



THE SECRETARY OF COMMERCE
Washington, D.C. 20230

January 30, 2006

The Honorable Jerry Weller
U.S. House of Representatives
Washington, D.C. 20515-1311

Dear Representative Weller:

Thank you for your letter regarding H.R. 3416, which would prohibit the application of the "foreign affairs" exemption of the Administrative Procedure Act (APA) with respect to actions of the Committee for the Implementation of Textile Agreements (CITA). CITA is an interagency group chaired by the Department of Commerce, including the Departments of State, Labor, Treasury, and the Office of the U.S. Trade Representative.

Commerce strives to comply with the terms of the APA in all of its rulemaking efforts. Under certain circumstances, our rules may directly involve military or foreign affairs functions in a manner that exempts our rules from the rulemaking requirements of the APA. This indeed is the case in several international trade-related areas throughout the government. There is a body of case law that demarcates when this exemption may be employed with regard to textile agreements. We are careful only to exercise this option in appropriate circumstances.

There may be circumstances in which CITA needs to quickly take action in response to conditions in the marketplace and to properly effectuate certain textile trade agreements and programs. These would be impeded if the "foreign affairs" exemption of the APA were unavailable under any circumstances. This exemption is important, and vitiating it for all CITA regulations would risk depriving the Executive Branch of much needed flexibility in conducting foreign affairs functions. Accordingly, we believe that H.R. 3416 is overly broad and would in some cases prevent the fulfillment of our statutory responsibilities.

Further, in some applications, the bill categorically requires that CITA follow the APA's rulemaking procedures, even in the context of foreign affairs functions. This may provoke definitely undesirable international consequences, and thereby impede the President's ability to exercise his constitutional authority to conduct the Nation's foreign affairs. Thus, the bill raises substantial constitutional concerns.

While the Bush Administration opposes H.R. 3416, we strongly support the principle of regulatory transparency. In recent years, we have taken several steps to increase such transparency, and we will continue to seek ways to ensure appropriate transparency in all of CITA's rulemakings.

The Office of Management and Budget advises that from the standpoint of the Administration's program, there is no objection to the submission of this letter. If you have any further questions, please contact me or Nat Wienecke, Acting Assistant Secretary for Legislative and Intergovernmental Affairs, at (202) 482-3663.

Sincerely,

A handwritten signature in black ink, appearing to read "Carlos M. Gonzalez".

Carlos M. Gonzalez