

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement

September 12, 2008.

AGENCY: The Committee for the Implementation of Textile Agreements.

ACTION: Modifications to the CAFTA-DR Commercial Availability Final Procedures; Notice of Modified Procedures

EFFECTIVE DATE:September 15, 2008.

SUMMARY: This notice presents the modifications to CITA's Final Procedures under the CAFTA-DR Commercial Availability Provisions

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

SUPPLEMENTARY INFORMATION:

Authority: Section 203(o)(4) of the CAFTA-DR Implementation Act; the Statement of Administrative Action ("SAA"), accompanying the CAFTA-DR, at 16-20.

BACKGROUND:

Annex 3.25 of the Dominican Republic-Central America-United States Free Trade Agreement ("Agreement") provides a list of fabrics, yarns, and fibers that the Parties to the Agreement have determined are not available in commercial quantities in a timely manner from suppliers in the United States or other CAFTA-DR countries. A textile and apparel good containing fabrics, yarns, or fibers that is included in Annex 3.25 of the Agreement may be treated as if it is an originating good for purposes of the specific rules of origin in Annex 4.1 of the Agreement, regardless of the actual origin of those inputs, provided that all other fabrics, yarns, or fibers of the component that determines the classification of the good meet the specific rules of origin in Annex 4.1 of the Agreement. The CAFTA-DR Implementation Act provides that the President will establish procedures governing the submission of requests and may determine whether additional fabrics, yarns, or fibers are not available in commercial quantities in a timely manner in the United States or the other CAFTA-DR countries. In

addition, the CAFTA-DR Implementation Act 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 pursuant to section 203(o), if he determines that the fabric, yarn, or fiber has become available in commercial quantities in a timely manner.

The SAA provides that the President will delegate to CITA his authority under section 203(o)(4) of the Agreement, known as 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 for Agreement countries, as set out in Annex 3.25 of the Agreement.

The CAFTA-DR Commercial Availability Final Procedures (“procedures”) are not subject to the requirement to provide prior notice and opportunity for public comment, pursuant to 5 U.S.C. 553(b)(A) (Administrative Procedures Act). These procedures may be modified in the future to address concerns that may arise as CITA gains experience in implementing them. CITA possesses inherent authority to reconsider, and/or subsequently amend, commercial availability determinations that may have been procured by error, fraud, or similar faults. Should CITA undertake to review a determination under such circumstances, CITA will provide notice to the public, through the email and website notification processes described in the procedures, and provide opportunity for interested entities to submit comments and information for CITA’s consideration.

CITA’s Request for Public Comment on the Due Diligence Requirement under the CAFTA-DR Commercial Availability Procedures. On December 3, 2007, CITA issued a *Federal Register* notice requesting public comment and proposals on the operation of the due diligence requirement under CITA’s procedures implementing the CAFTA-DR Commercial Availability Provision. See Request for Public Comment on the Due Diligence Requirement Under the Commercial Availability Procedures of the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR), 72 Fed. Reg. 67916 (December 3, 2007). In its notice, CITA explained that, based on its experience in implementing those procedures, it was concerned that due diligence efforts have fallen short of those expected when the procedures were drafted; that product descriptions may not meet recognized standards; that potential suppliers may not be adequately substantiating their claims that they are to be able to supply requested products; and that CITA is not

receiving complete information from interested entities regarding meaningful contact between requesters and potential suppliers necessary for CITA to make informed determinations. CITA requested comment on several areas involved in the commercial availability process, including: communications between requesters and potential suppliers; identification of potential suppliers; content of communications between requesters and potential suppliers; substitutability of products; commercial availability of a production input vs. downstream product; and potential suppliers' responses to requester's inquiry. As a result of its review and consideration of submitted comments and proposals, CITA has modified its existing procedures.

MODIFIED FINAL PROCEDURES:

1. Introduction

The intent of the procedures is to foster the use of U.S. and CAFTA-DR products by implementing procedures that allow 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 order requests 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 (“Request”) is a submission from an interested entity requesting that CITA place a good on the list in Annex 3.25 because that fiber, yarn, or fabric is not available in commercial quantities in a timely manner from a supplier in the CAFTA-DR countries.

(b) *Interested Entity.* An “interested entity” means a government that is a Party to the Agreement, other than the United States; 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 CAFTA-DR Implementation Act.

(c) *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 through the U.S. Department of Commerce's Office of Textile and Apparel CAFTA-DR Commercial Availability [website](#) or by sending an [email](#) to OTEXA_CAFTA@ita.doc.gov.

(d) *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.

(e) *Request*. A "Request" refers to the Commercial Availability Request.

(f) *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 3.25 list in an unrestricted quantity pursuant to Section 203(o) of the CAFTA-DR Implementation Act, requesting that CITA either remove a product or that a quantity restriction be introduced.

(g) *Requestor*. The "requestor" refers to the interested entity that files a Request, either a Request or a Request to Remove or Restrict, under the CAFTA-DR Commercial Availability provision, for CITA's consideration.

(h) *CAFTA-DR Supplier*. A "CAFTA-DR supplier" is a potential or actual supplier of a textile or apparel good in the territory of any Party.

(i) *Response with an Offer to Supply*. A "Response with an Offer to Supply" ("Response") is a submission from an interested entity to CITA providing its objection 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.

(j) *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.

(k) *Fiber, Yarn, or Fabric*. The term "fiber, yarn, or fabric" means 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.

(l) *U.S. Business Day*. A "U.S. business-day" is any calendar day other than a Saturday, Sunday, or a legal holiday. See section 203(o)(4)(B)(i) of the CAFTA-DR Implementation Act.

3. Submissions for Participation the CAFTA-DR Commercial Availability Proceeding.

(a) *Filing a Submission*. All submissions for a CAFTA-DR 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 translation must be provided. Each submission must be submitted to 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_CAFTA@ita.doc.gov. The email version of the submission will be posted for public review on OTEXA's CAFTA-DR 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, 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 asterisks.

(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 CAFTA-DR 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. 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 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 CAFTA-DR 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 CAFTA-DR 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 dedicated [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 producer in the CAFTA-DR countries.

(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 ASTM ("American Society for Testing and Materials") or AATCC ("American Association of Textile Chemists and Colorists").

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 CAFTA-DR 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 CAFTA-DR countries.

(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 CAFTA-DR countries. Due diligence for the requestor means it has made reasonable efforts to obtain the subject product from CAFTA-DR 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 CAFTA-DR suppliers*: Requestors must make reasonable efforts to identify CAFTA-DR suppliers in the CAFTA-DR countries. Requestors should identify CAFTA-DR 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 CAFTA-DR countries may not constitute due diligence. Rather, reasonable efforts must be taken to identify CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR suppliers. Third party communications are no substitutes for meaningful dialogue between appropriate officials. Once interest is expressed between requestors and CAFTA-DR suppliers, subsequent communications should be conducted by appropriate officials of the requestor and CAFTA-DR 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 CAFTA-DR suppliers. 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 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 CAFTA-DR 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 CAFTA-DR suppliers its standard business practice with respect to the provision of samples. While requestors may request a sample, a CAFTA-DR supplier is not required to provide a sample under CITA's procedures. However, CITA notes that CAFTA-DR 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 CAFTA-DR suppliers. In its inquiries to CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR supplier proposes a substitutable product, the requestor must provide reasonable justifications to the CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR countries.

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.

Respondents 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 CAFTA-DR supplier) may file a submission 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR supplier's rationale that other products that are supplied by the CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR supplier was not responsive, a CAFTA-DR 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 CAFTA-DR supplier to substantiate the ability to supply the subject product. If a CAFTA-DR 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 CAFTA-DR supplier has been responsive to a requestor in the undertaking of due diligence, the CAFTA-DR 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 CAFTA-DR supplier's claim to supply the subject product, or one substitutable, in commercial quantities in a timely manner.

(ii) If a CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR 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 CAFTA-DR supplier's rationale that other products that are supplied by the

CAFTA-DR 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 CAFTA-DR supplier to provide business confidential or other commercially sensitive information to a requestor. However, a CAFTA-DR 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 CAFTA-DR 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.* 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 website whether the subject product is available in commercial quantities in a timely manner in the CAFTA-DR countries 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 3.25 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 CAFTA-DR countries. If a Request is denied, notice of the denial will be posted on the CAFTA-DR Commercial Availability [website](#).

- (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.

- (3) *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 CAFTA-DR countries 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 3.25 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 3.25 of the Agreement with a

specified restricted quantity. CITA may approve the Request in a restricted quantity if CITA determines that a CAFTA-DR 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 CAFTA-DR 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 3.25 of the Agreement with a specified restricted quantity. The restricted quantity specifies the amount of the subject product that can be provided by a CAFTA-DR 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:* Not later than six months after adding a product to the Commercial Availability List in Annex 3.25 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 CAFTA-DR countries.

(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 CAFTA-DR supplier(s). CITA will solicit comments and information from the CAFTA-DR supplier(s) and the requestor.

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

(C) If the CAFTA-DR 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 website, that the restricted quantity is eliminated and the subject product is added to the Commercial Availability List in Annex 3.25 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 CAFTA-DR 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 website.

(i) *Process during Extension Period:* During the extended time period, CITA will request that interested entities provide additional evidence to substantiate the information provided, and may initiate a meeting with interested entities. Should CITA elect to conduct a meeting, it will comply with requirements to conduct proceedings in an open manner. 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.

(ii) CITA also will consider evidence in support of claims that CAFTA-DR supplier(s) can supply a substantially similar product to that specified in the Request.

(ii) 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 3.25 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 subsection (c)(4), the requested subject product shall be added to the Commercial Availability List in Annex 3.25, in an unrestricted quantity, in accordance with the requirements of section 203(o)(4)(D) of the CAFTA-DR Implementation Act. CITA will notify the public of the deemed approval by publication in the U.S. Federal Register and posting on OTEXA's website.

9. Six Month Procedures.

(a) *Request to Remove or Restrict.* No earlier than six months after a product has been added to the Commercial Availability List in Annex 3.25 in an unrestricted quantity pursuant to Sections 203(o)(2) and (4) of the CAFTA-DR Implementation Act, an interested entity may submit a request to CITA requesting that a product be either removed or that a quantity restriction be introduced.

(b) *Content of a Request to Remove or Restrict.* The Request to Remove or Restrict must provide the substantive information set forth in subsection 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 in the CAFTA-DR countries 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 CAFTA-DR countries, e.g., that a CAFTA-DR supplier is capable to supply the entire subject product requested originally, then that product will be removed from the Commercial Availability List in Annex 3.25 of the Agreement.

(ii) If CITA determines that the product is available in restricted quantities in a timely manner in the CAFTA-DR countries, e.g., that a CAFTA-DR 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 a CAFTA-DR country if the subject product is obtained from non- CAFTA-DR sources, 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.

(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.

R. Matthew Priest

Chairman

Committee for the Implementation of Textile Agreements