



**UNITED STATES
ASSOCIATION OF
IMPORTERS OF
TEXTILES AND
APPAREL**

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By Courier and E-Mail

PUBLIC VERSION

Mr. R. Matthew Priest
Committee for the Implementation of Textile Agreements
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W., Room 3001
Washington, D.C. 20230

Re: Comments on the Due Diligence Requirements Under the Commercial Availability Procedures of the Dominican Republic-Central America-United States Free Trade Agreement, 72 Fed. Reg. 67916 (December 3, 2007)

Dear Mr. Priest:

This letter presents comments in response to the Federal Register notice of December 3, 2007. The U.S. Association of Importers of Textiles and Apparel, USA-ITA, appreciates the opportunity to provide its perspective on what constitutes due diligence efforts by both apparel producers and yarn and fabric suppliers for purposes of the commercial availability – or short supply – procedures under DR-CAFTA. We appreciate the extension of time permitted for USA-ITA to provide these comments.

USA-ITA has been a strong supporter of the free trade agreements and its members include manufacturers, distributors, retailers, importers and related service providers. Many USA-ITA members source apparel within the Western Hemisphere. In response to the Federal Register notice, USA-ITA solicited input from its membership about the short supply process. Not all of these companies use the short supply benefits under DR-CAFTA, however, and we are still receiving comments from companies that clarify the reasons why this FTA benefit is underutilized. As we continue to receive additional meaningful comments from member companies, we will share those insights with you and your colleagues in the Office of Textiles and Apparel.

USA-ITA and its member companies applaud the commitment of the Committee for the Implementation of Textile Agreements (CITA) to encourage public discussion about the implementation of the commercial availability program – both through the public meeting last September and through the publication of the Federal Register notice soliciting further comments. The DR-CAFTA commercial availability procedures constitute a significant improvement over the practice that existed under the unilateral Caribbean Basin Trade Promotion Act, CBTPA, as well as a significant improvement over the similar provisions created under other free trade agreements, such as the North American Free Trade Agreement (NAFTA)

and the Singapore-U.S. Free Trade Agreement. We particularly appreciate the fact that CITA recognizes that the long-term success for DR-CAFTA means that all segments of the U.S. industry – yarn spinners, textile mills, apparel manufacturers, retailers and importers – need to remain involved in a dialogue about how we all can best develop a successful North American industry.

One way to accomplish this goal is to expand the efforts already begun by CITA to bring together the U.S. industry to discuss how best to determine – when appropriate – which fibers, yarns and fabrics meet the definition of not “available in commercial quantities in a timely manner.” The public hearing highlighted the fact that there is already a wealth of knowledge available from industry experts, and OTEXA officials, about many products that are not manufactured in either the United States or any of the DR-CAFTA Parties. Where such information is available, USA-ITA believes it should provide an automatic basis for including a product on the short supply list rather than relying upon requestors to go through the short supply process.

For example, in February 2006, the Special Textile Negotiator, Scott Quesenberry, notified the Honduran Minister of Industry and Trade that the United States had determined through its own investigation that 12 shirting fabrics are not available in commercial quantities in a timely manner in the territory of any of the Parties to DR-CAFTA. That finding should place each of those 12 fabrics on the short supply list without any further action by any individual. Action by CITA to place these shirting fabrics on the DR-CAFTA short supply list would send an important and strong message to the apparel importers and retailers that the DR-CAFTA process is based on the facts, not political decisions.

In addition to the importance of taking advantage of industry expertise to assess which fibers, yarns and fabrics are not available from DR-CAFTA producers, it should be recognized that the DR-CAFTA commercial availability process is predominantly useful for the production of “basic” garments. The process therefore has particular appeal when the sales are not limited to a single season; these are more likely to be replenishment programs that are sold year after year in large quantities. On the other hand, USA-ITA member companies indicate that the short supply process is less likely to make sense for fashion products, even though the DR-CAFTA region represents an ideal location for quick turnaround production. This is because the lead-time and expense of the short supply process still makes the cost too high and the timing too long for a quick response to a high consumer demand.

Further, member companies comment that the current expense of the process means that they are not likely to consider a request for an imported product that does not have a relatively high non-preference duty rate. This point is important in the context of CITA’s review of the due diligence provisions because the current practice for successful petitions has evolved into a practice that requires extensive research and communications with potential suppliers that can be very expensive and time (and resource) consuming.

USA-ITA respectfully urges CITA to consider how, if the short supply process is to remain viable, it can clarify the process to better reflect how apparel makers select suppliers and build long term working relationships. USA-ITA members are hopeful that this review process will lead to guidance from CITA that will reform the process to better match the realities of the business. Toward that end, we provide the following comments with respect to the specific questions raised by CITA in its Federal Register notice.

Communications Between Requestors and Potential Suppliers

USA-ITA members do not believe that there can be a specific list of persons or employees who are deemed appropriate contacts and strongly recommends against such a determination by CITA. Just like the business world, each situation may be different. To set a single standard would likely be counterproductive to the short supply process, placing form over substance. Certainly, the process should include business to business interaction. There may be a role for advisors as well, but it is apparent that the standard of due diligence is leading some to believe that legal advisors are mandatory. That in turn may be causing some entities that would otherwise consider using the short supply process to avoid it, which is an unfortunate and inappropriate result. USA-ITA urges CITA to respond to this phenomenon and ensure that the process is available to all.

It is possible that CITA could serve a facilitating role between requestors and potential suppliers, helping requestors to better direct solicitations, and encouraging the sharing of information between the requestor and a potential supplier. Including the imprimatur of the U.S. Government on such communications might smooth this process and increase the prospects of meaningful responses from the most likely prospective suppliers.

Identification of Potential Suppliers

It is the experience of USA-ITA member companies that the apparel manufacturers often know who the mills are that are most likely to be capable of producing a product, or know of the resources that will help them identify potential suppliers. There are also published resources and trade associations that can be called upon. However, it is possible that the standard of due diligence is compelling some companies to contact a far broader range of potential suppliers than would otherwise make sense from a business perspective. CITA must recognize this contradiction.

USA-ITA members understand that under the current system many emails are sent on behalf of requestors to solicit business from potential suppliers, and it is not always clear which mills are relevant to their business or serious and legitimate. Besides the time and cost involved, this could result in some communications being erroneously disregarded or misunderstood. USA-ITA member companies are concerned about the perceived need, under the guise of due diligence, to send mass emails to a large volume of mills of which experienced requestors have no knowledge. Such a process is removed from the realities of the apparel manufacturing

business. The rules already established by CITA require that a requestor certify to its due diligence and include in its request a complete description of its efforts. That document should already adequately advise CITA whether the requestor has exercised due diligence. CITA should clarify that the determination of due diligence is not dependent upon how **many** solicitations were made but rather whether those solicitations were based upon a reasonable level of knowledge and expertise.

Content of Communications

For USA-ITA member companies, product specifications and performance criteria are typically specified when an order for a particular product is placed, as are timelines for delivery.

ASTM or AATCC standards are not normally identified when orders are placed, unless the product is one that requires water resistance. Therefore, it makes little sense for CITA to insert identification of industry accepted standards as a requirement in a short supply program that is intended to reflect business needs.

Timelines in a fashion business are always important, although the timelines may vary from one product to the next; there is no one set standard. Time is always of the essence, whether the product at issue is a basic or a fashion item. Therefore, it is appropriate for requestors to require potential suppliers to meet specific deadlines. A mill that truly wants to win the business of a requestor will respond promptly and in sufficient detail to permit the requestor to effectively evaluate the viability of working with that mill.

Probably the most probative piece of evidence the mill can provide, and the key to determining whether there is a deal to be done, is a sample. Every vendor has to provide its buyer with samples before the order is finalized; it can be no different between mills and the vendors in the short supply process. Pending presentation of such a sample, surely it is not unreasonable to expect a mill to disclose whether it has produced such a product recently and whether it has the equipment on hand and the capacity to produce it. Requestors are not being unreasonable in making such demands.

USA-ITA also refers CITA to the points raised below under the heading “potential suppliers’ responses,” regarding compliance issues. Every company is looking for a competitive edge, which can be linked to the performance of the product, another program, or compliance with standards. The fabric supplier is key to that success and should be willing to respond to inquiries, and visits, to demonstrate that it would be an appropriate supplier.

Substitutability of Products

Substitutability is an inherently subjective judgment, especially where the issue for the buyer is a fabric’s “hand” or drape or coordination with a larger merchandise program. No one standard can determine whether products are substitutable for one another. It must be a case-by-

case determination. USA-ITA urges CITA to recognize and respect the judgment of the buyer, whose primary responsibility is to identify and respond to the demands of the market and the customer. CITA should be able to distinguish between situations in which the claim that an offered product is not an acceptable substitute is based upon the demands of a buyer that has established performance requirements, or an existing program with which the fabric must mesh, versus those in which the manufacturer is merely making excuses.

Production Input versus Downstream Product

USA-ITA members appreciate that there are concerns regarding the definition of what types of products should be available for DR-CAFTA short supply determinations, but the fact is that the purpose of the process is to identify finished consumer products that should obtain duty-free access. This means that apparel purchasers are going to focus their requests on the fabric used to make the product.

We understand that in an earlier short supply process there was an instance in which the use of a particular yarn in a fabric affected the hand of the finished fabric. In that instance, the requestor was a U.S. mill that sought to sell its fabric to an apparel manufacturer in the Caribbean. The apparel manufacturer had obtained specifications from a major U.S. brand that called for the fabric to contain the yarn, which was produced in Europe. In that instance, the U.S. mill was willing to seek a short supply determination for the yarn so that it could produce a fabric that met the customer's needs. However, there is no reason why, if a U.S. mill has no interest in pursuing that option, the apparel manufacturer should be precluded from seeking a short supply determination for the fabric. In the view of USA-ITA, it would be unduly restrictive for CITA to require that the request be limited to the yarn. As with many of the other CITA decisions related to short supply petitions, a case-by-case decision is the only means to maintain a viable, business-friendly short supply process.

Potential Suppliers' Responses

In addition to the points noted previously, USA-ITA member companies believe it is reasonable – and the norm -- to expect a potential supplier to identify its machinery and capacity and other information relevant to evaluating the realistic ability of a mill to produce the requested product. A responsible, reputable buyer will need to actually see the mill, to observe capacity and capability and to assess a broad range of business practices. All companies, including USA-ITA member companies, are concerned about the production aspects of the business as well as about compliance with corporate standards for human rights, labor conditions, environmental impacts, and other aspects of corporate social responsibility. Requestors are acting responsibly in seeking the information necessary to determine whether a mill can produce the fabric and meet the buyer's standards in doing so. No less should be expected of potential suppliers under the DR-CAFTA short supply process than is expected of existing suppliers.

Mr. R. Matthew Priest
January 8, 2008
Page 6 of 6

Conclusions

USA-ITA members appreciate that the DR-CAFTA short supply process constitutes an improvement over earlier established mechanisms. But the process could be improved. Over a relatively short period of time it has become extremely complicated and fraught with pitfalls for companies that simply want to provide the best value for their customers. USA-ITA looks forward to working with CITA to make the commercial availability process truly reflective of the realities of sourcing decisions.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura E. Jones", written in a cursive style.

Laura E. Jones
Executive Director