

**SUPPORTING STATEMENT**  
**U.S. Department of Commerce**  
**International Trade Administration**  
**Interim Procedures for Considering Requests under the Commercial Availability**  
**Provision of the United States - Peru Trade Promotion Agreement**  
**Implementation Act (“Act”)**  
**OMB Control No. 0625-0265**

**SUPPORTING STATEMENT PART A**

**This is a request for extension of an existing information collection.**

**Abstract**

The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the “Agreement”), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Peru or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3-B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. Articles containing these commercially unavailable fibers, yarns, and fabrics are entitled to duty-free or preferential duty treatment despite containing inputs not produced in the United States or Peru.

The list of commercially unavailable fabrics, yarns, and fibers may be changed pursuant to the commercial availability provision in Chapter 3, Article 3.3, Paragraphs 5–7 of the Agreement. Section 203(o) of the Act implements the commercial availability provision of the Agreement. Under this provision, interested entities from Peru or the United States have the right to request that a specific fabric, yarn, or fiber be added to, or removed from, the list of commercially unavailable fabrics, yarns, and fibers in Annex 3-B.

Section 203(o) of the Act provides that the President may modify the list of fabrics, yarns, and fibers in Annex 3-B by determining whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or Peru, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (“CITA”), which issues procedures and acts on requests through the U.S. Department of Commerce, Office of Textiles and Apparel (“OTEXA”) (See Proclamation No. 8341, 74 FR 4105, Jan. 22, 2009). Interim procedures to implement these responsibilities were published in the Federal Register on August 14, 2009. (See *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*, 74 FR 41111, Aug. 14, 2009) (“Commercial Availability Procedures”).

CITA must collect certain information about fabric, yarn, or fiber technical specifications 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, subject to Section 203(o) of the Act.

## **Justification**

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

The United States and Peru negotiated the U.S.-Peru Trade Promotion Agreement (the “Agreement”), which entered into force on February 1, 2009. Subject to the rules of origin in Annex 4.1 of the Agreement, and pursuant to the textile provisions of the Agreement, a fabric, yarn, or fiber produced in Peru or the United States and traded between the two countries is entitled to duty-free tariff treatment. Annex 3-B of the Agreement also lists specific fabrics, yarns, and fibers that the two countries agreed are not available in commercial quantities in a timely manner from producers in Peru or the United States. Articles containing these commercially unavailable fibers, yarns, and fabrics are entitled to duty-free or preferential duty treatment despite containing inputs not produced in the United States or Peru.

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Section 203(o) of the Act provides that the President may modify the list of fabrics, yarns, and fibers in Annex 3-B by determining whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or Peru, and that the President will issue procedures governing the submission of requests and providing an opportunity for interested entities to submit comments. The President delegated the responsibility for publishing the procedures and administering commercial availability requests to the Committee for the Implementation of Textile Agreements (“CITA”), which issues procedures and acts on requests through the U.S.

Department of Commerce, Office of Textiles and Apparel (“OTEXA”) (See Proclamation No. 8341, 74 FR 4105, Jan. 22, 2009). Interim procedures to implement these responsibilities were published in the Federal Register on August 14, 2009. (See *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*, 74 FR 41111, Aug. 14, 2009) (“Commercial Availability Procedures”).

The intent of the Commercial Availability Procedures is to foster the use of U.S. and regional products by implementing procedures that allow products to be placed on or removed from a product list, in a timely fashion, and in a manner that is consistent with normal business practice. The procedures are intended to facilitate the transmission of requests; allow the market to indicate the availability of the supply of products that are the subject of requests; make available promptly, to interested entities and the public, information regarding the requests for products and offers received for those products; ensure wide participation by interested entities and parties; allow for careful review and consideration of information provided to substantiate requests and responses; and provide timely public dissemination of information used by CITA in making commercial availability determinations.

CITA must collect certain information about fabric, yarn, or fiber technical specifications 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, subject to Section 203(o) of the Act.

**2. Indicate how, by whom, and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

For an additional fiber, yarn or fabric to be added to Annex 3-B, an interested entity must submit to CITA a Request for a Commercial Availability Determination (“Request”) which states that the subject product is not commercially available in either the United States or Peru within a commercially reasonable timeframe (*i.e.*, timely). In support of its claim, the requestor must provide information to CITA regarding its attempts to source the subject product in the region, and why it determined that the product is not available in a timely manner. Potential suppliers from the United States or Peru may submit a Response with an Offer to Supply (“Response”), asserting their capability and capacity to supply the subject product. These Responses must include information supporting the capability and capacity assertion. If the requestor disputes a responder’s assertions, the requestor may submit a Rebuttal comment offering its contention, along with supporting information and documentation.

The information collected by CITA from Requests, Responses and Rebuttals will be used to determine whether the subject product is available in commercial quantities in a

timely manner in the United States or Peru under the commercial availability provision of the Act. Requests, Responses, and Rebuttals must identify confidential information. Entities submitting confidential information in their Requests, Responses, or Rebuttals to CITA must submit both a public and a confidential version of their submissions. If the submissions are accepted, the public submissions or public versions of submissions will be posted on the dedicated commercial availability section of OTEXA's website. Business confidential information will not be shared with the public. Requestors and potential suppliers of the product named in the Request may use the public version as a basis for Responses and Rebuttals.

The information collected is used solely as the basis for administrative determinations under the Act. These filings will become part of the record of the proceedings but may not be used to make determinations in any future proceedings. Since implementing these procedures, CITA has received one Request from an interested entity, which was rejected after technical deficiencies were identified in a review by OTEXA staff. No new products have been added to the list in Annex 3-B of the Agreement.

**3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also, describe any consideration of using information technology to reduce burden.**

Participants in a commercial availability proceeding must submit public versions of their Requests, Responses or Rebuttals electronically (via email) for posting on OTEXA's website. CITA's current procedures also require the submission of an original signed, mailed copy (hard copy). All business confidential information must be contained solely in the hard copy. However, due to the ongoing COVID-19 pandemic and the current telework directive issued by the U.S. Department of Commerce, the Chairman of CITA and OTEXA staff are not able to take receipt of mailed hard copy submissions. Therefore, a waiver has been issued to allow for electronic submissions without original hard copies, including submissions that contain business confidential information through a secure online system.

**4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Question 2.**

The information provided by participants in a commercial availability proceeding is unique in each case in that it relates to the availability of a particular fiber, yarn or fabric from a requestor and U.S. or Peruvian suppliers. No other U.S. government agency collects this information, so there is no chance for duplication.

**5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.**

Standardized criteria, instructions, and certifications are utilized to help ensure that the burden on small businesses is minimized. In addition, the amount of information requested has been reduced to the minimum necessary to determine whether or not the subject product is commercially available in a timely manner from suppliers in the United States or Peru.

**6. Describe the consequence to the Federal program or policy activities if the collection is not conducted or is conducted less frequently, .**

If the collection is not conducted, CITA would be unable to determine if certain textile and apparel goods were commercially available in a timely manner from suppliers in the United States or Peru. In that case, the United States would not be in compliance with its obligations under the Agreement.

**7. Explain any special circumstances that require the collection to be conducted in a manner:**

- a. requiring respondents to report information to the agency more often than quarterly;**

This collection does not require respondents to report information to the agency more often than quarterly.

- b. requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**

This collection does not require respondents to prepare a written response in fewer than 30 days following receipt.

- c. requiring respondents to submit more than an original and two copies of any document;**

This collection does not require respondents to submit more than an original and two copies of any document.

- d. requiring respondents to retain records, other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**

This collection does not require respondents to retain any records for more than three years.

- e. in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;**

This collection is not conducted in connection with a statistical survey.

- f. requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**

This collection does not require the use of a statistical data classification reviewed and approved by OMB.

- g. that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**

This collection does not include any such pledge of confidentiality.

- h. requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

Any information provided by participants in a commercial availability proceeding that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. Specifically, these provisions include 5 U.S.C. § 552(b) (4), which protects confidential information from disclosure under the Freedom of Information Act, and 18 U.S.C. § 1905, which prohibits disclosure of confidential information by U.S. government employees or officers.

When business confidential information is provided, participants must also provide a public version of its submission in which business confidential information is summarized or, if necessary, deleted. The public submissions will be available to the public via OTEXA's website to allow potential participants in a proceeding to base any subsequent submissions on the information provided.

**8. If applicable, provide a copy and identify the date and page number of publications in the Federal Register of the agency's notice, required by 5 CFR 1320.8 (d), soliciting comments on the information collection prior to submission**

**to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.**

The Federal Register Notice soliciting public comment on the renewal of this information collection was published on April 29, 2022 (87 FR 25445). No comments were received.

The basic framework for the commercial availability process was established by the U.S. and Peruvian governments during the negotiation process for the Agreement and was thereafter written into the Act. Stakeholders, including trade associations representing private sector companies that may wish to file Requests under the commercial availability provision, were consulted during the negotiation process. CITA's procedures follow the framework established in the Agreement.

**9. Explain any decisions to provide payments or gifts to respondents, other than remuneration of contractors or grantees.**

None. CITA makes no payments or gifts to respondents.

**10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulation, or agency policy. If the collection requires a systems of records notice (SORN) or privacy impact assessment (PIA), those should be cited and described here.**

Any information provided by participants in a commercial availability proceeding that is marked business confidential will be kept confidential and protected from disclosure to the full extent permitted by law. Specifically, these provisions include 5 U.S.C. § 552(b) (4), which protects confidential information from disclosure under the Freedom of Information Act, and 18 U.S.C. § 1905, which prohibits disclosure of confidential information by U.S. government employees or officers.

When business confidential information is provided, participants must also provide a public version of the submission in which business confidential information is summarized or, if necessary, deleted. The public submissions will be available to the public via OTEXA's website to allow potential participants in a proceeding to base any subsequent submissions on the information provided.

**11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior or attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of**

**the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.**

No questions of a sensitive nature are asked.

**12. Provide an estimate in hours of the burden of the collection of information.**

It is estimated that 10 Requests will be filed per year. The average amount of time required to prepare each Request is estimated at 8 hours. The total annual burden for all Requests is estimated to be 80 hours.

<u>Activity</u>	<u>Time Required</u>
Due Diligence	5 hours
Summarizing Due Diligence and Preparing Request	2 hours
Preparing Supporting Documentation	1 hour
Total Time per Request	8 hours
Times 10 Requests per Year	80 hours

It is estimated that 3 Responses to Requests will be filed per year. The average amount of time required to prepare each Response is estimated at 2 hours. The total annual burden for all Responses is 6 hours.

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

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

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

Combined, these three information collections represent an annual burden of 89 hours.



**13. Provide an estimate for the total annual cost burden to respondents or record keepers resulting from the collection of information. (Do not include the cost of any hour burden already reflected on the burden worksheet).**

It is estimated that 10 Requests will be filed per year. The average amount of time required to prepare each Request is estimated at 8 hours. The estimated average private sector salary for persons responding is \$40 per hour. The estimated total annual labor cost per Request is \$320.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Due Diligence	5 hours	\$200
Summarizing Due Diligence and Preparing Request	2 hours	\$80
Preparing Supporting Documentation	1 hour	\$40
Total Cost Per Request	8 hours	\$320
Times 10 Requests per Year	80 hours	\$3200

It is estimated that 3 Responses to Requests will be filed per year. The average amount of time required to prepare each Response is estimated at 2 hours. The estimated average private sector salary for persons responding is \$40 per hour. The total labor cost per Response is estimated at \$80. The estimated total annual cost burden for all Responses is \$240.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Preparing Response	1.5 hours	\$60
Preparing Supporting Documentation	0.5 hours	\$20
Total Cost per Response	2 hours	\$80
Times 3 Responses per Year	6 hours	\$240

It is estimated that 3 Rebuttals will be filed per year. The average amount of time required to prepare each Rebuttal is estimated at 1 hour. The estimated average private sector salary for persons responding is \$40 per hour. The total labor cost per Rebuttal is estimated at \$40. The estimated total annual cost burden for all Rebuttals is \$120.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Preparing Rebuttal	1 hour	\$40
Total Cost per Rebuttal	1 hour	\$40

Times 3 Rebuttals per Year	3 hours	\$120
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In addition to the costs outlined above, postage/delivery services and telephone calls for assistance from OTEXA analysts may be required. Some private sector entities may choose to engage legal counsel or other consultants to assist in preparing the Request, which would add an additional cost.

**14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information.**

The average amount of time to review and process Requests is estimated at an average annual total of 80 hours (8 hours per Request for an average of 10 Requests per year). The estimated average public sector salary for persons processing the Requests is \$40 per hour. The total annual cost to the government is estimated at \$3,200 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Initial Processing of Request: Review and Ensure Compliance with CITA's Procedures and Sufficiency of Due Diligence, Post to OTEXA's Website (if accepted), and Notify Interested Parties (if accepted)	3 hours	\$120
Process Offers to Supply (if applicable)	1 hour	\$40
Draft Memo to CITA and Obtain Proper Clearances	2 hours	\$80
Prepare Federal Register Notice for Publication	1 hour	\$40
Publish Decision on OTEXA's Website and Amend Annex 3-B of the US-PERU TPA	1 hour	\$40
Total Cost per Request	8 hours	\$320
Times 10 Requests per Year	80 hours	\$3,200

The average amount of time to review and process Responses is estimated at an average annual total of 3 hours (1 hour per Response for an average of 3 Responses per year). The estimated average public sector salary for persons processing the Requests is \$40 per hour. The total annual cost to the government is estimated at \$120 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Review Response to Ensure it Follows CITA's Procedures	.5 hours	\$20
Notify Requestor	.25 hours	\$10
Post to OTEXA's Public Website	.25 hours	\$10
Total Cost per Response	1 hour	\$40
Times 3 Responses per Year	3 hours	\$120

The average amount of time to review and process Rebuttals is estimated at an average annual total of 3 hours (1 hour per Rebuttal for an average of 3 Rebuttals per year). The estimated average public sector salary for persons processing the Requests is \$40 per hour. The total annual cost to the government is estimated at \$120 per year.

<u>Activity</u>	<u>Time Required</u>	<u>Cost</u>
Review Rebuttal to Ensure it Follows CITA's Procedures	.5 hours	\$20
Notify Responder	.25 hours	\$10
Post to OTEXA's Public Website	.25 hours	\$10
Total Cost per Rebuttal	1 hour	\$40
Times 3 Rebuttals per Year	3 hours	\$120

**15. Explain the reasons for any program changes or adjustments reported in ROCIS.**

There are no changes to the information collection since the last OMB approval.

**16. For collections of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.**

Respondents will provide electronic copies of the public versions of Requests to be posted to OTEXA's website. Determinations to add or remove fibers, yarns, or fabrics from the list of commercially unavailable fibers, yarns, or fabrics are also published in the Federal Register.

**17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.**

The agency plans to display the expiration date for OMB approval of the information collection on all instruments.

**18. Explain each exception to the certification statement identified in “Certification for Paperwork Reduction Act Submissions.”**

The agency certifies compliance with 5 CFR 1320.9 and the related provisions of 5 CFR 1320.8(b)(3).

**SUPPORTING STATEMENT PART B**

This collection of information does not employ statistical methodologies.