

## RECOMMENDATIONS FOR AN IMPROVED CAFTA-DR SHORT SUPPLY MECHANISM

The lack of a sufficient quantity, performance, and variety of fibers, yarns, and fabrics in the U.S. and Central America impair full utilization by the textile and apparel industry of the U.S.-Central American/Dominican Republic Free Trade Agreement (CAFTA-DR), which generally requires use of such regional inputs for companies to claim duty benefits. Although some new investment in yarns and fabrics is planned for the region, what is available now and what will come online based on announced investments are still not enough to meet current and expected future demand for inputs in the region. There are also many yarns and fabrics not available or are in short supply (meaning there is some production but not enough to satisfy the demand). This acute short supply situation makes it difficult for textile and apparel production and investment to grow and be sustained in the region.

Fortunately, CAFTA-DR contains a special mechanism so that certain fibers, yarns, and fabrics determined not to be available in commercial quantities in a timely manner<sup>1</sup> may be sourced from outside the CAFTA-DR countries for use in textile or apparel products and imported to the U.S. duty-free under the agreement. Unfortunately, the current commercial availability (short supply) process is costly, burdensome and inefficient, so it is ineffective. For instance, in 2021, total apparel imports under CAFTA-DR were \$6.488b while imports under the short supply list were about \$200m or only 3%<sup>2</sup>. Instead of serving as a relief valve for companies unable to source certain materials locally, the short supply mechanism discourages apparel production and investment in the region.

**Reforming the short supply mechanism to improve the availability of certain fibers, yarns, and fabrics that are not currently accessible in the region in commercially meaningful quantities will help secure the current production in region, facilitate growth in new and diverse supply chains, and achieve several policy objectives that enjoy bipartisan support including:**

- (1) incentivizing the shift of supply chains from Asia to the Western Hemisphere,
- (2) creating well-paying apparel jobs in Central America to address the root causes of migration,
- (3) growing textile and apparel trade between the United States and Central America,
- (4) establishing a clear demand signal to attract new textile investment to the United States and Central America, and
- (5) protecting existing and planned investments in the region.

### RECOMMENDATIONS

**We offer the following recommendations to improve CAFTA's commercial availability process and are open to further dialogue and other creative solutions that are not highlighted in this document:**

1

There should be an immediate review of existing manufacturing in the United States and Central America to quickly identify certain yarns and fabrics that are not produced in commercial quantities, and those specific yarns and fabrics should be immediately deemed to be in short supply. Such a review could also determine, if requested, which items are currently on the short supply list but are no longer in short supply and those items could be removed. We recommend this be a regular review, repeated in 5-year intervals.

<sup>1</sup> The President delegated authority to the Committee for the Implementation of Textile Agreements (CITA) to carry out the short supply program. CITA is chaired by the Deputy Assistant Secretary of Commerce for Textiles, which in September 2008 established [Procedures for Considering Commercial Availability Requests](#).

<sup>2</sup> OTEXA data: <https://otexa.trade.gov/fta/catv1.htm>

2 Going forward, the standard to measure whether a product is in short supply should be whether the product is actually produced and sold today in commercial quantities in the U.S. or Central America. The standard should be that the product is currently actually available for purchase, and with consideration of commercial factors, such as speed, capacity, and performance. It should be insufficient for a company to simply say they *could* make the product.

3 The text of the agreement and the procedures published by CITA contemplate and allow for the addition of certain yarns or fabrics to the short supply list in restricted or unrestricted quantities. Too frequently, short supply requests for unlimited quantities are denied without consideration of whether the request could be approved for restricted quantities or for unlimited quantities for a restricted time period. Such a list would enable U.S. or CAFTA-DR suppliers to provide a portion of the required commercial quantity and/or give suppliers time to build their capacity to meet the required commercial quantity and then allow the rest to be on the short supply list. We urge CITA to make greater use of its authority to put requested products on the short supply list in restricted quantities, or for a restricted time period, that might otherwise be rejected altogether. If supply of the added product becomes commercially meaningful in the region, then a manufacturer can always take advantage of the provision allowing products to be removed from the list by request.

4 We recommend CITA update the procedures to require potential suppliers to provide samples to the requestor requesting the product be added to the short supply list. In addition, if the potential supplier is unable or unwilling to supply a sample, then the procedures should be updated to establish that the objector cannot make the subject fiber, yarn, or fabric.

5 At certain points, the CAFTA-DR procedures stipulate that the potential supplier/objector “may” supply certain information to demonstrate that they can make the product.

- a. These should be changed to “must” or “shall.” (E.g., the procedures state that “the supplier may support its offer by reporting the quantity ... it has produced of the subject product, or a substitutable product, in the preceding 24-month period.”)
- b. The procedures should require objectors to provide this information (e.g., “shall support its offer by reporting the quantity and providing supporting production records and sales documentation... it has produced the product in commercial quantities in the preceding 24-month period”).

6 The ability to block a short supply request with a substitutable product should be eliminated.

- a. The text of the agreement, which all the parties agreed to, must govern the consideration of short supply requests and take precedence over the regulations promulgated implementing the short supply process. Article 3.25 of the agreement sets out the requirements of the short supply process and says that when the parties consider a short supply request, they “shall consider that there is substantial production if a Party demonstrates that its domestic producers are capable of supplying commercial quantities of the good in a timely manner.” There is no reference to “similar” or “substitutable goods” anywhere in [Article 3.25](#) of the agreement. Every reference to a product requested in the short supply process is preceded by “the” or “a” and, as a result, means that the exact product requested must be made in commercial quantities in a timely manner in order to be blocked from the short supply list.
- b. Further, in practice, the use of “substitutable goods” creates too much unjustified subjectivity in the review of the short supply request. For example, while the procedures require a potential supplier to support a claim of substitutability “with measurable criteria” no specific criteria are described in the rule nor is there any indication from the rule how such claims should be analyzed. In other words, there are no set forth criteria for determining when an offered product is sufficiently similar to the requested product that it blocks the addition of the requested product to the short supply list. No specific criteria are given, leaving the evaluation open to subjective criteria that may not be evenly applied.
- c. Moreover, the use of “substitutable goods” unfairly shifts the burden to the requestor to explain why it wants the specific product requested. But the apparel company best knows the garment qualities like feel, stretch, and durability, among many others, that it is trying to provide to consumers. It should not be the role of CITA or the objecting entity to question the request by finding that another product is ‘close enough’.
- d. Since the entire concept of “substitutable products” is not authorized by the text of the agreement and its use in practice creates too much subjectivity and inappropriately questions the judgment of the requesting entity, suppliers should not be able to claim that their product is “substitutable” in order to prevent a short supply designation.

7 We urge CITA to automatically include all products recommended by the U.S. International Trade Commission for inclusion in the Miscellaneous Tariff Bill on the short supply list. This would be an immediate boon for Made in USA apparel since these products would not have to pay heavy tariffs on imported inputs that are not commercially available.