



Consulting and Government Affairs Practice

700 13th St., NW Suite 930

Washington, DC 20005

Telephone: 202.393.4481

Fax: 202.393.4494

www.ssa-dc.com

COMMERCIAL AVAILABILITY REBUTTAL

-- PUBLIC VERSION --

July 28, 2010

Ms. Kim Glas
Chair, Committee for the Implementation of Textile Agreements
Office of Textiles and Apparel
U.S. Department of Commerce
14th and Constitution Ave., NW
Washington, DC 20230

**Re: Rebuttal to Submission from Burlington WorldWide/Insinca, S.A.
CITA File# 146.2010.07.08.Fabric.SoriniSametforBWA**

Dear Ms. Glas,

On behalf of B-W-A, Inc. ("BWA"), and pursuant to the Committee for the Implementation of Textile Agreements' ("CITA's") *Modified Final Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement* ("CAFTA-DR") set forth in 73 Fed. Reg. 53200 ("Final Procedures"), Sorini, Samet & Associates, LLC ("SS&A") submits this Rebuttal Comment ("Rebuttal") to the submission offered by Burlington WorldWide on behalf of both Burlington WorldWide and Insinca, S.A. ("Burlington/Insinca") regarding BWA's pending Commercial Availability Request ("Request").¹

This Rebuttal offers information that demonstrates the Burlington/Insinca submission does not comply with CITA's Final Procedures for filing a Response with an Offer to Supply, and therefore should be rejected by CITA. Moreover, the Burlington/Insinca submission does not provide sufficient relevant information to demonstrate that Burlington/Insinca can supply the subject fabric to BWA in commercial quantities in a timely manner.

¹ File # 146.2010.07.08.Fabric.SoriniSametforBWA

Listed below are rebuttal comments to the arguments and information provided in the Burlington/Insinca submission. The number of inaccuracies and generally limited and/or vague information about the supplier's capabilities demonstrate that the submission is neither a serious attempt to submit a Response with an Offer to Supply under the CAFTA-DR commercial availability process, nor is it a serious business offer to the supply the subject fabric to BWA.

I. The Submission Does Not Comply with CITA's Final Procedures.

A. Submitting a Response with an Offer to Supply.

Paragraph 6(a) of CITA's Final Procedures states that "[a]n interested entity may file a submission to a Request CITA accepted advising CITA of its objection to the Request and its ability to supply the subject product by providing an offer to supply the subject product..." (Underline added). In no part of Burlington/Insinca's submission does the interested entity make an offer to supply the subject fabric to BWA. For this reason the submission offered by Burlington/Insinca should not be considered by CITA to be a Response with an Offer to Supply. Moreover, as described below, Burlington/Insinca does not offer sufficient relevant information that it is capable of producing/supplying the subject fabric.

B. Quantity.

Paragraph 6(b)(2) of CITA's Final Procedures states that the "Response must supply the quantity of the subject product that the respondent is capable of currently supplying." Burlington/Insinca does not cite this provision of the Final Procedures, yet information provided could be inferred to relate to the provision.

In no part of its submission does Burlington/Insinca claim to be capable of currently supplying the subject product; instead, the submission states that Insinca has the capacity to manufacture 10 million square meters of poly/rayon or poly/lyocell fabric per year." This statement does not address the subject product, as required by the procedures. First, BWA's Request does not pertain to any poly/rayon fabrics. Second, the poly/rayon and poly/lyocell fabrics referenced in the submission would be, as understood through industry parlance, of chief-weight polyester (*i.e.*, greater than or equal to 50% polyester). The subject fabric in BWA's Request is of chief weight standard lyocell staple fiber. The information provided by Burlington/Insinca is either non-compliant with paragraph 6(b)(2), or not relevant information under the Final Procedures.

C. Production Capability/Demonstration of Ability to Supply.

Paragraph 6(b)(3)(i) of CITA's Final Procedures states that the Response must report the quantity of the subject product, or substitutable product, the supplier has produced in the past 24-month period. Burlington/Insinca does not cite this provision of the

Final Procedures, yet information provided could be inferred to relate to the provision.

In no part of its submission does Burlington/Insinca claim to have ever produced the subject product. Instead, Burlington/Insinca's submission reported 24-month production figures for poly/rayon fabric. Poly/rayon fabric is not subject to BWA's pending Request. Burlington/Insinca makes no claim whatsoever that poly/rayon fabric is substitutable for the subject fabric, and indeed BWA and its customers would not accept a poly/rayon fabric as a substitute for the subject product. The fabric subject to BWA's Request is of chief weight standard lyocell staple fiber, which involves different production processes. The information provided by Burlington/Insinca is either non-compliant with paragraph 6(b)(3)(i), or not relevant information under CITA's Final Procedures.

D. Production Capability/Demonstration of Ability to Supply.

Paragraph 6(b)(3)(iv) of CITA's Final Procedures states that "a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability." Burlington/Insinca did not provide sufficient relevant information in its submission. It states, instead, that Insinca has access to the fibers, can spin and dye the yarns, and "has the capacity to manufacture 10 million square meters of poly/rayon or poly/lyocell fabric per year."

The fabric subject to BWA's Request is of chief weight standard lyocell staple fiber. The Burlington/Insinca submission makes an assumption that its experience in producing chief-weight polyester fabrics is adequate demonstration of its capability to produce fabrics of chief weight standard lyocell staple fiber. As described in further detail below, this assumption is not supported by sufficient details presented by Burlington/Insinca, and the assumption is not supported by the industry realities of producing apparel fabric of standard lyocell staple fiber.

E. Production Capability/Demonstration of Ability to Supply.

Paragraph 6(b)(3)(vi) of CITA's Final Procedures states that "[i]n the event a CAFTA-DR supplier was non-responsive, a CAFTA-DR supplier must provide a reasonable explanation in its Response as to why it did not respond to earlier inquiries by the requestor in the course of due diligence." With regard to the requestor's attempts to contact Insinca (listed as Industrias Sinteticas de Centro America in the Request) during the course of due diligence, Burlington/Insinca's submission did not provide a reasonable explanation as to why Insinca did not respond.

BWA's representatives sent due diligence inquiry emails to the address info@insinca.com, to the attention of Mr. Oscar Vidal Palma (copies of which are provided in Appendix I of the business confidential version of this submission).

Burlington/Insinca's submission provides three reasons for the lack of a response to the requestor, none of which are relevant and valid: (1) the Insinca contact, Mr. Palma, has lost many emails over the past year due to email issues, (2) email is not a high priority for Mr. Palma because he is not responsible for external relations, and (3) Mr. Palma is not the correct contact for production inquiries.

First, Burlington/Insinca explained that emails were lost due to issues with Palma's email address. The submission did not state that the email issues affected the info@insinca.com address, which is the contact information used by BWA's representatives.

Second, the address info@insinca.com is found under Insinca's listing in the 2009 edition of Davison's Textile Bluebook, which is an industry-wide publication that lists company contact information for the purpose of external relations. Even if Mr. Palma is not responsible for external relations at Insinca, it is reasonable to assume that whoever received the inquiry emails at info@insinca.com would have ensured that the appropriate Insinca contact would have seen them.

Third, Mr. Palma's title is listed in Davison's Textile Bluebook as Production Manager; therefore, it is reasonable for external contacts to assume that Mr. Palma is an appropriate Insinca contact for production inquiries.

The Burlington/Insinca submission also does not accurately describe the correspondence between representatives of Burlington WorldWide and representatives of BWA during the course of due diligence. BWA's representatives contacted an appropriate salesperson at Burlington to inquire whether Burlington could supply the subject fabric. Burlington's salesperson responded by stating, "Burlington does not produce any lyocell products." In normal business practice, it is reasonable to conclude from Burlington's response that (1) the potential supplier is not able to supply the customer with its needs, and (2) the potential supplier is not interested in exploring business development with the customer, as no follow up questions were asked and no information was requested about the potential customer's project.

However, Burlington/Insinca argue in its submission that the burden should be on the potential customer to go beyond standard business practice, and beyond requirements in CITA's Final Procedures, by asking further questions of the potential supplier. Burlington's salesperson told BWA's representatives that the subject fabric was not commercially available from Burlington, yet the Burlington/Insinca submission argues that BWA or its representatives should have asked if Burlington "were able to develop a lyocell fabric" and should have asked to discuss the issue with Burlington's merchandising and product development areas. As a matter of procedure under the CAFTA-DR commercial availability process, paragraph 4(b)(3) of CITA's Final Procedures states, "The Request must provide a complete description of the due

diligence undertaken by the requestor to determine the subject product's availability in the CAFTA-DR countries.” It does not require requestors to determine if any supplier is interested in developing the product.

Instead, it would be reasonable that the salesperson of the potential supplier fully understand the supplier's business model, expertise, and current ventures with other suppliers. For example, the Burlington/Insinca submission argues (we believe incorrectly, as described below) that lyocell fabrics are manufactured in exactly the same way as rayon fabrics. Therefore, if this were true, and if Insinca had produced 20 million square meters of poly/rayon fabrics over the past 24-month period (as stated in the submission), then it would seem reasonable for a Burlington salesperson to have knowledge of such expertise among its joint ventures and should be responsible for relaying potential significant business to the appropriate Burlington/Insinca contacts. Or, at the very least, the salesperson should inform potential customers that certain Burlington ventures are experienced in producing such products, since, in Burlington's view, the subject product is made in exactly the same manner as those Insinca currently supplies.

F. Location of the CAFTA-DR Supplier.

Paragraph 6(b)(5) of CITA's Final Procedures states that “The Response must provide the name, address, phone number, and email address of a contact person at the facility claimed to be able to supply the subject product.” The Burlington/Insinca submission identifies the name of the facility, a contact person and the country in which it is located.

CITA deliberately uses the word “facility” in this provision rather than “interested entity” or “interested party”. This language illustrates the fact that interested entities, and in particular interested parties, that respond to pending Requests may not have relevant information regarding product development, production, or ability to supply the subject product in a timely manner. In the Burlington/Insinca submission, it is claimed that for the subject product Insinca will acquire the fiber, spin the yarn, dye the yarn, weave the fabric, and finish the fabric; therefore, functioning contact information should have been provided for someone at Insinca who could be contacted to provide information on its ability to supply the subject product.

II. The Submission Does Not Provide Sufficient Relevant Information to Demonstrate that Burlington/Insinca can Supply the Subject Fabric.

In no part of the Burlington/Insinca submission does the supplier indicate it has ever produced the subject fabric. Such past production, and the availability of a production sample, would make it easier for the supplier to demonstrate its capabilities to BWA and to CITA. Of course, under the CAFTA-DR commercial availability process the supplier is not required to have produced the subject fabric in the past; however, per CITA's Final

Procedures, particularly paragraph (6)(b)(3)(iv), “[r]egardless of whether a sample is provided, a respondent must demonstrate its ability to produce the subject product by providing sufficient relevant information regarding their production capability.” The Burlington/Insinca submission fails to provide such sufficient relevant information. CITA requires the submission of such information so that all parties may make highly informed decisions and determinations.

The Burlington/Insinca submission did not include the identification of suppliers of inputs, subcontractors, descriptions of specific types of necessary equipment, or other information necessary to demonstrate that the supplier understands how to develop, produce and supply the subject fabric in a timely manner. For example, the Burlington/Insinca submission states, “all weaving will utilize rapier looms...”. Rapier looms are generally configured to weave plain-weave fabric; however, the fabric subject to the Request includes various types of weaves, such as: twill, jacquard, dobby, oxford, and satin. Rapier looms can be modified with different attachments and numbers of harnesses to produce other weave types, but the submission provides no details about the status and configuration of the looms.

Another example is the statement in the Burlington/Insinca submission that, “...all standard piece dye and package dye equipment is utilized in the dyeing and finishing processes.” An attempt to define “standard” in this context is not provided, and the dyeing and finishing of yarns and fabric of standard lyocell staple fiber is not considered “standard” by any definition. The lack of sufficient and relevant information and documentation indicates that Burlington/Insinca does not fully appreciate the complexities of the processes and equipment necessary to produce apparel fabric of standard lyocell staple fiber, and is not capable of supplying the subject fabric in a timely manner.

The Burlington/Insinca submission states, “the yarn spinning, weaving, dyeing, and finishing process for fabrics containing lyocell and rayon is exactly the same.” This statement is inaccurate. There are numerous differences between the production processes for rayon apparel fabrics and the production processes for apparel fabrics of standard lyocell, including but not limited to the following: first, standard lyocell yarns have a higher dye affinity than rayon yarns. In fact, the dyeing of standard lyocell yarns more closely resembles that for cotton rather than rayon. Insinca, according to its website, does not produce any products containing cotton. Second, apparel fabrics of standard lyocell require fibrillation, whereas rayon fabrics cannot be fibrillated. Third, yarns and fabrics of standard lyocell tend to swell more when wet and have a greater modulus (stiffness) than comparable rayon products. Because of these and other characteristics, the production of apparel fabrics containing standard lyocell requires special handling and processes in order to achieve the commercially desirable effects.

Further demonstrating a limited understanding of standard lyocell apparel fabric production, the Burlington/Insinca submission does not reference the different variations of lyocell fibers and rayon fibers that are claimed to be subject to “exactly the same” fabric

production processes. BWA's Request is very specific in its requirement of standard lyocell staple fiber. Different lyocell fiber variations, such as A100, standard, and LF, require different fabric production processes. Similarly, there are differences in the processes for producing apparel fabrics of different types of rayon fibers alone, such as standard and high wet modulus (or viscous - HWV). For example, the process for spinning viscose rayon yarns differs from that of spinning non-viscous rayon.

Lastly, in its argument that rayon and standard lyocell staple fibers are similar, the Burlington/Insinca submission states, "the FTC granted lyocell a generic description in order to separate it from rayon because the manufacturing process to produce lyocell is more environmentally friendly than that of standard rayon." The Burlington/Insinca suggests that this is the only difference between rayon and lyocell cited by the FTC; when in fact, the FTC cited other differences as well. When the FTC approved the use of lyocell as a generic term, it issued a press release, stating: "Although substantially similar in chemical composition to rayon, which must be dry-cleaned, lyocell is washable and is more resistant to shrinkage and wrinkling. The FTC also noted that other countries and international standards organizations allow use of the name lyocell."² As stated above in this Rebuttal, there are in fact many differences between standard lyocell and rayon. For example, standard lyocell can be fibrillated, a process that gives finished fabrics a soft touch that is commercially desirable. The production of yarns and fabrics of standard lyocell in fact more closely resembles those of natural fibers, such as wool or cotton, rather than rayon.

Closing

It is the hope of SS&A and BWA that this Rebuttal offers sufficient information for CITA to reject the submission of Burlington/Insinca, which does not constitute a Response with an Offer to Supply.

It is clear from the submission that Burlington/Insinca does not produce the subject product, has never produced the subject product, and is not offering a substitutable product. The submission also does not provide sufficient relevant information to demonstrate that Burlington/Insinca understands the complexities of the subject product, or that it has the necessary expertise and equipment to develop, produce and supply the subject product in a timely manner.

If you have any questions or require further information with regard to this Rebuttal, please contact Keith Jenkins at (202) 393-4481 x201, or kjenkins@ssa-dc.com.

Sincerely,

² Federal Trade Commission: FTC Approves "Lyocell" For Use In Fabric Content Labeling, April 12, 1996. (<http://www.ftc.gov/opa/1996/04/lyocell3.shtm>)

A handwritten signature in black ink, appearing to read "Keith A. Jenkins", with a long horizontal flourish extending to the right.

Keith A. Jenkins
Senior Director of Government Affairs

July 28, 2010

APPENDIX I

Due Diligence Correspondence with Burlington WorldWide and Insinca, S.A. (Industrias Sinteticas):

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