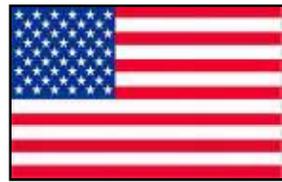




# CAFTA-DR: Modified Commercial Availability Procedures



INTERNATIONAL  
**TRADE**  
ADMINISTRATION



October 28, 2008



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## FREE TRADE AGREEMENTS

CAFTA-DR Commercial Availability

[Free Webinar](#): Revised Procedures for CAFTA-DR Commercial Availability Proceedings, Tuesday, October 28 at 2:00 pm EST

[Short Supply List \(updated\) - CAFTA-DR Annex 3.25](#)

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- [Pending Requests](#)
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**114 products =  
3 fibers, 14 yarns, 97 fabrics**

**NEW: Revised Procedures**

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For further information, contact Maria Dybczak at 202-482-3651 or by [e-mail](#).

# CAFTA-DR Short Supply List (10-28-2008)

**114 products**

**CAFTA-DR process:**

**50 Requests**  
**47 Approved**



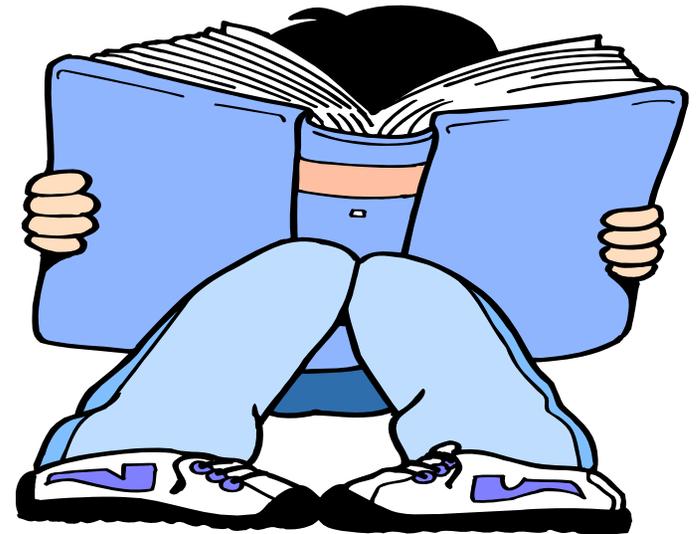
## CAFTA-DR Process Uniqueness



- 30-44 business day determination process.
- Due to the expedited process, proper **due diligence** is critical to a Request and an Offer to Supply.
- The Committee for the Implementation of Textile Agreements (CITA) does not act as the investigative body.
- **Due Diligence:** The Revised Procedures clarify the required due diligence that CITA expects from requestors and suppliers.

## How has CITA modified its Procedures?

1. Due diligence - Requestors and Suppliers
2. Use of third parties
3. Product description
4. Samples
5. Substitutability
6. “Downstream” requests
7. Prohibited inputs



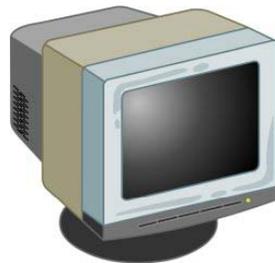
# “Due Diligence”



- Contact potential suppliers prior to submitting a Request.
- Names, titles, and addresses of suppliers contacted must be provided.
- Memorialize and document correspondence.

# Requestor's Due Diligence

A requestor must contact potential suppliers by reasonable means: phone, email, fax, or letter. A **single attempt** to contact is insufficient due diligence. If one method of contact has not worked, requestors should try other means as well.



## **Due Diligence: Potential Supplier response to a Requestor's inquiry**

- If a supplier receives an inquiry from a requestor, a supplier must indicate whether it can supply the specified product.
- Suppliers should engage requestors in direct communication to demonstrate their ability and interest in supplying the subject product.

## Offer to Supply (Day 2-10)

The **Response** (an offer to supply) 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.

## Suppliers' "Due Diligence"

- 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.**

# Suppliers' Production Capability

A supplier's substantiation of its claim to be able to supply a product could include:

1. The quantity of the subject product produced in the last 24 months.
2. If the supplier has not produced the subject product, it must provide detailed information on its current ability to make the good, such as:
  - Current production capacity
  - Current loom availability
  - Standard timetables to produce the subject product
  - Equipment used to produce the subject product



# Third Party Involvement

- **Due Diligence**
  - The use of third parties is permitted to identify and make initial contact with suppliers.
  - Once a supplier indicates interest, the requestor and the supplier should be in direct contact.

## Description of the Subject Product

Inquiries from Requestors must include a full description of the subject product.

- Use standard, industry-accepted measures of performance and specifications, such as ASTM or AATCC.
- If any of the specifications are outside industry norms (such as tighter tolerances), Requestors must provide a justification.
- The product description in the Request must match the product description in the due diligence.

# Samples?

- A supplier may provide a sample to demonstrate production capability, but a supplier is not required to provide a sample, even if a requestor asks that it provide one.
- Both parties should explain their standard business practices with respect to samples.
- If the requestor requires that a sample be produced, the supplier must provide an explanation as to its normal business practice with respect to samples.
- If a requestor is not able to obtain a sample, it should request additional production information from the supplier that supports its claim to be able to supply the subject product.

# Substitutable Products?

- In the course of due diligence, a supplier may propose a substitutable product.
- If the requestor does not accept the proposed substitute, it must provide an explanation to the supplier.
- In the Request, requestors must address the issue of substitutability and provide reasonable justifications why the subject product cannot be substituted.
- If a supplier submits a Response with an Offer to Supply, it must also present arguments as to why the proposed substitute is adequate.
- CITA will make a determination on whether a proposed substitute is acceptable, based on the information on the record.

## “Downstream” Requests

- Requests for downstream products will be rejected or denied if CITA determines that only a production input of the downstream product is commercially unavailable.
- Cannot request a fabric if in fact the yarn is the product not commercially available.



# Prohibited Inputs, Specs, or Processes

**CITA will reject or deny Requests involving banned inputs, specs or processes!**



## Questions?

- If you have a question, please submit it in writing using the “Q&A” or “Ask a Question” feature.
- We will address as many questions as time allows.
- The remaining questions will be addressed via email following the webinar.
- If questions come up later, please contact OTEXA using the information on the next slide.

## For More Information

For more information, please contact OTEXA:

Office of Textiles and Apparel (OTEXA)  
U.S. Department of Commerce  
1401 Constitution Ave. NW, Room 3100  
Washington, DC 20230  
Phone: (202) 482-3400  
Fax: (202) 482-0858

Email: [OTEXA\\_CAFTA@ita.doc.gov](mailto:OTEXA_CAFTA@ita.doc.gov)

