

## **Reporting Requirements for Submitting a Request for Consideration in a Commercial Availability Proceeding**

### Submissions for Participating in a US-KOREA FTA 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](mailto: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.

#### 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.