



INTERNATIONAL
TRADE
ADMINISTRATION

U.S.-Peru Trade Promotion Agreement

Textiles and Apparel

October 6, 2009





U.S. – Peru TPA



- Negotiations completed – 2005
- Agreement signed – 2006
- Approved by Peruvian legislature - 2006
- Approved by U.S. Congress - 2007
- **Implementation – February 1, 2009**

U.S.-Peru TPA Textile Provisions

- Safeguard Mechanism
- Customs Cooperation
Anti-Circumvention
- Reciprocal Market Access (tariffs)
- Yarn-Forward Rule of Origin, with limited negotiated exceptions



Yarn-forward Rule of Origin

Yarn → **Fabrics** → **Apparel**



“Essential Character”



“Essential Character plus”

- Narrow elastic fabrics
- Visible lining
- Thread (cotton, filament)
- Pocketing



Flexibilities

- ***Brassieres:*** cut-and-sew
- ***Viscose Rayon Filament Yarn***
- ***Certain Nylon Filament Yarns:*** (not elastomeric yarn) permitted from Mexico and Israel (ATPDEA)
- ***De Minimis:*** 10% of the fibers and yarns of a product can be from outside the region. However, all **elastomeric** content must be sourced from the region.



Short Supply

- Fiber, Yarn, or Fabric not “commercially available” in TPA region (U.S. and Peru)
- Can be sourced outside of the region for use in qualifying goods
- Short Supply List (*Annex 3-B*)
- Process/Procedures



ATPDEA

- Apparel (to U.S.)
- Rule of origin - all components
- Limited use of Peruvian fabrics and yarns
- 120-day short supply determination
- No regional elastomeric

U.S.–Peru TPA

- Textiles and apparel
- Rule of origin - essential character (some exceptions)
- Unlimited use of Peruvian fabrics and yarns
- 30-44 day short supply determination
- Regional elastomeric

Short Supply: U.S-Peru TPA

- Ability to **Add** Products
- Ability to **Remove** Products
- **Partial** Quantity Determinations



© www.ClipProject.info

Commercial Availability Process

- Under terms of the US-PERU TPA, the United States administers process to determine if a product is not commercially available.
- Inter-agency committee, CITA, is the adjudicating authority. CITA does not collect information – it only reviews information submitted on the record.
- Interested entities submit evidence to CITA to support their claims as to the commercial availability of the subject product.
- CITA makes its determination based on record evidence within 30 to 44 business days.



Commercial Availability Process: Due Diligence



- Most important part of Commercial Availability process.
- Because CITA does not collect information, interested entities must provide evidence based on their due diligence.
- Requestors must do due diligence to source the product from U.S. and Peruvian suppliers.
- Potential suppliers must do due diligence to demonstrate that they can produce the subject product or one substitutable.

Price is NOT a Factor

- Determination of Commercial Availability is NOT based on whether the product is available outside the region at a lower price.
- As long as a U.S. or Peruvian supplier can demonstrate it can produce the subject product or one substitutable, price is irrelevant.



How Do I Begin? Product Description

- Include all specifications for inputs, construction, performance criteria and finishing processes.
- Use standard, industry-accepted measures of performance (ASTM or AATCC).
- All specifications and requirements must have measurable criteria.
- If any specifications or requirements are outside industry standards, must have justification.
- Address whether other products may substitute.



Product Description: Tolerances

Be careful not to specify too tight a tolerance.

- Customs strictly enforces commercial availability product specifications by testing imported apparel claimed to qualify under the Commercial Availability Provision.
- For example, if a subject product's yarn count specification provides a range of 20-25, and Customs' tests of yarn from a finished product shows a yarn count of 26, the entry will not qualify for duty free treatment.
- When specifying construction and performance criteria, consider the impact of any finishing processes that may affect inputs' specifications in the final product.

How Do I Begin? Due Diligence

- Identify potential suppliers of the subject product. May use association directories, trade directories, knowledge of the industry.
- Contact suppliers to inquire whether they can supply the subject product as specified.
- Use “reasonable” means to contact suppliers: direct contact by phone, email, fax, or letter.
- A single attempt to contact a potential supplier will not be considered sufficient due diligence.



Due Diligence: Third Party Involvement

- A requestor may use third parties (e.g. law firm or legal representative) to identify and make initial contact with potential suppliers.
- However, once a potential supplier indicates interest to supply the subject product, the requestor must continue with direct contact with the supplier.



Due Diligence: What to Ask a Potential Supplier

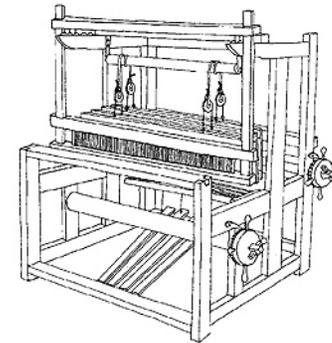


- In inquiry, give the full description of the subject product, including all specifications for inputs, construction, finishing and any performance criteria.
- Ask the supplier if it can supply the subject product as specified.
- If a potential supplier does indicate that it can supply the product, ask the supplier to provide detailed information about its production capacity and capability.

Information on Supplier's Production Capability

A supplier must substantiate its claim to be able to supply the product by providing certain information. A requestor may ask that a supplier:

- Provide quantity of the product, or ones similar, that the supplier has produced in the last 24 months.
- Provide other information demonstrating its ability to produce the product, such as:
 - Equipment to be used,
 - Current capacity,
 - Current loom availability, and/or
 - Timetables to deliver product.
- A Supplier is not required to disclose business confidential information.



Provision of Samples

- While a requestor may ask for a sample, a supplier is not required to provide one.
- Both the requestor and supplier should explain their standard business practice on samples.
- Even if the supplier provides a sample, it must still provide detailed information to support its claim that it can produce the subject product.
- A requestor may test a sample to determine if it meets specifications.



Substitutable Products

- In the course of due diligence, a supplier may propose another product that it claims is substitutable.
- If the requestor does not accept the proposed substitute, it must provide an explanation to the supplier why it is not substitutable.
- If the issue is raised in due diligence, the Request must also include an explanation why the supplier's proposal is not substitutable.
- CITA will review the information on the record, and will make a decision whether the product is substitutable.

Due Diligence by a Potential Supplier: Responding to a Requestor's Inquiry

- If, in the course of due diligence, a supplier receives an inquiry from a requestor, the supplier must state whether it can supply the specified product.
- A supplier should engage requestors in direct communication and provide information that demonstrates its ability to supply the subject product.
- If a supplier proposes another product, it must explain why it is substitutable for the product the requestor has specified.

Documenting Due Diligence

- Identify potential suppliers by company name, address, phone number, and email.
- Identify contact person by name and title.
- Memorialize and document all communications with potential suppliers (e.g. copy all emails and notes of telephone conversations).
- Collect any documentation (e.g. specification sheets and test results) relating to a supplier's claims to have the ability to supply the subject product.



Submitting a Request



- If no U.S. or Peruvian supplier can demonstrate that it can produce the specified product or one that is substitutable, you may submit a Request.
- Include same product description as provided in due diligence, but add HTS number(s).
- Describe due diligence process: include rationale as to why efforts were reasonable, provide contact information, and summarize communications with potential suppliers.
- Address whether other products are substitutable, and if not, why not.

Don't Forget...when submitting a Request

- **Submit Request in both a hard copy (an original signed version, delivered to the Chairman of CITA), and an electronic copy (in either PDF or Word).**
- **A Request must include a Due Diligence Certification that all information is accurate.**



When a Request is Received

- CITA has two days to review the Request to see if it meets all requirements.
- If all requirements have been met, CITA will accept Request and will notify all interested parties in an email.
- If the requirements have not been met, CITA will reject the Request and will send the requestor an explanation of its deficiencies.



Response with an Offer to Supply

- A U.S. or Peruvian supplier may respond to a Request, but no later than 8 business days after it has been notified.
- The Response must offer to supply the final, specified product, NOT an input.
- The Response must state the quantity of the product the supplier may produce. The supplier is not required to produce the total quantity required.
- The Response may offer a product it claims is substitutable, but must explain why.
- The Response must contain detailed information that demonstrates that the supplier can produce the product.

Due Diligence by a Potential Supplier submitting a Response

- CITA will consider whether the potential supplier was responsive to inquiries by the requestor in the course of due diligence to source the subject product.
- If the potential supplier was not responsive, a Response must provide a reasonable explanation why it did not respond to a requestor's inquiries.
- CITA will reject a Response if it does not include such explanation.

Response: Information on a Suppliers' Production Capability and Capacity

In its Response, a supplier must substantiate its claim to be able to supply a product by providing certain information:

- Quantity of the product, or ones similar, that the supplier has produced in the last 24 months.
- Other information demonstrating its ability to produce the product, such as:
 - Equipment to be used,
 - Current capacity,
 - Current loom availability, and/or
 - Timetables to deliver product.
- Not required to disclose business confidential information.



Rebuttal to a Response

- The requestor may submit a Rebuttal – arguing that the supplier cannot produce the specified product.
- The Rebuttal may respond only to evidence or arguments raised in the Response, but may include new information that addresses the claims of the supplier.
- For example, the Rebuttal may argue that the supplier's equipment, described in the Response, is not capable of producing the product as specified.

CITA may extend its Deadline

- If, after reviewing the Request, the Response, and the Rebuttal, CITA does not have sufficient information to make a decision, it may extend its deadline from 30 to 44 business days.
- In many cases, CITA will call the requestor and the supplier to a public meeting to provide more information to support their claims that the supplier can or cannot produce the specified product or one substitutable.



CITA's Determination

- After reviewing the information on the record, CITA will make a decision whether or not the specified product is commercially available in either the United States or Peru.
- CITA can make the following determinations:
 - Approve the Request in Unrestricted Quantities,
 - Approve in Restricted Quantities, or
 - Deny the Request.
- If Approved, the specified product is added to Annex 3-B.



Approval in Restricted Quantities

- CITA may determine that a U.S. or Peruvian supplier has demonstrated that it can supply the subject product or one substitutable in some portion of the total quantity requested.
- If so, CITA will approve the Request, with a “Restricted Quantity.”
- If a product is approved with a Restricted Quantity, that quantity must first be sourced from a U.S. or Peruvian supplier before sourcing from outside the region.

“Downstream” Requests

- Requests for downstream products will be rejected or denied if CITA determines that it is only a production input of the downstream product is commercially unavailable.
- For example, CITA will reject or deny a request for 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, specifications or processes.



Online Sources

- Office of Textiles and Apparel (OTEXA)
<http://otexa.ita.doc.gov/>
- U.S. Customs – Imports to U.S.
http://www.cbp.gov/xp/cgov/trade/priority_trade/
- U.S. ITC – Tariff Schedule
<http://www.usitc.gov/>
- U.S. Trade Representative – TPA Text
<http://www.ustr.gov>



Trade Data

- U.S. imports by country
- U.S. exports by country

Trade Agreements

ATPDEA

Commercial Availability Procedures





Friday Oct. 2, 2009 5:58:55 PM

Trade Data

Textiles and Apparel
Footwear, Leather &
Travel Goods

The Textile Correlation

Federal Register Notices

China Textile Safeguard

Earned Import Allowance

Dom. Rep. 2 x 1
Haiti 3 x 1

Wool and Cotton TRQ

Free Trade Agreements

CAFTA-DR

TPLs
Cumulation

Trade Preference Programs

AGOA
ATPDEA
CBTPA
Haiti HOPE
U.S. Imports/TRQs

Commercial Availability

Australia FTA
Bahrain FTA
CAFTA-DR
NAFTA
Peru TPA
Singapore FTA
AGOA/ATPDEA/CBTPA

Webinars

Labeling Requirements

IPR Protection

Worn Clothing

Announcements

- [Free Webinar: U.S.-Peru FTA Interim Commercial Availability Procedures-](#) (Oct. 6, 2009)
- [09/21/2009 Limitations of Duty- and Quota-Free Imports of Apparel Articles Assembled in Beneficiary Sub-Saharan African Countries from Regional and Third-Country Fabric](#)
- [09/16/2009 Determination to Approve Commercial Availability Request under CAFTA-DR: 127.2009.08.07.Fabric.ST&RforIntradeco - Certain Cotton/Polyester Three Thread Circular Knit Fleece Fabric \(#1\) \(effective 9/21/2009\)](#)
- [09/16/2009 Determination to Approve Commercial Availability Request under CAFTA-DR: 128.2009.08.07.Fabric.ST&RforIntradeco - Certain Cotton/Polyester Three Thread Circular Knit Fleece Fabric \(#2\) \(effective 9/21/2009\)](#)
- [09/16/2009 Determination to Approve Commercial Availability Request under CAFTA-DR: 130.2009.08.21.Fabric.ST&RforHansae - Certain Cotton/Nylon/Spandex Raschel Knit Open Work Crepe Fabric \(effective 9/21/2009\)](#)
- [09/09/2009 Determination to Approve Commercial Availability Request under CAFTA-DR: 129.2009.08.10.Fabric.SoriniSametforBWA - Certain Woven Modal-Polyester Apparel Fabric \(effective 9/10/2009\)](#)
- [08/24/2009 Proposed Information Collection; Comment Request; Procedures for Considering Requests and Comments from the Public for Textile and Apparel Safeguard Actions on Imports from Oman.](#)
- [08/13/2009 Request for Public Comment on a Short Supply petition under NAFTA: Certain Yarn-Dyed Poplin Fabric](#)
- [08/13/2009 Determination to Approve Commercial Availability Request under CAFTA-DR: 126.2009.07.06.Fabric.SharrettsPaleyforFishman&Tobin - Certain Polyester/Rayon/Wool Fabric \(effective 8/14/2009\)](#)
- [08/13/2009 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 \(effective 8/14/2009\)](#)

[Past Announcements](#)



[FTA Home](#)

[Australia](#)

[Bahrain](#)

[CAFTA-DR](#)

[Chile](#)

[Colombia \(pending\)](#)

[Israel](#)

[Jordan](#)

[Korea \(pending\)](#)

[Morocco](#)

[NAFTA](#)

[Oman](#)

[Panama \(pending\)](#)

[Peru](#)

- [Commercial Availability](#)
- [Safeguards](#)
- [Market Information](#)
- [Trade Data](#)
- [Text and Documentation](#)
- [Advisory Committee Reports](#)

[Singapore](#)

[OTEXA Home](#)

Free Trade Agreements

Summary of the U.S. - Peru Trade Promotion Agreement

****The information presented on this website is meant to serve as a guide.**

Only the agreement text and the customs regulations issued to implement the agreement are definitive. For complex issues or where interpretation is required, U.S. exporters should seek legal assistance or an advanced ruling from the customs administration in the country to which they are exporting.**

If you have any questions about this Agreement, please contact Richard Stetson at the U.S. Department of Commerce Office of Textiles and Apparel at 202-482-3400 or by [email](#).

Status: The United States-Peru Trade Promotion Agreement (U.S.-Peru TPA) entered into force on February 1, 2009.

How U.S. Textile and Apparel Companies Benefit:

Textile and apparel trade between the United States and Peru has grown in recent years. U.S. exports of textiles and apparel to Peru jumped from \$23 million in 2004 to \$34 million in 2008. Under the U.S.-Peru TPA, Peruvian tariffs on qualifying U.S. fibers, yarns, and fabrics will be eliminated, further improving market access for U.S. exporters. Similarly, due to the favorable conditions created by the Agreement, investment in the apparel sector in Peru is expected to grow, promoting increased sales of U.S. fibers, yarns, and fabrics to the Peruvian market.

Key benefits to U.S. yarn and textile manufacturers include:

- Immediate duty-free (zero tariff) market access for textile and apparel products.
- Yarn forward rule of origin– The U.S.-Peru TPA adheres to a yarn-forward rule of origin, meaning that in order to enter the U.S. market duty free, textile and apparel products must be made using U.S. and regional yarns and fabrics. Goods that meet the rule of origin qualify for immediate duty-free market access upon entry into force.
- Regional Elastomeric Requirement – Consistent with other free trade agreements, elastomeric yarns must be sourced from the region for textile and apparel products to qualify for duty free entry.
- Improved Customs Procedures – Specific textile customs cooperation language will help prevent transshipment and circumvention of the rules of origin of the Agreement.
- Streamlined Short Supply Processes - Streamlined commercial availability (short supply) determination processes will allow yarns or fabrics that are deemed not commercially available in the region to be used in the production of apparel.
- Safeguards - A special textile safeguard mechanism will provide for temporary MFN tariffs, if a



[FTA Home](#)

[Australia](#)

[Bahrain](#)

[CAFTA-DR](#)

[Chile](#)

[Colombia \(pending\)](#)

[Israel](#)

[Jordan](#)

[Korea \(pending\)](#)

[Morocco](#)

[NAFTA](#)

[Oman](#)

[Panama \(pending\)](#)

[Peru](#)

- [Commercial Availability](#)
- [Safeguards](#)
- [Market Information](#)
- [Trade Data](#)
- [Text and Documentation](#)
- [Advisory Committee Reports](#)

[Singapore](#)

[OTEXA Home](#)

FREE TRADE AGREEMENTS

PERU TPA Commercial Availability (Short Supply)

[Short Supply List U.S.-Peru TPA Annex 3-B](#)

[Interim Procedures](#)

[Frequently Asked Questions \(FAQs\)](#)

[Submit a Request or Offer](#)

[Sign up for E-mail Notification](#)

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

Office of Textiles and Apparel (OTEXA)
U.S. Department of Commerce
Washington, DC 20230
Phone: (202) 482-5078 | Fax: (202) 482-2331
OTEXA@mail.doc.gov

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_PERU@ita.doc.gov

