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PUBLIC DOCUMENT

Chairman
Committee for the Implementation of Textile Agreements
U.S. Department of Commerce
Room H3001A
14th Street & Constitution Avenue, N.W.
Washington, D.C. 20230

Re: Garan Manufacturing Corporation's Rebuttal Comments
Case: 107.2009.04.24.Fabric.ST&RforGaranManufacturing
Commercial Availability of Certain Cotton/ Polyester Fleece Fabrics (#3)

Dear Chairman:

On behalf of Garan Manufacturing Corp., of Starkville, MS, we hereby submit these Rebuttal Comments in connection with the Offer to Supply submitted by Elasticos Centroamericanos y Textiles, S.A. de C.V. ("Elcatex") in the above cited request for a finding of commercial non-availability pursuant to the provisions of Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement ("the Agreement") Implementation Act and CITA Final Procedures for implementing Section 203(o)(4) contained in CITA's Federal Register notices of March 15, 2007 and the Modifications to Procedures of September 12, 2008 (hereinafter "Procedures").

CITA should disregard Elcatex's submission because it fails to demonstrate that Elcatex is able to produce the subject fabric. CITA should therefore accept the above reference petition and place the subject fabric on Annex 3.25 of the DR-CAFTA. As described in detail below, our position is based on the following:

· Elcatex does state the amount of "similar" fabrics it has recently produced as well as the brand names of the machinery it has installed. However, this information is insufficient to conclude that Elcatex is indeed capable of producing the subject fabric.

- Elcatex has acknowledged that it does not even currently possess the machinery required to make these fabrics.

- Elcatex proposes to make a fabric with technical tolerances that are outside of the stated requirements. Furthermore, where the technical specifications of the proposed fabric meet the stated requirements, they are dangerously close to exceeding the stated tolerances. Given typical manufacturing tolerances, there is a high likelihood that the fabrics Elcatex proposes to make would regularly exceed the stated performance criteria.

- Elcatex has a history of failing to meet stated product specifications, and failing to meet delivery deadlines, casting doubt on its ability to make the subject fabric, as well as its ability to meet the stated seasonal deadlines.

- Elcatex's stated capacity is minute relative to the market for the subject fabric. As such, the fabric is not available commercial quantities.

Section 6(b)(3)(iii) of the Procedures require a respondent to provide detailed information on its current ability to make the subject product, particularly in cases where the subject fabric represents a new style. This information is to include, inter alia, "descriptions of equipment." Elcatex acknowledges that the fabrics it produced in the past were "similar" to the subject fabrics by stating that it has produced "around 245,000 pounds...of a similar fabric in the last 24 months."¹ However, it does not provide any information whatsoever regarding the fabrics it produced, how those fabrics were similar to the subject fabric and how they differed. Thus, the subject fabric represents a new variation on products Elcatex previously produced. Elcatex is therefore required, under CITA's Procedures, to provide such detailed information. However, Elcatex lists only the brand name of the machinery it has installed, with no indication of the type of machinery, or the number of units installed. Thus, there is no basis for CITA to determine that Elcatex is capable of making the subject fabrics, nor is there sufficient information for CITA to conclude that Elcatex is capable of making the admittedly inadequate quantities it claims it can make.

Elcatex notes that it does not currently possess 21 gauge knitting machines, but states they "will be ready once we receive confirmation for our response letter and formal Purchase Order." This statement does not make sense. It appears they are certifying that the machines will magically appear the moment a purchase order is received. It is more likely that they are stating that they will order the machines upon receipt of a purchase order that said machines will be delivered and installed and sample fabrics will be produced all within a four week period.

By its own statements, Elcatex has acknowledged that it does not possess the machinery to produce the subject fabrics. It cannot produce them today. They are, therefore, not available in commercially meaningful quantities – in fact they are not available at all.

The DR-CAFTA provides that an item shall be added to Annex 3.25 unless the article is available in commercial quantities. CITA's Procedures, on the other hand, require only that a

¹ Elcatex Letter at 2.

potential supplier to show that it is *capable* of producing the articles in question. Elcatex is not currently capable of producing the articles in question and therefore, is now effectively asking CITA to further lower that threshold from “capable of making a fabric” to “capable of making a fabric...if it obtained the requisite machinery.” By this definition, any business in the DR-CAFTA region would be “capable” of making the subject fabrics provided it bought and installed the requisite machinery. Elcatex, by its own admission, clearly states that it is not currently capable of producing the articles in question.

Elcatex is suggesting that they will purchase the requisite machinery upon receipt of a purchase order. This is not the manner in which businesses normally operate. Few companies, if any, would issue a purchase order, effectively extending credit, to another company prior to the purchase of the machinery required to produce the article. CITA has made clear that it intends for the commercial availability procedures to mirror normal business practices. This is not a normal business practice.

The specifications provided by Elcatex in its Offer to Supply cast doubt on its ability to actually produce the subject fabric as well as its understanding of the nature of these fabrics.

Elcatex states it will supply a fabric with a fiber content of 72.4 percent cotton and 27.6 percent polyester. This is not standard nomenclature in the apparel business – fiber content is typically stated in whole numbers of percent – not tenths. In the course of fabric manufacturing, particularly one in which multiple and different yarns are being used, the exact fiber content is difficult, if not impossible to predict with such specificity. In fact, any single roll of fabric from a single production run will vary throughout its length and width.

The industry typically allows for deviations in fiber content, making such precise predictions meaningless. The Federal Trade Commission, for example allows a variance of +/- three percent for fiber content labeling requirements.

We note that the stated fiber content – 72.4/27.6% is perilously close to the limits of the range for the subject fabric – 73/27. Presuming Elcatex intends to produce a fabric with this fiber content, it is highly likely that some portion of the production run would be outside of the stated parameters and thus be unacceptable.

As noted below, Garan has specific experience with Elcatex and has noted numerous instances where Elcatex failed to meet performance and other criteria. This casts doubt on Elcatex’s ability to meet this fiber content specification in particular. As noted above, Elcatex did not provide significant details to support its claim that it could produce the subject fabric. Such information would have been helpful for any reader, including CITA to determine that Elcatex can supply the subject fabric. It also would be helpful for Garan to understand any steps Elcatex has taken or would take to correct its previous practices which led to its lapses in performance.

Elcatex states it will supply a fabric with a weight of 292-298 grams per square meter. The stated requirements of the subject fabric are for a weight of 271-300 grams per square meter. While the proposed weight is within the required range, it is also perilously close to the upper limit of 300 grams per square meter. As with the other tolerances it is highly possible that,

during the course of normal manufacturing, Elcatex may not be able to consistently stay within its stated range. There is little margin for error or normal production variation in Elcatex's proposed fabric.

Elcatex states it will supply a fabric with a shrinkage tolerance of 5 percent in each direction. The stated requirements of the subject fabric are LESS than five percent in each direction. Thus, the fabric Elcatex proposes to supply would not meet the requirements for shrinkage. In the course of normal production operations, variances in shrinkage testing are expected. Thus, Elcatex's projected shrinkage tolerance of five percent in each direction would likely not be consistently met. Some amount of their production would likely have less shrinkage, making the fabric acceptable on that measurement. At the same time, some portion of Elcatex's production would likely result in shrinkage in excess of five percent, making it unacceptable. Again, Garan has specific prior experiences with Elcatex that cast doubt on Elcatex's ability to meet this shrinkage specification in particular.

Elcatex states it will supply a fabric possessing a torque measurement of 2.97 percent. As with the fiber content, Elcatex's stated torque measurement is stated with unusual specificity. Normal business practices provide that torque measurements are stated in tenths of a percent. Curiously, Elcatex has coupled this highly unusual and specific torque measurement with a relatively high tolerance - +/- 1 percent. This too is problematic since the upper level of that tolerance is dangerously close to the stated limitation of 4 percent torque. Presuming Elcatex can consistently remain within this stated tolerance, the fabrics it proposes to supply would meet this one requirement. However, the stated tolerance leaves little room for error. As noted above, Elcatex has a history of failing to meet specific criteria in delivering fabrics. Given this experience, and lacking any information to the contrary, one can assume there is a reasonable level of doubt that Elcatex can indeed meet this specification.

Elcatex states that it is able to supply 272,800 kilograms (600,000 pounds) of the subject fabric in a six-month season. We note that Elcatex states it can produce the same quantity of fabric in four other Offers to Supply.² Elcatex's total production capacity for the subject fabric of this petition, as well as the four others cited below is not clear. Presuming Elcatex's capacity is 600,000 pounds in its entirety for a six month season, it would only be able to supply Garan with a small percentage of its needs. We understand that other garment manufacturers are using the subject fabric. Thus, the total market is probably larger than Garan's stated requirements and Elcatex's capacity, as a percent of that market, is likely even smaller.

At this level of claimed capability, one cannot determine that the fabric is available in "commercially meaningful" quantities as is required.

Garan has purchased fabrics from Elcatex in the past. On numerous occasions, Elcatex failed to meet product specifications and delivery schedules. The problems were so prevalent that Garan ceased ordering from Elcatex several years ago. During the past year, senior representatives from Garan contacted Elcatex in an attempt to re-establish the relationship. On each occasion, Elcatex refused to enter into a dialogue. At best it made appointments and then

² CITA References: 105.2009.04.24.Fabric.ST&RforGaranMfg, 106.2009.04.24.Fabric.ST&RforGaranMfg, 108.2009.04.24.Fabric.ST&RforGaranMfg, and 109.2009.04.24.Fabric.ST&RforGaranMfg

cancelled them. If Elcatex was truly interested in supplying the subject fabric to Garan, it would have made substantive efforts to win that business. At the very least it should have met with Garan officials. It did neither. These actions cast substantial doubts on Elcatex's interest in actually supplying the subject fabrics.

In the course of our due diligence, we contacted senior management at Elcatex on two separate occasions via email. Our emails were not returned and we therefore believe the emails were successfully delivered to Elcatex. No responses were ever received. Elcatex claims it did not receive the communications. We note that Elcatex on two previous occasions has refused to enter into a dialogue when prospective customers approached them only to object to those companies' requests for findings of commercial non-availability, proposing to offer fabrics that differed substantially from the applicable requirements.³ CITA has made clear that it intends for the commercial availability procedures to mirror normal business practices. This is not a normal business practice. Further, Elcatex's actions are at odds with the commercial availability process.

If you have any questions or comments regarding these Rebuttal Comments, please contact Mark Haney at mhaney@strtrade.com.

Respectfully submitted,
SANDLER, TRAVIS & ROSENBERG, P.A.

By: 
Mark Tallo

³ See CITA Case: 82.2008.08.05.Fabrics.ST&RforBadgerSportswear, and 36.2007.09.20.Fabric.Alson&BirdforPerryManufacturing.