



INTERNATIONAL
TRADE
ADMINISTRATION

Short Supply under the Colombia TPA

November 28, 2012

Presentation Overview

- What is CITA?
- The Colombia Short Supply Process
- Requestors: How to conduct Due Diligence and submit Requests.
- Suppliers: How to reply to Due Diligence inquiries and submit a Response with an Offer to Supply.
- Enforcement

“Yarn-Forward” Rule of Origin

Yarn → **Fabrics** → **Apparel**



Applies to ‘Essential Character’, Plus...

What **MUST** originate:



- Component that gives “essential character” of good.
- Narrow elastic fabrics
- Visible lining
- Thread (cotton, filament)
- Pocketing
- **EXCEPTION:** If any are in Short Supply

Rules more liberal than “Yarn Forward”

- **Brassieres (6212.10):** cut-and-sew
- **Viscose Rayon Filament yarn:** permitted from any source
- **Certain Nylon filament yarns:** permitted from Mexico, Canada, and Israel
- ***De Minimis:*** 10% of the weight of fibers and yarns in a textile product can be from outside the region, **EXCEPT elastomeric yarns**, which must be sourced in the region.
- **Short Supply**

Imports of Textiles & Apparel under Colombia TPA

June through September 2012	\$US millions
Total Imports:	\$90.1
Total Qualifying Imports:	\$70.6
Imports - Short Supply	\$3.3
Percentage of Qualifying Imports	4.7%



The Colombia Short Supply List: Annex 3.B

18 products:

- 6 yarns, 12 fabrics
- Negotiated into the agreement
- Fibers, Yarns or Fabrics can be added through Short Supply process
- Additional products may be added through consultation between the governments of U.S. and Colombia



What IS Short Supply?

What Short Supply IS:

“No U.S. or Colombian producers are **capable** of making this product or one that is substitutable.”

What Short Supply ISN'T:

“Even though U.S. or Colombian producers make the product, right now, I can't get **enough**.”

EXCEPTION: Restricted Quantity Determinations.

Can I import the product directly into the U.S and get duty-free treatment under Short Supply?

NO – you can only qualify for duty-free treatment if you use the product in a **downstream** good.

- Examples:
 - Yarns: you can only qualify if the yarn is used in a fabric or apparel that you import into the U.S.
 - Fabric: you can only qualify if you use the fabric in apparel that you import into the U.S.

The Colombia Short Supply Process compared with ATPDEA



The process is **very different** from ATPDEA:

- Faster process: **30-44** days versus 60-120 days.
- **NO End Use restriction.**
- Suppliers include both **U.S. and Colombian** producers.
- **No other agency involvement:** no requirement for ITC investigation or consultation with Congress.
- But, CITA is the adjudicating authority. **CITA does not collect information** – it only reviews information and evidence submitted on the record.
- CITA makes its **determination based ONLY on evidence.**

The Short Supply Process: “Due Diligence” is CRITICAL!



- Because CITA does not collect information, interested entities **must provide evidence** based on their “due diligence.”
- For Requestors, due diligence is a **reasonable effort to source the product** from U.S. or Colombian suppliers.
- For potential suppliers, due diligence is the offer to supply the product, and a **demonstration of capability** to supply product or substitute.

Timelines for Short Supply Proceedings

- CITA receives a Request – **2 days** to Accept or Reject
 - ✓ Does it meet requirements for due diligence, product description and substitutability?
 - ✓ If rejected, CITA explains why.
 - ✓ If accepted, CITA notifies interested parties.
- Supplier has **8 business days** to submit a Response with an Offer to Supply
- After a Response has been submitted, Requestor has **4 business days** to submit a Rebuttal
- CITA can hold a public meeting to go over information on the record.
- Determination in 30 or 44 days.

Requestors: How do you start?

If you think that a product isn't available in the region, you must compile evidence to support your claim.

- **Identify the product:**
 - Reasonable specifications (industry standards)?
 - Reasonable deadline and quantities?
 - Is there a substitutable product?
- **Identify potential suppliers**, and contact them to confirm whether they can or cannot supply the product.
- **Collect documents** to support your claim.

The Product Description:

Requestors must provide a **reasonable** product description, both in terms of scope and in specifications.

- Don't make the product description **too broad**.
- Make sure you **include all specifications** for inputs, construction, and finishing processes.
- If you include performance requirements, they must have **measurable criteria**. Identify any relevant testing methods.
- Disclose any requirements for **deadlines and quantities**.
- Include **explanations** for any specifications or requirements that might be **outside industry standards**.

Things to Consider in a Product Description

- Don't make it **too broad** – if your ranges are very wide, and a supplier can make ANY PART of that range, then that product is not in short supply.
- You only need to include **relevant specifications**.
- If you find that a supplier can make a certain part of the range, you can **narrow** your product description when you submit a Request.
- Measurable criteria does NOT include “hand,” or “feel.”
- “Customer preference” is not a valid reason for a specification.
- “Certification” requirements may not be valid.

What are Relevant Specifications?

- “Relevant Specifications” are those that will determine whether a potential supplier has the capability to produce the product.
- Not necessary to provide all specifications that would be provided to a supplier (i.e. mill specifications).
- Depending on the product, the relevant specifications may be yarn sizes, fiber content, weave types, and/or finishing processes.
- If a particular specification, e.g. width, is not going to be a determining factor in whether a supplier is capable of producing the good, then you don’t have to include it in your product description.
- But be prepared that if a supplier can supply the product, it can provide a product of any width.



Don't forget TOLERANCES!

- Some physical parameters can change after construction. Dyes and other finishing processes can affect yarn size, thread count, colorization, and weight.
- Even though you provide specifications based on construction parameters, take into account how post-construction processes can affect physical characteristics.
- Customs tests the entered apparel, **NOT** the fiber, yarn or fabric. If test results fall outside specifications, they will deny duty-free treatment.
- CITA **CANNOT MAKE ANY CHANGES** to a product description once its been submitted by a requestor. Expansion of specifications must be made in a new Request.

Downstream Products and Finishing

- **CITA will not accept a Request** if it finds that it is only an “upstream input” and not the “downstream” product that is unavailable.
- For example, if the inquiry is for a fabric that calls for a specific yarn, if a supplier can make the fabric but the yarn isn’t available in the CAFTA region, a supplier will say so in its response to the requestor.
- Confirm with the supplier, but **be prepared to modify your request** to ask for the upstream input.
- **CITA does not accept** Requests where the only aspect of the product that’s “unavailable” is a **finishing process**.

Commercial Quantities in a Timely Manner

In the course of due diligence, and in a Request, the requestor must indicate the total quantity you require for a certain period, and what, if any, deadlines are involved.

- **CITA does not require** that suppliers have the **immediate capacity** to produce the quantity, but it must be available in a timely manner.
- If CITA finds that the product is available, but not in the quantities required, it can add the product in a “**Restricted Quantity.**”
- CITA will determine what is considered “timely” on a **case-by-case basis**, but will typically consider the relative complexity of the subject product.

Identifying and Contacting Potential Suppliers

- Requestors may use **different ways to identify potential suppliers**: industry directories, association memberships, previous supplier contacts from past requests.
- Confirm the **name, title, address** for contact including email, and/or phone. You must include this in your Request.
- CITA will not reject request because not all possible suppliers have been contacted, but you must have contacted a **reasonable** number of suppliers. Be prepared to justify your choices.
- Requestors must attempt to **contact a potential supplier at least twice**, but it is the supplier's responsibility to respond to the inquiry.
- A potential supplier is **not required to respond immediately**, but should respond in a timely manner.

Possible sources for lists of suppliers:

- **U.S. Trade Associations:**
 - NCTO, AMTAC, NTA
- **Colombian Trade Associations:**
 - ProExport, InExModa, ANDI
- **U.S. and Colombian suppliers:**
 - Davidson's Blue Book,
 - Past requests under other FTAs (for U.S. suppliers).

Requestors' Due Diligence Inquiries:

What may you ask Suppliers?

- State that you are trying to source a product that **complies with the Colombia TPA rule of origin**.
- Provide the **entire product description**, including any performance criteria. If anything is outside industry standards, provide justification.
- Indicate the **quantity required** and any deadlines involved.
- Ask for a response within a **reasonable period of time**.
- You **may use a representative** to make the initial inquiries, but once a supplier indicates their interest, all other communications must be between the requestor and a supplier.

Due Diligence Inquiries:

What must the Potential Supplier provide?

- An **offer to supply** the specified product or one substitutable.
- Detailed **information on its production capacity and capability**, and, if applicable, information about the substitutable product.
- If you can't make all of the quantity requested, say how much you can, and in what time frame.
- Must **identify all sub-contractors**, with information about the contractor's capability.
- While you may ask for certain information and/or a sample, suppliers are **NOT required to provide business proprietary information, or provide samples**.

Due Diligence Inquiries: Price is NOT a Factor

- CITA does **NOT** consider whether the product is available outside the region at a lower price.
- As long as a potential supplier can demonstrate that it can produce the subject product or one substitutable, price is irrelevant.



Due Diligence Inquiries:

Information on Supplier's Production Capability

A supplier must substantiate its claim to be able to supply the product by providing certain information.

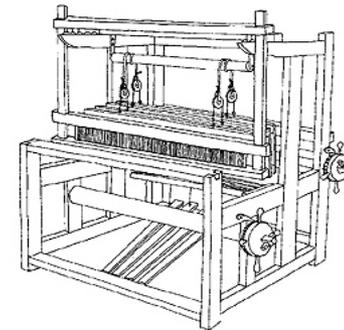
- Provide **quantity of the product**, or one(s) similar, that the supplier has **produced in the last 24 months**.
- Provide other **information demonstrating its capability** to produce the product, such as:

Equipment to be used,

Current capacity,

Current loom availability, and/or

Timetables to deliver product.



- Must provide the **name and address of any sub-contractor**, and information about its capabilities.

Due Diligence Inquiries: Request for 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.
- If a supplier does offer to supply a sample, it **may require payment** or a purchase order.
- A **requestor may test** that sample to confirm it meets specifications.
- Even if the **supplier** provides a sample, it **must still provide detailed information** to support its claim that it can produce the subject product.

Responding to Due Diligence Inquiries: Substitutable Products



- A supplier **may propose another product** that it believes is substitutable for the subject product.
- A supplier should **explain why** it believes the product is an acceptable substitute, referencing measurable criteria whenever possible.
- If the requestor does not accept the proposed substitute, it must provide an **explanation to the supplier why it is not substitutable**.
- However, the requestor may **NOT base their explanation** on customer preference or any other **non-measurable criteria**.

Substitutability: Factors to be considered

- A product is substitutable if, **for the purposes of the end-use**, there is **no measureable difference** in the physical characteristics of the products.
- CITA will consider whether a difference between the two product **imparts any different physical characteristics**.
- Examples:
 - 20 gauge knit fabric: is 12 gauge substitutable?
 - Recycled polyester yarn: is virgin polyester yarn substitutable?

Customer Preferences and Non-Measurable Criteria:

- As long as a supplier can meet all physical specifications included in a description, **CITA does not consider a customer's preference or other non-measurable criteria** as reasonable requirements.
- Issues regarding price, financing and means of delivery are considered **terms of sale, and are not relevant.**

Due Diligence Inquiries:

What if I don't think the Supplier is Capable?

If you don't think a supplier has demonstrated its ability to supply the product as specified, or one that's substitutable, be sure to:

- Tell the supplier **why you don't think they're capable**, or why the product they offer is not substitutable.
- Give the supplier an **opportunity to respond**, and to provide information that supports their claim.
- **Address the supplier's arguments**, and answer all questions.

Tips for Requestors: Due Diligence

- Make sure your **product description is reasonable**, and that you've allowed for **tolerances**.
- Make sure you have the right and reasonable **contact information** for potential suppliers, and have **contacted them at least twice**.
- If a supplier indicates they wish to supply, begin a dialogue, and **get enough information** to confirm whether it has the capacity and capability.
- **Answer ALL questions** from the supplier – don't disengage in due diligence.
- Collect all **documentation** of communications with suppliers.

Requestors: Preparing a Request to CITA

- Make sure your product description is **exactly the same** as (or narrower than) the description you gave potential suppliers.
- Make sure you have **adequately summarized contacts** with potential suppliers, and include documentation.
- If a supplier had offered to supply, include an **explanation why** you think the **supplier was not capable**.
- Be sure to follow CITA's procedures and meet all requirements.
- Contact OTEXA if you have any questions.



Requestors: After submitting a Request

- Be prepared – a supplier you may have contacted in due diligence **can still submit a Response** with an Offer to Supply.
- If you don't think that the supplier has demonstrated its capability to supply the product or one substitutable, you can **submit a Rebuttal**.
- **Address ALL of the supplier's claims** and explain why you don't think it is capable of supplying the product.
- CITA may call for a **public meeting** – this is the LAST opportunity to present your arguments and evidence.

Suppliers: Responding to Due Diligence Inquiries

If you are contacted with an inquiry to source a fiber, yarn or fabric:

- **Review the product description:**
 - Reasonable specifications (industry standards)?
 - Reasonable deadline and quantities?
 - Is there a downstream or finishing issue?
 - Is there a substitutable product?
- **Respond to the inquiry in a timely manner.**
- **Answer all questions**, but you can ask questions yourself.



Suppliers Due Diligence: Reviewing the Product Description

When a supplier receives an inquiry, carefully **review the product description** and requirements (e.g. quantities and deadlines):

- Look at all specifications for inputs, construction, performance criteria and finishing processes. Are these **reasonable**? Are they based on **measurable criteria**?
- Are the requirements for quantities and deadlines reasonable?
- If any specifications or requirements are **outside industry standards**, the requestor must provide a **justification**.
- You can always **ask the requestor for clarification** if you have questions.

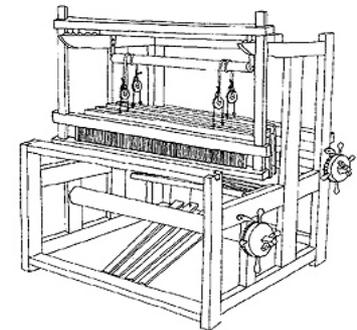
Responding to Due Diligence Inquiries: Downstream Products and Finishing

- CITA **does not accept Requests** where the product is available, but for a production input or “**upstream**” product.
- CITA **does not accept Requests** where the only aspect of the product that’s “unavailable” is a **finishing process**.
- If either of these circumstances arise, a supplier should say so in its reply to the requestor.

Responding to Due Diligence Inquiries: Information on Supplier's Production Capability

A supplier must substantiate its claim to be able to supply the product by providing certain information. Even if they don't specifically ask, you must demonstrate your ability to supply the product.

- **Provide quantity of the product**, or one(s) similar, that the supplier has produced in the **last 24 months**.
- Provide **other information demonstrating its capability** to produce the product, such as:
 - Equipment to be used,
 - Current capacity,
 - Current loom availability, and/or
 - Timetables to deliver product.
- Must provide the **name and address of any sub-contractor**, and information about its capability.



Responding to Due Diligence Inquiries: Information on Supplier's Production Capability

REMEMBER: A requestor may ask anything they like, but....

- A supplier is **not required to disclose business confidential information** (i.e. details about equipment names, current customers, current production schedule).
- While a supplier doesn't have to provide business confidential or irrelevant information, **you must answer all questions** – even if the answer is “that's confidential” or “that's not relevant.”
- Be sure to **explain this in writing** so you can document the exchange with the requestor.

Responding to Due Diligence Inquiries: Substitutable Products



A supplier may propose another product that it believes is substitutable for the product specified.

- **Explain why** the product is an acceptable substitute, referencing measurable criteria whenever possible.
- If the **requestor does not accept** the proposed substitute, it must provide an **explanation** to the supplier **why it is not substitutable**.
- However, the requestor **may NOT** base their explanation on customer preference or any other **non-measurable criteria**.

Responding to Due Diligence Inquiries: Providing Samples

While a requestor may ask for a sample, a supplier is NOT required to provide one.

- If a supplier does offer to supply a sample, it **may require payment** or a minimum purchase order.
- Even if the supplier provides a sample, it **must still provide detailed information** to support its claim that it can produce the subject product.



Responding to Due Diligence Inquiries: Providing Samples

- If a supplier does provide a sample, clearly state whether it's a sample that **meets all specifications** or just a **“representative”** sample of a similar product.
- A **requestor may test a sample** to determine if it meets specifications.
- If a supplier claims that the sample meets the exact specifications, and the requestor can show, with independent test results, that it does not, the requestor may have a reasonable claim that you are not capable of supplying the product.

Responding to Due Diligence Inquiries: What is Irrelevant

- CITA does **NOT** consider whether the product is available outside the region at a lower price.
- As long as a potential supplier can demonstrate that it can produce the subject product or one substitutable, **price is irrelevant.**
- Likewise, CITA will not consider requirements based on customer preference and non-measurable criteria.

Responding to Due Diligence Inquiries: Documenting Due Diligence Communications

- Memorialize and **document all communications** with the requestor (e.g. copy all emails and notes of telephone conversations), including the name of the person making the inquiry.
- Collect any documentation (e.g. specification sheets and test results) that the requestor provided relating to the specified product.
- Make sure to keep copies of all documentation that you provide to the requestor.



Tips for Suppliers:

Responding to Due Diligence Inquiries

- Make sure you **respond to the initial inquiry** – indicate if you will respond fully at a later date, or if someone else in the company will respond.
- **Clarify any questions** about the product's specifications and criteria, its substitutability, and requirements for quantity and deadlines.
- **Answer ALL outstanding questions** from the requestor regarding production capability and normal business practice.
- You **may consult with other suppliers** about the inquiry.
- Call OTEXA if you have any questions.

Suppliers:

Responding to a New Short Supply Request

When you are notified by CITA that there is a new Request, confirm the following information:

If you were contacted by the requestor prior to filing:

- Is the product description the same you received in the inquiry?
- Is the requestor's summary of due diligence on your communications accurate?

If you were not contacted by the requestor prior to filing:

- Are the requestor's statements about the product's specifications and substitutability reasonable?
- Determine if you wish to submit a Response with an Offer to Supply.

Suppliers:

How to submit a Response with an Offer to Supply

- Make sure you **meet all of CITA's requirements** for submitting a Response: Electronic and Hard copies, Due diligence Certificate, Deadlines.
- State that you are **making an offer to supply** the specified product or one substitutable.
- Provide **detailed information on your production capacity** and capability, including quantities of similar products you've manufactured, and, if applicable, on the substitutable product.
- **Identify all sub-contractors**, with information about the contractor's capability.
- **Address any issues** on specifications, performance criteria, deadlines and/or quantities.

Suppliers: Submitting a Response with an Offer to Supply

- **Go over all the arguments** and evidence that's in the Request.
- If you think the Request **contains inaccurate information**, give an **explanation** in your Response.
- **MORE THAN ONE SUPPLIER** can be included in Response. But all suppliers must provide information about their capacity and capability.
- Always provide **documentation** to support your claim.
- Be prepared – many times, the requestor will submit a Rebuttal.
- If CITA calls for a **public meeting**, be prepared to address all the requestor's claims. This is your **LAST** opportunity to demonstrate you can supply the product.

Requestors can Submit a Rebuttal

- Requestors can submit a Rebuttal to CITA within **4 days** after the Response.
- You can **only address the issues raised** by the Supplier in the Response.
- If CITA determines that it needs more information than what's already in the Request, the Response and the Rebuttal:
 - Extend deadline to 44 days.
 - Call for a public meeting .

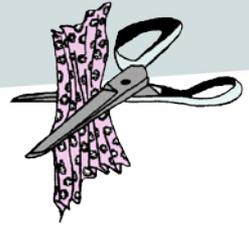
Restricted Quantity Determinations

- If CITA determines that a supplier or **suppliers cannot supply the entire quantity requested** in a timely manner, we can make a Restricted Quantity Determination.
- **Only CITA decides** what is “timely.”
- CITA will issue a determination for a **given quantity in a given time period.**
- The quantity determined to be available in the region must **FIRST** be sourced within the given time period.
- Only after that supply has been sourced can entries using non-regional products qualify for duty-free treatment.
- Once the time period for sourcing has elapsed, **clock starts over again.**

After CITA's Determination....

- If CITA has determined that a product is not commercially available, a supplier has an opportunity to present its case with a **Request to Remove or Restrict**, but must **wait 6 months** to file.
- U.S or Colombian suppliers may **provide evidence that it can supply** the product or one substitutable, and ask that CITA remove or restrict the product.
- If CITA determines that a product is commercially available, a **requestor may submit a new Request, at ANY time**, with new evidence to support its claim that the product is not available.
- Suppliers should be aware that if a requestor tries to source the product after CITA's determination, if the supplier is not responsive to a requestor, they can argue that the product is not available.

Requests to Remove or Restrict



- A U.S. or Colombian supplier may submit a Request to Remove products that have been added to Annex 3-B, or Restrict the Quantity that may be sourced outside the region.
- In its Request, the supplier must demonstrate that it can produce the specified product or one that is substitutable, and provide detailed information to support its claim.
- The supplier must meet the same requirements CITA has for a Response with an Offer to Supply.
- However, the supplier is NOT required to contact the original requestor or any other potential interested entity before it files its Request.

ENFORCEMENT: Customs

- While CITA determines whether a given product is or is not commercially available, it does **NOT decide whether a specific entry is eligible** for duty-free treatment.
- **Customs enforces the rules of origin.** If they determine that the entry doesn't qualify, they will disallow duty-free treatment.
- **Customs routinely tests apparel** claiming preferential treatment under Short Supply. Remember, if one specification lies outside the product description, it will not qualify.
- CITA does **NOT** advise Customs on an entry's eligibility. It can only confirm the product description of the product on the Short Supply list.
- If you have questions about a good's eligibility,
 - Before importing a good, consider asking Customs for an **Advance Ruling**.
 - After importing a good, follow Customs' procedures on **protests and review**.



OFFICE OF TEXTILES AND APPAREL (OTEXA)

FTA Home

Australia

Bahrain

CAFTA-DR

Chile

Colombia

- Safeguards
- Market Information
- Trade Data
- Text and Documentation
- Advisory Committee Reports
- Commercial Availability

Israel

Jordan

Korea

Morocco

NAFTA

Oman

Panama

Peru

FREE TRADE AGREEMENTS

Colombia TPA Commercial Availability (Short Supply)

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

[List of Products](#)

[Colombia Commercial Availability Requests](#)

- [Pending Requests](#)
- [Approved Requests](#)
- [Denied Requests](#)

[Official English version](#)

[Unofficial Spanish version](#)

[Procedures for Colombia Commercial Availability Proceedings](#)

- [Interim Procedures](#) (published November 5, 2012)

There is no official Spanish version of these interim procedures. However, because the Colombia TPA Commercial Availability procedures are essentially identical to those under the DR-CAFTA, it may be useful to review an unofficial Spanish version of the DR-CAFTA procedures. The document may be found [here](#).

NOTE: This document was provided by VESTEX, the Guatemalan Commission of the Apparel and Textile Industry and is not an official translation authorized by the U.S. government in the context of either DR-CAFTA or the U.S. Colombia Trade Promotion Agreement. Under both agreements, the official procedures, as published in English, are

For More Information:

For more information, please contact us:

Maria Dybczak
Office of Textiles and Apparel (OTEXA)
Phone: (202) 482-3651

Email: OTEXA_Colombia@trade.gov
Maria.Dybczak@trade.gov

