

Reporting Requirements for Submitting a Response with an Offer to Supply

Submissions for Participation 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. 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 30003, 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 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 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.
 - (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.