

**Report on CAFTA-DR Commercial Availability Request**  
**38.2007.12.26.Fabric.ColumbiaSportswearCo.**  
**For Certain Composite Fabrics**

On December 26, 2007, CITA received a commercial availability request from Columbia Sportswear Company (Columbia) for a composite fabric consisting of a woven face fabric and a knit backing fabric laminated together by means of a chemical adhesive. The record of the request, responses, and rebuttals can be found at:

<http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf> under reference number

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On December 28, 2007, in accordance with CITA's procedures (72 FR 13256, published on March 21, 2007), CITA notified interested parties of, and posted on its website, the accepted petition and requested that interested entities provide by January 10, 2008, a response advising of its objection to the commercial availability request or its ability to supply the subject product. CITA also explained that rebuttals to responses were due to CITA by January 16, 2008.

Response from Polartec LLC:

On January 7, 2008, Polartec LLC (Polartec) submitted a response with an offer to supply, advising CITA of its objection to the request and explaining its ability to supply the fabric as specified in the request in commercial quantities in a timely manner. In its submission, Polartec explained that it had engaged in extensive discussions regarding development and production of the fabric in question. Polartec stated that it had provided a sample fabric for Columbia's review in November 2007, and that while the company acknowledged that the sample provided did not match the required specifications, Polartec claimed that the fabric was a substitutable product. Polartec explained that it had difficulty in sourcing a woven face fabric, one component of the composite fabric, but claimed that while its original supplier, Burlington Worldwide (Burlington), could not provide the fabric for Polartec in 2007, it could now supply the fabric as specified. Polartec also claimed that Columbia's testing requirements did not apply to three-layer composite fabrics, that Columbia did not include its requirements for embossing in its original specifications, and argued that Columbia's concerns regarding the embossing process could be addressed.

Rebuttal from Columbia:

On January 16, 2008, Columbia submitted its rebuttal to Polartec's response. Columbia argued that the response by Polartec should be rejected as it does not meet the requirements of CITA's procedures. First, Columbia stated that Polartec did not provide the quantity of the subject fabric that it is capable of supplying. Specifically, Columbia claimed that Polartec provided neither a quantity of the subject fabric that they have

produced in the preceding 24 months, nor detailed information on its current ability to make the subject fabric. Second, Columbia stated that Polartec did not provide a sample of the subject fabric or a substitutable product.

As for Polartec's claim that it could supply the subject fabric, Columbia explained that it had made significant efforts to source the fabric from Polartec, and had provided the company ample opportunity to supply the product. Columbia contended that despite its efforts, Polartec was unable to substantiate its claims that it could produce the fabric as specified in a timely manner. Columbia asserted that it had originally contacted Polartec in August 2007, noting that the fabric was required for delivery in late January 2008. Columbia explained that it had provided full specifications, including the need for embossing. In support of its claim, Columbia referred to documentation included in its request that indicates that embossing was specified in email communications to Polartec in August 2007. Columbia asserted that Polartec's inability to source different components of the final fabric as specified, namely the woven face fabric and the embossing, was the reason that the sample provided by Polartec differed substantially from the specifications Columbia required. Therefore, Columbia argued that Polartec is unable to supply the fabric in question in a timely manner.

On January 24, 2008, in accordance with section 203(o)(4) of the CAFTA-DR Implementation Act, Article 3.25 of the CAFTA-DR Agreement, and section 8(c)(4) of CITA's procedures, because there was insufficient information to make a determination within 30 days, CITA extended the period to make its determination by 14 U.S. business days.

#### The Public Meeting:

On February 6, 2008, in accordance with section 8(c)(4)(i) of CITA's procedures, CITA held a public meeting with representatives from Columbia, Polartec, and Burlington to provide an additional opportunity for the companies to present evidence and arguments as to whether Polartec could supply the fabric in question.

At the meeting, Columbia explained that it sources the fabrics for its apparel in more than 20 countries and in many cases uses a "multi-source" strategy, meaning that the company uses more than one mill to produce a given fabric. This strategy allows Columbia to diversify its production so that it does not have to rely on one supplier to meet various production requirements and tight deadlines. However, because the same apparel item may be produced using fabrics from different suppliers, it is critical that the fabrics be identical. Therefore, Columbia requires that its suppliers meet fabric specifications exactly so that there are no differences in the end product.

Columbia initiated its due diligence efforts in May 2007, and, upon learning of Polartec's interest to supply the fabric, began direct communication with Polartec in August 2007.

Under Columbia's normal business practices, it requires potential suppliers to produce a sample within 4 to 6 weeks. Once Polartec had indicated its interest in supplying the fabric, Columbia worked with the company to develop the product. In this case, Columbia noted that it extended its deadline for a sample, but that when Polartec finally did produce a sample, the fabric was so far off specifications that Columbia had no confidence that Polartec could supply the fabric as specified. Moreover, Polartec's sample did not have the requisite embossing also specified. Therefore, Columbia believed it had no choice but to proceed with its commercial availability request. Columbia stated that while it does have an ongoing business relationship with Polartec and develops other products with the company, it still has not received a sample from Polartec that meets its requirements. Because the market for this product is growing, even beyond Columbia's initial projections, the sourcing of the fabric continues to be a time sensitive issue for the company. However, Columbia does not believe that Polartec can supply the composite fabric it specified in a timely manner.

Polartec opened its remarks by stating that while it wishes to preserve its ongoing relationship with Columbia, the company objected to the request because it needed to protect its interests. Polartec stated that it is known for its innovation and quality products. The company asserted that it had the capability, capacity and desire to supply the composite fabric Columbia specified.

Polartec's Senior Vice President for Product Development explained that in its normal course of business, when a client request comes in, the company has historically developed products that meet a client's performance requirements, focusing more on the functional attributes of its products, rather than exact specifications such as yarn size, thread count, and weave type. Polartec acknowledged that while it did receive the specifications and the sample from Columbia, it had treated the request as a new product to be developed based on performance standards, rather than a product that had to match an existing supply. Polartec admitted that it had not done embossing in years and that it would contract out embossing jobs to a local supplier. The company also admitted that when Burlington could not provide the woven face fabric required, it had trouble finding an alternate supplier to meet Columbia's specifications and deadline. As a result, Polartec did not produce a sample that met the specifications. With respect to the laminating that Columbia specified for the fabric, Polartec stated that they manufacture one million yards of laminated fabrics a year.

Columbia argued that because of its need to match fabrics exactly, it cannot rely on suppliers' assertions that they are able to produce the product and requires suppliers to produce an acceptable sample before it places an order. Columbia further stated that Polartec never contacted the company to explain that the sample it provided would not match the required specifications. Columbia claimed that they had never worked so long with a potential supplier in developing a product that still did not result in an acceptable fabric. With regard to Polartec's focus on performance criteria, Columbia noted that its specifications were often the result of the company's own product development; therefore, Columbia argued, performance was not an issue when a supplier met the specifications provided.

CITA asked whether Polartec had the current capacity and capability to make the fabric at issue. Polartec noted that the problem had been in sourcing the woven face fabric. Burlington commented that the reason for its past inability to supply the woven face fabric was because it had been in the process of transferring its production lines from one facility to another during the time of the initial inquiry. While it did not currently have the yarns to produce the woven face fabric required, Burlington stated that it could develop the specified component. When asked by CITA how long it would take Polartec to produce the fabric, Polartec stated that it might take weeks to produce a sample of the basic fabric. An embossed fabric would take longer as they would have to make the rollers with the pattern, which were expensive and can take up to four weeks to manufacture. Regarding the quantities specified by Columbia, all parties agreed that the bottleneck in timely production is the laminating process. Polartec said they have a relationship with a nearby lamination supplier. Polartec stated that they could supply 400,000 yards of the composite fabric over a 5 month period. Columbia reiterated that, after months of dialogue and attempts to get the fabric, Polartec still had not provided a sample to specifications and that there was no assurance that the multiple steps necessary to make this specific composite fabric could be coordinated by Polartec in order to produce the requested fabric in commercial quantities in a timely manner.

#### Analysis of Information on the Record:

Sufficiency of Polartec's Response: In its rebuttal, Columbia argued that Polartec's response did not meet CITA's requirements under its procedures for commercial availability determinations. CITA finds that Polartec's response was sufficient. A responder's failure to state a specific quantity to be supplied does not constitute an insufficiency under CITA's procedures. Unless a response states a given quantity to be supplied, CITA presumes that a blanket offer to supply is an offer to supply the full quantity as requested. With respect to information regarding Polartec's history of production or detailed information regarding its capability to produce the subject fabric, CITA notes that the response did include the company's statements of its history of production and development of laminated fabrics and that it had produced such fabrics in quantities that far exceed Columbia's stated requirements. While such information was sufficient to accept the response, CITA did recognize a need for additional information, and, therefore, extended its determination deadline and requested a meeting with the parties to supplement the information on the record. Finally, with respect to Polartec's failure to provide a sample in its response, CITA's procedures do not require such evidence. Under section 6 (b) (3) and (4) of CITA's procedures, a CAFTA-DR supplier may provide detailed information on its current ability to make the subject product and other information the supplier believes is relevant.

Polartec's Ability to Supply the Subject Fabric: The information on the record indicates that Columbia exercised sufficient due diligence in its attempts to source the fabric in the CAFTA-DR region. Columbia used a third party facilitator to determine potential

suppliers in the CAFTA-DR region, and provided each potential supplier with the necessary specifications, a request for samples, and a January 2008 deadline for scheduled delivery to begin. Once Polartec had indicated its interest in supplying the product, Columbia took over from the third-party and contacted Polartec directly.

Columbia stated in its rebuttal that, after Columbia contacted Polartec on August 28, 2007, Polartec did not acknowledge ownership of the project until October 8, 2007. In Columbia's request, the company described several subsequent exchanges between the companies relating to Columbia's concern that Polartec had not confirmed its sources for the fabric's components and Columbia's need for a sample. When Polartec finally supplied a sample to Columbia, not only did the fabric not comply with Columbia's specifications, it did not include certain key components, such as embossing. As stated in Columbia's request, when Polartec did not submit any test results for the sample, Columbia contacted Polartec again on November 6, 2007 to inquire about the fabric's development. Columbia's request further stated that Polartec explained that it had not been in contact because it had heard from a third party that Columbia was no longer interested in sourcing the fabric. Columbia's request also indicated that the company assured Polartec that this was not the case and that it was still interested in developing the fabric, but communicated its ongoing concerns that the sample was far off specifications and that key components were missing.

Polartec explained both in its response and at the public meeting that it thought that while the sample did not meet specifications, it "met the overall need." Polartec also stated at the public meeting that it had difficulty in confirming sources for the individual processes. Polartec further stated that in its normal course of business, the company develops products that meet a client's performance requirements, focusing more on the functional attributes of its products rather than exact specifications such as yarn size, thread count, and weave type. Polartec also stated in the public meeting that it had misunderstood Columbia's request, and focused not on the required specifications of the fabric, but what it perceived to be the fabric's performance characteristics.

In its response and at the public meeting, Polartec insisted that it could develop the fabric and supply Columbia with fabrics that would meet specifications. However, as reflected in Columbia's rebuttal, as late as December 11, 2007, Polartec could not confirm that it had a dedicated supplier for the specified woven face fabric. Moreover, Polartec stated that it was not aware that the face fabric would be embossed or printed, a specification that had been communicated to Polartec in August. Even at the public meeting on February 6, 2008, Polartec acknowledged that it still could not confirm whether it could produce the fabric as specified without further development with its suppliers, including Burlington Worldwide and a laminator.

#### Determination:

CITA finds that Columbia pursued the sourcing of the subject fabric in the CAFTA-DR region with sufficient due diligence. Not only did it clearly communicate all of the

specifications required for the composite fabric with a six month deadline, as soon as Polartec indicated its interest in developing the product, Columbia contacted the company on several occasions to foster a relationship with a potential supplier.

Columbia was diligent in contacting Polartec to inquire about the product's development. As reflected in Columbia's request and rebuttal, Polartec did not respond to Columbia's initial communications for six weeks. Polartec admitted at the public meeting that it had not focused on Columbia's required specifications, and had misunderstood Columbia's request. As Columbia stated at the meeting, Polartec did not advise Columbia that the sample it produced did not meet specifications. As late as four weeks before the production deadline, Polartec still had not identified suppliers that could meet Columbia's specifications.

In accordance with the CAFTA-DR Implementation Act and CITA's procedures, CITA must rely on the information on the record of the proceeding to determine whether a potential supplier has demonstrated its ability to supply a subject product in commercial quantities in a timely manner. The record clearly indicates that Columbia pursued the sourcing of the subject fabric with sufficient due diligence, and that Polartec had been given ample opportunity to develop the fabric. Therefore, CITA has found that Polartec has not demonstrated that it can supply the specified composite fabric in commercial quantities in a timely manner.

CITA notes that, in accordance with section 203(o)(4) of the CAFTA-DR Implementation Act, Article 3.25 of the CAFTA-DR Agreement, and section 9 of CITA's procedures, an interested entity may request that CITA remove or restrict the quantity of a product listed in Annex 3.25 six months after the product has been added. Upon receiving a request from an interested entity, if CITA determines that the product is available in commercial quantities, or restricted quantities, in a timely manner in the CAFTA-DR countries, CITA will publish in the Federal Register a notice of its determination of removal or restriction. Accordingly, the product would be removed from the Annex 3.25 list, or its quantity restricted, six months after the publication date of CITA's determination.

Therefore, based on the information submitted, CITA determines that the subject fabrics, as specified in the CAFTA-DR request File Number **38.2007.12.26.Fabric.ColumbiaSportswearCo.**, are not commercially available in the CAFTA-DR Countries. CITA approves the request.

Attendees of the February 6, 2007 Meeting:

CITA:

R. Matthew Priest (Chairman),

Office of Textiles and Apparel: Janet Heinzen, Maria Dybczak, Richard Stetson, Robert Carrigg

Office of Chief Counsel for Import Administration: Mildred Steward, Hardeep Josan

Office of the United States Trade Representative: Scott Quesenberry

Department of Treasury: Gordana Earp

INTERESTED ENTITIES:

Columbia

Jeffrey Tooze – Director, Global Customs & Trade

Peter Bragdon – Vice President, General Council

Kay Gipson – Materials Research Analyst II

Lori Boullet – Global Customs Specialist – Apparel (via conference call)

Woody Blackford – Men’s Apparel Design Director (via conference call)

Brock Billings – Global Trade Specialist (via conference call)

Erick Echeverria - Global Customs Coordinator (via conference call)

Sandler, Travis & Rosenberg (counsel to Columbia)

Nicole Bivens Collinson

Mark Haney

C. V. Bremer

Polartec:

Douglas Lumb: Senior Vice President of Product Development

Chris Sentementes: Director, Global Sourcing

Thomas Kennedy: Counsel to Polartec and Versa Capital Management

Burlington Worldwide:

Jeff Peck: (via conference call)

INTERESTED PARTIES:

Tshanda Kalombo: Committee on Ways and Means, U.S. House of Representatives

Ashley Coale: Office of the Honorable Earl Blumenauer, House of Representatives

Steve Lamar: Executive Vice President, American Apparel & Footwear Association

Jonathan Fee: Alston & Bird

Keith Jenkins: Sorini, Samet & Associates, LLC

Sara Ormond: American Manufacturers’ Trade Action Coalition

Natalie Hanson: International Development Systems

Cherie Tremaine: International Development Systems