



January 2, 2008

R. Matthew Priest
Chairman
Committee for the Implementation of Textile Agreements,
Room 3001
Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Subject: 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) *Federal Register*, Volume 72, Number 231, Page 67916, December 3, 2007

Via Email: OTEXA_CAFTA@ita.doc.gov

Dear Mr. Chairman:

On behalf of the American Apparel & Footwear Association – the national trade association of the apparel and footwear industries, and their suppliers – I am writing to comment on the Committee for Implementation of Textile Agreements (CITA) request for comments related to the commercial availability (aka “short supply”) provisions for the Dominican Republic-Central America-United States Free Trade Agreement (CAFTA-DR).

We applaud CITA for taking this opportunity to review how well the short supply program is functioning. We strongly support a well-functioning and credible short supply mechanism and believe it is critical to the overall health of the CAFTA-DR program. Buyers need to know they have recourse to a quick and efficient short supply tool when they are unable to locate required fabrics and yarns. Suppliers need to understand how the program works so that they can learn of potential trade leads or file petitions themselves to address short supply situations in their own supply chain.

We also wish to note that the short supply system has been in operation for almost two years and is widely known throughout the domestic and Central American regional industry. CITA’s efforts to publicize short supply petitions and the overall program have been commendable and have contributed to this widespread awareness.

Moving forward, we would make several recommendations.

First, CITA must enforce the deadlines, which are a key to the program. While we do not wish CITA to be overly rigid in this regard, we do believe that the discipline of a deadline-driven short supply process is critical to accommodate fast fashion cycles and speed to market needs that are especially important for the Central American region. Competitive textile and apparel companies understand that the industry operates on tight timeframes. The short supply process should operate in a similar manner, producing a clear result by the end of the 30-day review period. We should keep in mind that, by the time a petition is being published by CITA, potential suppliers will have already had several opportunities to respond with an offer to the requestor.

Second, in cases where CITA has denied a short supply request, CITA should publish the name and contact information of the firm that can supply the requested input, and must make samples of the requested input available for public inspection immediately available. We note that the House report language for the CAFTA-DR implementing bill contains such a requirement, as well as a requirement that the supplier demonstrate efforts that the requested input was marketed in the United States.¹ This underscores a central point that CITA should not ever reject a petition if a supplier is not ready to produce and market the requested input. Too many times we have seen previous petitions rejected because a supplier said they could make it, when it appeared there was little intention of doing so. As we noted before, by the time the petition is filed, and comments requested, the supplier firm will have already been contacted – probably several times – which would provide ample time to produce samples.

Third, we request that CITA be very skeptical of claims of substitutability. An input is substitutable if the ultimate buyer will accept the garment or article made with the input. In many cases, the petitioner is required to meet strict criteria established by the ultimate buyer and will have little leeway to substitute in a similar input.

Fourth, while we agree that the communications between requesters and potential suppliers resemble, to the nearest extent possible, the communications that would prevail in normal business practice, we should all recognize that the very nature of this short supply process is one that is far removed from normal business practice. Thus, we caution against any effort by CITA in defining what those “normal” business practices are. Our experience is that companies rely upon a variety of resources to locate potential suppliers, including associations, outside consultants, and legal firms. We routinely assist our members with these requests – helping identify potential suppliers and potential customers. Just this morning, for example, we received an inquiry from a member looking to identify a potential supplier in Central America. Moreover, it is not “normal” business practice to document, in an exhaustive manner, the efforts that a particular company may pursue in order to locate potential suppliers or show that no potential suppliers exist. Yet such documentation is required in order to

¹ House Report 109-182 states: “CITA should publish procedures that clearly explain the criteria it uses to make its determinations on whether and why a good is or is not available in commercial quantities. At the very least, when CITA determines that a good is available in commercial quantities, a sample of the good should be readily available for physical inspection by all parties as well as evidence of some effort to market the good in the United States.”

comply with the basic due diligence requirements of the commercial availability provisions.

Current CITA procedures indicate that “...‘due diligence’ for the requestor means it has made reasonable efforts to obtain the subject product from CAFTA-DR suppliers.” We believe this standard is adequate, provided the requestor is able to explain how it conducted those efforts – i.e., directly, through outside counsel or a trade association. Similarly, suppliers should be held accountable to their responses, or lack of response, when they are contacted to determine if they offer a specific fabric or yarn. On that note, we would encourage CITA to look suspiciously at a potential supplier’s “response to offer” (in response to a filed petition) when that same supplier refused to even respond to the initial due diligence request.

Should you require additional information, please contact Steve Lamar at slamar@apparelandfootwear.org or via phone at 703-797-9041.

Sincerely,

A handwritten signature in black ink that reads "Kevin M. Burke". The signature is written in a cursive style with a large initial "K" and "B".

Kevin M. Burke
President and CEO