and evidence and/or arguments to which it is responding. The Rebuttal Comment must reference the CITA File Number assigned to the particular Commercial Availability Request being addressed.

8. Determination Process.

(a) Not later than 30 U.S. business days after official receipt of a Commercial Availability Request (or not later than 60 U.S. business days where an extension is provided), CITA will notify interested entities by email and interested parties and the public by a posting on its website whether the subject product is available in commercial quantities in a timely manner in the United States and whether an interested entity has objected to the Commercial Availability Request.

(b) CITA will notify the public of the determination by publication in the Federal Register when the determination results in a change to the Commercial Availability List in Appendix 4-B-1 of the Agreement.

(c) *Types of Determinations.*

(1) *Approval:* An Approval means that CITA has determined that the subject product is not available in commercial quantities in a timely manner in the United States. If a Commercial Availability Request is approved, a notice will be published in the Federal Register adding the product to Appendix 4-B-1 of the Agreement.

(2) *Denial:* A denial means that CITA has determined that the subject product is available in commercial quantities in a timely manner in the United States. If a Commercial Availability Request is denied, notice of the denial will be posted on the KOREA FTA Commercial Availability website.

(i) *Denial of Requests for Downstream Products with Inputs Not Commercially Available:* If, during the course of its review of a Commercial Availability Request, CITA determines that the subject product is commercially available but for the commercial unavailability of a certain input of the subject product, CITA will deny the Commercial Availability Request. The requestor may submit a new Commercial Availability Request for the input in question rather than the downstream product.

(ii) *Denial of Requests for Products with Prohibited Inputs, Specifications, and/or Processes:* If, during the course of its review of a Commercial Availability Request, CITA determines that the subject product requires inputs, specifications, and/or processes that are prohibited under the laws and regulations of the United States, CITA will deny the Commercial Availability Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(3) *Insufficient Information to Determine:* CITA will extend its time period for consideration of the Commercial Availability Request by an additional 30 U.S. business days in the event that CITA determines, not later than 30 U.S. business days after official receipt of a Commercial Availability Request, that it has insufficient information to make a determination regarding the ability of a U.S. entity to supply the subject products of the Commercial Availability Request based on the submitted information. CITA will normally determine that it does not have sufficient information to make a determination on a Commercial Availability Request when CITA finds there is inconsistency in material information contained in the Commercial Availability Request, one or more Responses, and/or the Rebuttal Comment(s). CITA will notify interested parties via email that it has extended the time period for CITA's consideration by 30 U.S. business days. CITA also will announce the extension on the website.

(i) *Process during Extension Period:* During the extended time period, CITA will request that interested entities provide additional evidence to substantiate the information provided, and may initiate a meeting with interested entities. Such evidence may include, *inter alia*, product samples, lab tests, detailed descriptions of product facilities, and comparisons of product performance in the intended end-use of the subject product. Any samples, if requested, of fibers, yarns, or fabrics, that are provided to CITA will be made available for public inspection at the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, DC 20230. All written submissions must follow instructions described in Section 3 of these procedures. Samples should be identified with a cover sheet that describes the specifications of the sample and be identical to the specifications of the Commercial Availability Request. If CITA conducts a meeting, it will comply with requirements to conduct proceedings in an open manner.

(ii) CITA also will consider evidence in support of claims that U.S. supplier(s) can supply a substantially similar product to that specified in the Commercial Availability Request.

(iii) CITA will make a determination, not later than 60 U.S. business days after the official receipt of a Commercial Availability Request whether to approve or deny the Request and will follow the notification process accordingly.

(4) *Deemed Denial:* In the event that CITA does not make a determination in response to a Commercial Availability Request to add a product to Appendix 4-B-1 of the Agreement within the statutory deadlines provided, not later than 30 U.S. business days after the official receipt of the Commercial Availability Request or not later than 60 U.S. business days after the official receipt of the Commercial Availability Request that was determined to lack sufficient information pursuant to Section 8 of these procedures, the Request will be considered to be denied.

9. Submitting a Request to Remove.

(a) *Request to Remove.* An interested entity may submit a request to remove a product from Appendix 4-B-1. See Section 202(o)(3)(E)(i) of the Act.

(b) *Content of a Request to Remove.* The Request to Remove must provide the substantive information set forth in Section 6(b) (Contents of a Response with an Offer to Supply) of these procedures.

(c) *Procedures.*

(1) In considering whether to accept a Request to Remove, CITA will follow procedures set forth in Section 5 (Consideration and Acceptance of a Request) of these procedures.

(2) If CITA determines to accept the Request to Remove, CITA and any responding interested entity shall follow applicable procedures and contents set forth in subsection 6(a) (Response with an Offer to Supply) and Section 7 (Submitting a Rebuttal Comment) of these procedures.

(3) As set forth in subsections 8(a) and (b) (Determination Process) of these procedures, CITA will determine whether the subject product of the Request to Remove is available in commercial quantities in a timely manner in the United States not later than 30 U.S. business days after the official receipt of the Request to Remove.

(i) If CITA determines that the product is available in commercial quantities in a timely manner in the United States, then that product will be removed from the Commercial Availability List in Appendix 4-B-1 of the Agreement. Removal of the product shall not take effect earlier than six months (i.e., 180 calendar days) after publication of notice in the Federal Register that CITA has determined that the product is available in commercial quantities in a timely manner in the United States.

(ii) If the Commercial Availability List changes as a result of CITA's determination for the Request to Remove, CITA will notify interested parties by email of its determination and will publish a notice of its determination for the Request to Remove in the Federal Register.

(d) For removal, the notice of determination will state that textile and apparel articles containing the subject product are not to be treated as originating in the United States if the subject product is obtained from sources outside the United States, effective for goods entered into the United States on or after six months (i.e., 180 calendar days) after the date of publication of the notice. See Section 202(o)(3)(E)(iii) of the Act.

Request for Comment on the Interim Procedures

Comments must be received no later than [**insert 30 days after FR publication date**] and in the following format:

(1) Comments must be in English.

(2) Comments must be submitted electronically or in hard copy, with original signatures.

(3) Comments submitted electronically, via email, must be either in PDF or Word format, and sent to the following email address OTEXA.KOREA@trade.gov. The email version of the comments must include an original electronic signature. Further, the comments must have a bolded heading stating “Public Version”, and no business confidential information may be included. The email version of the comments will be posted for public review on the KOREA FTA Commercial Availability website.

(4) Comments submitted in hard copy must include original signatures and must be mailed to the Chairman, Committee for the Implementation of Textile Agreements, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C. 20230. All comments submitted in hard copy will be made available for public inspection at the Office of Textiles and Apparel, Room 3100, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m. on business days. In addition, comments submitted in hard copy will also be posted for public review on the KOREA FTA Commercial Availability website.

(5) Any business confidential information upon which an interested person wishes to rely may only be included in a hard copy version of the comments. Brackets must be placed around all business confidential information. Comments containing business confidential information must have a bolded heading stating “Confidential Version.” Attachments considered business confidential information must have a heading stating “Business Confidential Information”. The Committee will protect from disclosure any business confidential information that is marked “Business Confidential Information” to the full extent permitted by law.

Estimate of Burden to the Public for Collection of Information and Request for Public Comment

In accordance with Section 203(o) of the Act and as reflected in the interim procedures for commercial availability proceedings, CITA must collect certain information about the technical specifications of a fiber, yarn, or fabric and the production capabilities of U.S. textile producers to determine whether certain fibers, yarns, or fabrics are available in commercial quantities in a timely manner in the United States. This information collection is subject to review and approval by the Office of Management and Budget’s (“OMB”) OMB under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 et seq.

OMB has approved under Control Number [REDACTED] the interim procedures requiring the collection of information under the emergency provisions of the PRA. In accordance with the PRA, CITA has estimated the “burden” (in number of hours) on the public to submit information required by CITA under its interim procedures. CITA hereby provides the public the opportunity to provide comment on its estimates of the burden on the public to submit information to CITA under the U.S.-Korea FTA Commercial Availability provision.

Estimate of Burden as a Result of Information Collection: Based on estimates on the number of Requests, Rebuttals and Responses filed per year, and the average amount of time required to submit a Request, Rebuttal, and Response, CITA estimates that the total annual burden to the public is 89 hours per year. A further breakdown of its estimates for the number of hours to collect and provide information to CITA for Requests, Responses and Rebuttals is provided in detail below.

Requests: CITA estimates that 10 Requests will be filed per year under the U.S.-Korea FTA Commercial Availability provision. Based on the following activities required to submit a Request, CITA estimates that the total time to collect and present information in a Request is 8 hours, for a total of 80 hours per year.

<u>Activity: Request</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

Responses: CITA estimates that 3 Responses will be filed per year under the U.S.-Korea FTA Commercial Availability provision. Based on the following activities required to submit a Response, CITA estimates that the total time to collect and present information in a Response is 2 hours, for a total of 6 hours per year.

<u>Activity: Response</u>	<u>Time Required</u>
Preparing Response	1.5 hours
Preparing Supporting Documentation	.5 hours
Total Time per Response	2 hours
Times 3 Responses per Year	6 hours

Rebuttals: CITA estimates that 3 Rebuttals will be filed per year. The average amount of time required to prepare each Rebuttal is estimated at 1 hour, for a total annual burden for all Rebuttals of 3 hours.

<u>Activity: Rebuttal</u>	<u>Time Required</u>
Preparing Rebuttal	1 hour
Total Time per Response	1 hour
Times 3 Responses per Year	3 hour

Combined, these three information collections represent an annual burden of 89 hours. Copies of the above estimate can be obtained by calling or writing Jennifer Jessup, Departmental

Paperwork Clearance Officer, (202) 482-0336, Department of Commerce, Room 6616, 14th & Constitution Avenue, N.W., Washington, D.C. 20230 or via email at JJessup@doc.gov

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB Control Number.

Kimberly Glas
Chairman, Committee for the Implementation of Textile Agreements