

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Determination under the Textile and Apparel Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR Agreement)

August 11, 2009.

**AGENCY:** The Committee for the Implementation of Textile Agreements.

**ACTION:** Determination to add a product in unrestricted quantities to Annex 3.25 of the CAFTA-DR Agreement.

**EFFECTIVE DATE:** August 14, 2009.

**SUMMARY:** The Committee for the Implementation of Textile Agreements ("CITA") has determined that certain polyester/rayon/wool fabric, as specified below, is not available in commercial quantities in a timely manner in the CAFTA-DR countries. The product will be added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482 3651.

**FOR FURTHER INFORMATION ONLINE:** <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf>. Reference number: 126.2009.07.06.Fabric.SharrettsPaley forFishman&Tobin

#### SUPPLEMENTARY INFORMATION:

**Authority:** The CAFTA-DR Agreement; Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement Implementation Act (CAFTA-DR Implementation Act), Pub. Law 109-53; the Statement of Administrative Action (SAA), accompanying the CAFTA-DR Implementation Act; and Presidential Proclamations 7987 (February 28, 2006) and 7996 (March 31, 2006).

#### BACKGROUND:

The CAFTA-DR Agreement provides a list in Annex 3.25 for fabrics, yarns, and fibers that the Parties to the CAFTA-DR Agreement have determined are not available in commercial quantities in a timely manner in the territory of any Party. The CAFTA-DR Agreement provides that this list may be modified pursuant to Article 3.25(4)-(5), when the President of the United States determines that a fabric, yarn, or fiber is not available in commercial quantities in a timely manner in the territory of any Party. See Annex 3.25 of the CAFTA-DR Agreement; see also section 203(o)(4)(C) of the CAFTA-DR Implementation Act.

The CAFTA-DR Implementation Act requires the President to establish

procedures governing the submission of a request and providing opportunity for interested entities to submit comments and supporting evidence before a commercial availability determination is made. In Presidential Proclamations 7987 and 7996, the President delegated to CITA the authority under section 203(o)(4) of CAFTA-DR Implementation Act for modifying the Annex 3.25 list. On September 15, 2008, CITA published modified procedures it would follow in considering requests to modify the Annex 3.25 list of products determined to be not commercially available in the territory of any Party to CAFTA-DR (Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, 73 FR 53200) ("procedures").

On July 6, 2009, the Chairman of CITA received a Request for a Commercial Availability Determination ("Request") from Sharretts, Paley, Carter & Blauvelt, P.C. on behalf of Fishman & Tobin for certain polyester/rayon/wool fabrics. On July 8, 2009, in accordance with CITA's procedures, CITA notified interested parties of the Request, which was posted on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply ("Response") must be submitted by July 20, 2009, and any Rebuttal Comments to a Response ("Rebuttal") must be submitted by July 24, 2009. No interested entity submitted a Response to the Request advising CITA of its objection to the Request and its ability to supply the subject product.

In accordance with section 203(o)(4)(C) of the CAFTA-DR Implementation Act, and Section 8(c)(2) of CITA's procedures, as no interested entity submitted a Response objecting to the Request and demonstrating its ability to supply the subject product, CITA has determined to add the specified fabric to the list in Annex 3.25 of the CAFTA-DR Agreement.

The subject product has been added to the list in Annex 3.25 of the CAFTA-DR Agreement in unrestricted quantities. A revised list has been posted on the dedicated website for CAFTA-DR Commercial Availability proceedings.

**Specifications:** Certain Polyester/Rayon/Wool Fabric

**HTSUS:** 5515.11.00; 5515.19.00; 5516.92.00; 5516.93.00

**Fiber Content:** 30-65% polyester/ 25-65% rayon; 1-20% wool

**Configuration:**

#### Fabric #1 -

Warp - Spun yarn, either plied or single of various sizes, of intimately blended rayon and polyester staple fibers.

Fill - Spun yarn, either plied or single of various sizes, of intimately blended polyester and wool staple fibers.

#### Fabric #2 -

Warp - Spun yarn, either plied or single of various sizes, of intimately blended rayon and polyester staple fibers.

Fill - Spun yarn, either plied or single of various sizes, of intimately blended polyester, rayon and wool staple fibers.

#### Fabric #3 -

Warp - Spun yarn, either plied or single of various sizes, of intimately blended polyester, rayon and wool staple fibers.

Fill - Spun yarn, either plied or single of various sizes, of intimately blended polyester, rayon and wool staple fibers.

**NOTE:** "Intimately blended" refers to situations where the fibers are wound together to form that yarn.

**Construction:** Various

#### Weight:

English - 5 to 7.4 oz/sq. yd.

Metric - 170 to 250 gm/sq. meter

#### Width:

English - 56 to 64 inches

Metric - 142 to 163 cm

**Weave:** Various, including plain and twill

**Coloration:** Piece dyed or of yarns of different colors

**Janet E. Heinzen,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

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**BILLING CODE 3510-DS**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Interim Procedures for Considering Requests Under the Commercial Availability Provision of the United States - Peru Trade Promotion Agreement Implementation Act and Estimate of Burden for Collection of Information

August 11, 2009.

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

**ACTION:** Notice and Request for Comments.

**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 - Peru Trade Promotion Agreement Implementation Act ("US-PERU TPA"), which implemented into U.S. law the United States - Peru Trade Promotion Agreement ("Agreement"). Section 203(o)(2) of the US-PERU TPA provides that the President shall establish procedures to govern the submission of requests to modify the list of fabrics, yarns, or fibers not available

in commercial quantities in a timely manner in either the United States or Peru as set out in Annex 3-B of the Agreement. The President has delegated to CITA the authority to determine whether fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in either the United States or Peru 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 US-PERU TPA.

**DATES:** The interim procedures are effective as of August 14, 2009.

CITA solicits public written comments on the Interim Procedures. Comments must be received no later than September 14, 2009 of this notice in either hard copy or electronically. 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\_PERU@ita.doc.gov.** Additional instructions regarding the submission of comments may be found at the end of this notice.

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 203(o) of the US-PERU TPA and CITA's Interim Procedures. CITA hereby gives notice of the estimated burden to the public, and provides the opportunity for the public to submit comments on those estimates. Written comments and recommendations for the estimate of the burden to the public should be sent to Wendy Liberante, OMB Desk Officer, via the Internet at **Wendy.L.Liberante@omb.eop.gov** or fax (202) 395-7285 by September 14, 2009.

**FOR FURTHER INFORMATION CONTACT:** Maria Dyczak, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3400.

**SUPPLEMENTARY INFORMATION:**

**Authority:** Section 203(o) of the US-PERU TPA and Proclamation No. 8341, 74 FR 4105 (Jan. 22, 2009).

**Background:**

The US-PERU TPA provides a list in Annex 3-B for fabrics, yarns, and fibers that the Parties have determined are not

available in commercial quantities in a timely manner from producers in the United States or Peru. A textile and apparel good containing fabrics, yarns, or fibers that are included in Annex 3-B of the US-PERU TPA will be treated as if it is an originating good for purposes of the specific rules of origin in Annex 4.1 of the US-PERU TPA, regardless of the actual origin of those inputs. However, all other fabrics, yarns, or fibers of the component that determine the classification of the good must satisfy the specific rules of origin in Annex 4.1 of the US-PERU TPA. The US-PERU TPA provides that the President will establish procedures governing the submission of requests under Section 203(o) ("the commercial availability provision") set forth in the US-PERU TPA and may determine whether additional fabrics, yarns, or fibers are available or are not available in commercial quantities in a timely manner in the United States or Peru. In addition, the US-PERU TPA establishes that the President may remove a fabric, yarn, or fiber from the list, if it has been added to the list in an unrestricted quantity or has had a restriction eliminated, if he determines that the fabric, yarn, or fiber has become available in commercial quantities in a timely manner.

In Proclamation No. 8341, 74 FR 4105, 4107 (January 22, 2009), the President delegated to CITA his authority under the commercial availability provision to establish procedures for modifying the list of fabrics, yarns, or fibers not available in commercial quantities in a timely manner, as set out in Annex 3-B of the US-PERU TPA. Set forth below are the Interim Procedures implementing the commercial availability provisions set forth in the US-PERU TPA.

**INTERIM PROCEDURES:**

**1. Introduction**

The intent of these procedures is to foster the use of U.S. and Peruvian products by allowing such products to be placed on or removed from a product list, on a timely basis, and in a manner that is consistent with normal business practice. 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 such requests; have the market indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and parties, information regarding the requests for products and offers to supply received; ensure wide participation by interested entities and parties; provide careful scrutiny of

information provided to substantiate order requests and response to supply offers; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

**2. Definitions**

*(a) Commercial Availability Request.* A "Commercial Availability Request" or "Request" is a request for a commercial availability determination submitted by an interested entity requesting that CITA place a good on the Commercial Availability List in Annex 3-B of the Agreement because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a US-PERU TPA supplier.

*(b) Commercial Availability List.* The Commercial Availability List is the list of products (fibers, yarns, and/or fabrics) in Annex 3-B of the US-PERU TPA that have been determined to be not commercially available from US-PERU TPA suppliers in commercial quantities in a timely manner.

*(c) Fiber, Yarn, or Fabric.* The terms "fiber, yarn, or fabric" mean 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") provision.

*(d) Interested Entity.* An "interested entity" means the government of Peru, 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 203(o)(4)(B)(i) of the US-PERU TPA.

*(e) Interested Party.* An "interested party" means any interested person that requests to be included on the email notification list for commercial availability proceedings. Any interested person may become an interested party by contacting CITA either by sending an email to **OTEXA\_PERU@ita.doc.gov**, or through the website dedicated to commercial availability proceedings under the US-PERU TPA ("US-PERU TPA commercial availability website" or "website"). The website is located on the U.S. Department of Commerce's Office of Textile and Apparel website, under "Commercial Availability"/"Peru."

*(f) Official Receipt.* The "official receipt" is 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 "Rebuttal Comment" ("Rebuttal") is 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 or Restrict.* A "Request to Remove or Restrict" is a submission from an interested entity, made no sooner than six months after a product has been added to the Annex 3-B list in an unrestricted quantity pursuant to Section 203(o)(4) of the US-PERU TPA, requesting that CITA either remove a product or that a quantity restriction be introduced.

*(i) Requestor.* The "Requestor" refers to the interested entity that files a Request or a Request to Remove or Restrict, under the commercial availability provision of the US-PERU TPA, for CITA's consideration.

*(j) Response with an Offer to Supply.* A "Response with an Offer to Supply" ("Response") is 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.* A "U.S. business day" is any calendar day other than a Saturday, Sunday, or a legal holiday observed by the Government of the United States. See section 203(o)(4)(B)(ii) of the US-PERU TPA.

*(l) US-PERU TPA Supplier.* A "US-PERU TPA Supplier" is a potential or actual supplier of a textile or apparel good of a producer. See section 203(n)(16) of the US-PERU TPA ("The term 'producer' means a person who engages in the production of a good in the territory of Peru or the United States.").

### 3. Submissions for Participation in a US-PERU TPA Commercial Availability Proceeding.

*(a) Filing a Submission.* All submissions in a US-PERU TPA commercial availability proceeding (e.g., Request, Response, Rebuttal, and Request to Remove or Restrict) must be in English. If any attachments are in a language other than English, then 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: electronic mail and an original signed submission.

(1) An electronic mail ("email") version of the submission must be either in PDF, Word, or Word-Perfect format and must contain an adequate public summary of any business confidential information and the due diligence certification, sent to **OTEXA\_PERU@ita.doc.gov**. The email version of the submission will be posted for public review on

the US-PERU TPA commercial availability website. No business proprietary information should be submitted in the email version of any document.

(2) The original signed submission must be received via express courier to -- Chairman, Committee for the Implementation of Textile Agreements, Room H3100, U.S. Department of Commerce, 14th and Constitution Ave., N.W., Washington, DC 20230. Any business confidential information upon which an interested entity wishes to rely must be included in the original signed submission only. 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 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 US-PERU TPA suppliers who were contacted, what was asked generally about the capability to manufacture the subject product, and the responses thereto should be included in public versions, which will be made available to the public.

*(b) Due Diligence Certification.* Due Diligence Certification. An interested entity must file a certification of due diligence as described in subsection (b)(1) with each submission, both email and original signed versions, containing 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 submission, both email and original signed versions, containing factual information. Accurate representations of material facts submitted to CITA for the

US-PERU TPA 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 US-PERU TPA 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 Requests, CITA will confirm to the requestor that both versions of the Request were received through an email confirmation. CITA's email confirmation shall be considered the "official receipt" of the Request, and also begins the statutory 30 U.S. business-day process for CITA consideration of Requests. CITA will confirm official receipt of any Response and Rebuttal by posting the submissions on the US-PERU TPA 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 US-PERU TPA supplier.

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

(1) *Detailed Product Information.* The 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 the American Society for Testing and Materials ("ASTM") or the American Association of Textile Chemists and Colorists ("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 US-PERU TPA suppliers with detailed explanations and measurable criteria for the specification or term at issue. In the course of its review of the 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 distinguishes 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 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 or Peru.

(3) *Due Diligence.* The 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 or Peru. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from US-PERU TPA suppliers.

(i) *Generally:* The requestor must

provide the names and addresses of suppliers contacted, who (by name and position) was 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 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 US-PERU TPA suppliers:* Requestors must make reasonable efforts to identify US-PERU TPA suppliers in the United States or Peru. Requestors should identify US-PERU TPA suppliers through a number of means, including the requestor's knowledge of the industry, industry directories, and industry association memberships. However, an email from a requestor with a general inquiry to all manufacturers in the United States or Peru may not constitute due diligence. Rather, reasonable efforts must be taken to identify US-PERU TPA 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 US-PERU TPA 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 US-PERU TPA suppliers. Third party communications are no substitutes for meaningful dialogue between appropriate officials. Once interest is expressed between requestors and US-PERU TPA suppliers, subsequent communications should be conducted by appropriate officials of the requestor and US-PERU TPA supplier based on normal business practice. A lack of appropriate business-to-business contact may be deemed as insufficient due diligence.

(iv) *Description of the Subject Product:* In undertaking due diligence, requestors must provide a detailed description of the product

to US-PERU TPA 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 US-PERU TPA 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 US-PERU TPA suppliers its standard business practice with respect to the provision of samples. While requestors may request a sample, a US-PERU TPA supplier is not required to provide a sample under CITA's procedures. However, CITA notes that US-PERU TPA 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 US-PERU TPA suppliers. In its inquiries to US-PERU TPA 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 US-PERU TPA 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 US-PERU TPA supplier proposes a substitutable product, the requestor must provide reasonable justifications to the US-PERU TPA 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 US-PERU TPA 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 Request must provide information on whether the requestor believes that other products supplied by the US-PERU TPA 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 US-PERU TPA supplier.

(5) *Additional Information.* The 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 producer in the United States or Peru.

**5. Consideration and Acceptance of a Request.**

In considering whether to accept a Request, CITA will consider and determine whether it provides all the required information specified in Sections 3 and 4 of these 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 of a Request.

(a) *Request Rejected.* If CITA determines that the 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 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 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 Request. The requestor may submit a 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 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 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 Request contains the required information, CITA will notify interested parties by email that a Request has been accepted and filed and will assign a File Number. CITA will post the accepted 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.

(a) *Response With an Offer to Supply Submission.* An interested entity (a US-PERU TPA supplier) may file a Response to a Request CITA accepted advising CITA of its objection to the Request and its ability to supply the subject product by providing an offer to supply the subject product as described in the Request. An interested entity will

have 10 U.S. business days after official receipt of a Request to respond to a Request. If good cause is shown, CITA may extend this deadline, but CITA will still meet the statutory deadline for making a determination.

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

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

(2) *Quantity.* The Response must supply 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 must contain information supporting the claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(i) The Response must report the quantity, in metric units, that the US-PERU TPA 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 US-PERU TPA 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 new style, weight, or other variation that is new to the market or new to the US-PERU TPA 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 US-PERU TPA 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 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 may provide, if relevant, the basis for the US-PERU TPA supplier's rationale that other products that are supplied by the US-PERU TPA supplier in commercial quantities in a timely manner are substitutable for the subject product(s) for purposes of the intended use, supported by measurable criteria.
- (vi) In its review of a Response, CITA will consider whether the US-PERU TPA 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 US-PERU TPA supplier was not responsive, a US-PERU TPA supplier must provide a reasonable explanation in its Response as to why it did not respond to earlier inquiries by the requestor in the course of due diligence. CITA will reject a Response if it does not include such explanation.
- (4) **Due Diligence.** The Response must provide a complete description of the due diligence undertaken by the US-PERU TPA supplier to substantiate the ability to supply the subject product. If a US-PERU TPA 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 US-PERU TPA supplier has been responsive to a requestor in the undertaking of due diligence, the US-PERU TPA 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 US-PERU TPA supplier's claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.
- (ii) If a US-PERU TPA 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 US-PERU TPA supplier does not provide such information, it must, subject to section 6(b)(4)(vii), 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 US-PERU TPA 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 new style, weight, or other variation that is new to the market or new to the US-PERU TPA 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 US-PERU TPA 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 US-PERU TPA 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 US-PERU TPA supplier's rationale that other products that are supplied by the US-PERU TPA 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 US-PERU TPA supplier to provide business confidential or other commercially sensitive information to a requestor. However, a US-PERU TPA 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 US-PERU TPA supplier.** The Response 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 must meet the requirements outlined in Section 3 of these procedures. General comments in support of or opposition to a Request or a Response do not meet the requirements of a Rebuttal. A Due Diligence Certification must accompany a Rebuttal.
- (a) **Rebuttal Comment.** Rebuttal Comment. Any interested entity may submit a Rebuttal to a Response. An interested entity must submit its Rebuttal not later than 4 U.S. business-days after the deadline for Response. If good cause is shown, CITA may extend the time limit, but CITA will still meet the statutory deadline for making a determination.
- (b) **Contents of a Rebuttal.** The Rebuttal Comment may respond only to evidence or arguments raised in the Response and must identify the Response, evidence and/or arguments to which it is responding. The Rebuttal must reference the CITA File Number assigned to the particular Request being addressed.
- 8. Determination Process.**
- (a) Not later than 30 U.S. business days after official receipt of a Request (or not later than 44 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 Web site whether the subject product is available in commercial quantities in a timely manner in the United States or Peru and whether an interested entity has objected to the 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 Annex 3-B of the Agreement.
- (c) **Types of Determinations.**
- (1) **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 or Peru. If a Request is denied, notice of the denial will be posted on the US-PERU TPA Commercial Availability Web site.
- (i) **Denial of Requests for Downstream Products with Inputs Not Commercially Available:** If, during

the course of its review of a 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 Request. The requestor may submit a 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 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 Request if there is a substitute product that does not require such prohibited inputs, specifications, or processes.

(2) *Approval in Unrestricted Quantity.*

An approval in unrestricted quantities means that CITA has determined that the subject product is not available in commercial quantities in a timely manner in the United States or Peru or that no interested entity has objected to the Request.

If a Request is approved without restriction, a notice will be published in the U.S. **Federal Register** not later than 30 U.S. business days (or not more than 44 U.S. business days where an extension is provided) after the official receipt of a Request, adding the subject product to the Commercial Availability List in Annex 3-B of the Agreement. The effective date of the determination is the date of publication of the notice in the U.S. **Federal Register**.

(3) *Approval in a Restricted Quantity.*

(i) *Approval in a Restricted Quantity:*

An Approval in a Restricted Quantity means that CITA has determined to add the subject product to the Commercial Availability List in Annex 3-B of the Agreement with a specified restricted quantity. CITA may approve the Request in a restricted quantity if CITA determines that a US-PERU TPA supplier(s) can partially fulfill the Request for the subject product. The restricted quantity specifies the amount of the subject product that can be provided by a US-PERU TPA supplier(s).

(A) If a Request is approved in a restricted quantity, a notice will be published in the **Federal Register** not later than 30 U.S. business days (or not more the 44 U.S. business days where an extension is provided) after official receipt of the

Request, adding the subject product to the Commercial Availability List in Annex 3-B of the Agreement with a specified restricted quantity. The restricted quantity specifies the amount of the subject product that can be provided by a US-PERU TPA supplier(s).

(B) The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(ii) *Elimination of a restricted quantity:* Elimination of a restricted quantity: Not later than six months after adding a product to the Commercial Availability List in Annex 3-B of the Agreement in a restricted quantity, CITA may eliminate the restriction if it determines that the subject product is not available in commercial quantities in a timely manner in the United States or Peru. See Section 203(o)(4)(E) of the US-PERU TPA.

(A) The determination that the subject product is not available in commercial quantities in a timely manner will be based upon whether the restricted quantity has been provided by a US-PERU TPA supplier(s). CITA will solicit comments and information from the US-PERU TPA supplier(s) and the requestor.

(B) If the US-PERU TPA supplier(s) are still capable of providing the restricted quantity, the restriction will remain.

(C) If the US-PERU TPA supplier(s) are unable to provide the restricted quantity, CITA will eliminate the restricted quantity. CITA will publish a notice in the U.S. **Federal Register**, and post on the Web site, that the restricted quantity is eliminated and the subject product is added to the Commercial Availability List in Annex 3-B of the Agreement in an unrestricted quantity. The effective date of the determination will be the date of publication in the U.S. **Federal Register**.

(4) *Insufficient Information to*

*Determine.* CITA will extend its time period for consideration of the Request by an additional 14 U.S. business days in the event that CITA determines, not later than 30 U.S. business days after official receipt of a Request, that it has insufficient information to make a determination regarding the ability of a US-PERU TPA supplier to supply the subject products of the Request based on the submitted information. CITA will normally determine that it does not have

sufficient information to make a determination on a Request when CITA finds there is inconsistency in material information contained in the Request, one or more Responses, and/or the Rebuttal(s). CITA will notify interested parties via email that it has extended the time period for CITA's consideration by 14 U.S. business-days. CITA also will announce the extension on the Web site for US-PERU TPA commercial availability proceedings.

(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 3110, U.S. Department of Commerce, 14th St. and Constitution Ave., 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 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 US-PERU TPA supplier(s) can supply a substantially similar product to that specified in the Request.

(iii) CITA will make a determination, not later than 44 U.S. business days after the official receipt of a Request whether to approve, approve with restriction, or deny the Request and will follow the notification process accordingly.

(5) *Deemed Approval.* In the event that CITA does not make a determination in response to a Request to add a product to Annex 3-B of the Agreement within the statutory deadlines provided, not later than 45 U.S. business-days after the official receipt of the Request or not later than 60 U.S. business-days after the official

receipt of the Request that was determined to lack sufficient information pursuant to Section 8(c)(4) of these Procedures, the requested subject product shall be added to the Commercial Availability List in Annex 3-B, in an unrestricted quantity, in accordance with the requirements of section 203(o)(4)(D) of the US-PERU TPA. CITA will notify the public of the deemed approval by publication in the U.S. **Federal Register** and posting on OTEXA's Web site.

#### 9. Submitting a Request to Remove or Restrict

(a) *Request to Remove or Restrict.* No earlier than six months after a product has been added to the Commercial Availability List in Annex 3-B in an unrestricted quantity pursuant to Section 203(o)(4)(C)(iii) or (vi) of the US-PERU TPA, an interested entity may submit a request to CITA requesting that a product be either removed or that a quantity restriction be introduced. See Section 203(o)(4)(E)(i) of the US-PERU TPA.

(b) *Content of a Request to Remove or Restrict.* The Request to Remove or Restrict 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 or Restrict, 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 or Restrict, 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 or Restrict is available in commercial quantities in a timely manner from a US-PERU TPA supplier not later than 30 U.S. business days after the official receipt of the Request to Remove or Restrict.
  - (i) If CITA determines that the product is available in commercial quantities in a timely manner in the United States or Peru, e.g., that a US-PERU TPA supplier is capable to supply the entire subject product requested originally, then that

product will be removed from the Commercial Availability List in Annex 3-B of the Agreement.

- (ii) If CITA determines that the product is available in restricted quantities in a timely manner in the United States or Peru, e.g., that a US-PERU TPA supplier is capable to supply part of the subject product requested originally then a restricted quantity will be introduced for that product.
- (iii) If the Commercial Availability List changes as a result of CITA's determination for the Request to Remove or Restrict, CITA will notify interested parties by email of its determination and will publish a notice of its determination for the Request to Remove or Restrict in the U.S. **Federal Register**.
  - (A) 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 either the United States or Peru if the subject product is obtained from sources outside the United States or Peru, 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 203(o)(4)(E)(iv) of the US-PERU TPA.
  - (B) For restriction, the notice of determination will specify the restricted quantity for the subject product that is to be effective on or after six months (i.e., 180 calendar days) after the publication date of the notice. See Section 203(o)(4)(E)(iv) of the US-PERU TPA.

#### Request for Comment on the Interim procedures

Comments on the above Interim Procedures must be received no later than September 14, 2009, 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 an electronic mail ("email"), must be either in PDF, Word, or Word-Perfect format, and sent to the following email address: **OTEXA\_PERU@ita.doc.gov**. The email version of the comments must include an original 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 Web site dedicated to US-PERU TPA commercial availability proceedings.

- (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 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 Textile and Apparel, Room 3100, U.S. Department of Commerce, 14th and Constitution Avenue N.W., Washington, D.C., between the hours of 8:30 a.m. and 5:00 p.m. on business days.
- (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.

#### Classification

##### Administrative Procedure Act

These procedures are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(a)(1) ("Administrative Procedures Act").

##### Paperwork Reduction Act

This document contains collection of information requirements subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. The information collection has been approved by OMB under Control Number: 0625-0265.

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

In accordance with Section 203(o) of the US-PERU TPA and as reflected in the Interim Procedures for commercial availability proceedings, CITA must collect certain information about the technical specifications of a fabric, yarn, or fiber and the production capabilities of Peruvian and U.S. textile producers to determine whether certain fabrics, yarns, or fibers are available in



commercial quantities in a timely manner in the United States or Peru. CITA submitted to the Office of Management and Budget (“OMB”) for Clearance its Interim Procedures requiring the collection of information under the emergency provisions of the Paperwork Reduction Act of 1995 (“PRA”) (44 U.S.C. Chapter 35). 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. In a **Federal Register** notice published on July 31, 2009, (74 FR 38169), CITA solicited public comment on its estimated burden. CITA hereby provides the public further opportunity to provide comment on its estimates of the burden on the public to submit information to CITA under the Interim Procedures.

**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. 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 US-PERU TPA 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.

Activity: Request	Time Required
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 Requests will be filed per year under the US-PERU TPA 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 Response is 2 hours, for a total of 6 hours per year.

Activity: Response	Time Required
Preparing Response	1 hours and 30 minutes
Preparing Supporting Documentation	30 minutes

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.

Activity: Rebuttal	Time Required
Preparing Rebuttal	1 hour
Total Time per Response	1 hour
Times 3 Responses per Year	3 hours

Combined, these three information collections represent an annual burden of 89 hours. CITA hereby requests public comment on its estimates for the burden to the public to collect and submit information in the course of a commercial availability proceeding under Section 203(o) of the US-PERU TPA and the Interim Procedures provided above. Copies of the above estimate can be obtained by calling or writing Diana Hynek, Departmental Paperwork Clearance Officer, (202) 482-0266, Department of Commerce, Room 7845, 14th & Constitution Avenue, NW, Washington, DC 20230 or via the Internet at [DHynek@doc.gov](mailto:DHynek@doc.gov). Written comments and recommendations for the estimate of the burden to the public should be sent to Wendy Liberante, OMB Desk Officer, via the Internet at [Wendy.L.Liberante@omb.eop.gov](mailto:Wendy.L.Liberante@omb.eop.gov) or fax (202) 395-7285 by September 14, 2009.

Notwithstanding any other provision of 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 Paperwork Reduction Act unless that collection displays a currently valid OMB Control Number.

**Janet E. Heinzen,**

*Acting Chairman, Committee for the Implementation of Textile Agreements.*

[FR Doc. E9-19559 Filed 8-13-09; 8:45 am]

**BILLING CODE 3510-DS**

## COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

### Request for Public Comment on Short Supply Petition under the North American Free Trade Agreement (NAFTA)

August 11, 2009.

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

**ACTION:** Request for Public Comments concerning a request for modification of the NAFTA rules of origin for articles of apparel and clothing accessories, not knitted or crocheted made from certain yarn-dyed poplin fabric.

**SUMMARY:** On August 5, 2009, the Chairman of CITA received a request from Sorini Samet & Associates LLC, on behalf of Cintas Corporation (“Cintas”), alleging that certain yarn-dyed poplin fabric, as specified below, classified under subheading 5513.31 of the Harmonized Tariff Schedule of the United States (HTSUS), cannot be supplied by the domestic industry in commercial quantities in a timely manner and requesting that CITA consider whether the North American Free Trade Agreement (NAFTA) rule of origin for articles of apparel and clothing accessories, not knitted or crocheted, classified under HTSUS Chapter 62, should be modified to allow the use of certain non-North American yarn-dyed poplin fabric, as specified below. The President may proclaim a modification to the NAFTA rules of origin only after reaching an agreement with the other NAFTA countries on the modification. CITA hereby solicits public comments on this request, in particular with regard to whether certain yarn-dyed poplin fabric, as specified below, can be supplied by the domestic industry in commercial quantities in a timely manner. Comments must be submitted by September 14, 2009 to the Chairman, Committee for the Implementation of Textile Agreements, Room 3001, United States Department of Commerce, Washington, DC 20230.

**FOR FURTHER INFORMATION CONTACT:** Maria Dybczak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482-3651.

#### SUPPLEMENTARY INFORMATION:

**Authority:** Section 204 of the Agricultural Act of 1956, as amended (7 USC 1854); Section 202(q) of the North American Free Trade Agreement Implementation Act (19 USC 3332(q)); Executive Order 11651 of March 3, 1972, as amended.

#### BACKGROUND:

Under the North American Free Trade Agreement (NAFTA), NAFTA countries are required to eliminate customs duties on textile and apparel goods that qualify as originating goods under the NAFTA rules of origin, which are set out in Annex 401 to the NAFTA. The NAFTA provides that the rules of origin for textile and apparel products may be amended through a subsequent agreement by the NAFTA countries. See