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January 15, 2008

**PUBLIC**  
**VERSION**

*VIA UPS*

Mr. R. Matthew Priest  
Chairman, Committee for the Implementation of  
Textile Agreements – Room H3100  
U.S. Department of Commerce  
14th and Constitution Avenue, NW  
Washington, DC 20230

Re: Commercial Availability Request Under Section 203(o)(4) of the  
Dominican Republic-Central America-United States Free Trade  
Agreement Implementation Act; Certain Wool Blend Coating Fabrics

Dear Mr. Priest:

On behalf of S. Rothschild & Co., Inc. (“Rothschild”) and Herman Kay & Co. (“Kay”), and pursuant to Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement (“DR-CAFTA”) Implementation Act and the Final Procedures set forth in 72 Fed.Reg. 13256 (March 21, 2007) (“Final Procedures”), we request that the Committee for the Implementation of Textiles Agreement (“CITA”) place certain fabrics described herein on the list in Annex 3.25 of DR-CAFTA. These fabrics are not available in commercial quantities in a timely manner in the territory of any DR-CAFTA party. Should any potential supplier respond with an offer to supply the fabrics in question, we request a thorough assessment of such supplier’s manufacturing capacity to determine whether the supplier can fill the requested quantity in a timely manner. We further request open access to information submitted by the supplier for consideration by CITA.

Rothschild and Kay have made every effort to secure the subject fabrics from DR-CAFTA producers. The two companies’ conclusion about the lack of availability of the subject blended woolen fabrics in the DR-CAFTA territory is based on their many years of experience in the woolen coating industry, and the fact that they have not been actively

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solicited for business in the subject fabrics by any mill in the CAFTA-DR territory in several years. Nonetheless, they issued a written Request for Quote (“RFQ”) inquiring with all identified potential DR-CAFTA suppliers as to their interest in supplying the requested fabrics in commercial quantities in a timely manner, and they engaged in direct discussions with all potential suppliers to ascertain their interest in supplying the requested fabrics in commercial quantities in a timely manner.

Rothschild filed a commercial availability request on December 15, 2006 asking CITA to place four types of woolen coating fabrics on the list in Annex 3.25 of DR-CAFTA. The present request deals with a narrower class of fabrics and a significantly greater volume of required quantities. While the previous request included 100 percent woolen coating fabrics. Rothschild and Kay are currently requesting only blended woolen coating fabrics, which the lone mill in opposition to the prior request confirmed in the prior proceeding it had not produced in at least “several years.” Moreover, the addition of Kay’s commercial order requirements has provided the necessary basis for CITA to consider the commercial availability of even greater quantities of the blended woolen fabrics required by coat producers in the DR-CAFTA territory.

#### **I. Detailed Product Information**

Rothschild and Kay are domestic designers and importers of outerwear, each with substantial coat production in the DR-CAFTA territory. This commercial availability request covers wool coating fabrics containing 20 percent or more by weight of man-made staple fibers and 80 percent or less of wool, cashmere or camelhair fiber (or any combination thereof), but in no case less than 36 percent wool, cashmere or camelhair fiber (or any combination thereof), with a three percent fiber content allowance in accordance with the regulations implementing the Textile Fiber Products Identification Act with respect to fiber content tolerances (16 C.F.R. 303.43(a)).

We request that the determination in this case cover fabrics, as specified below.

<b>Fiber Content</b>	Various
<b>Fiber Construction</b>	20 percent or more by weight of man-made fibers and 80 percent or less by weight of wool, cashmere or camelhair fiber, or any combination thereof, with a three percent fiber content allowance
<b>Yarn Size</b>	Various
<b>Fabric Weight</b>	17 to 23 ounces (482 to 652 grams)
<b>Colors</b>	Various
<b>Finishing</b>	Carbonized, fulled, dried, dyed, brushed, sheared, vaporized, rolled
<b>HTSUS Classification</b>	5111.30.9000, 5515.13.0510, 5515.22.0510, 5515.99.0510, 5516.32.0510, 5516.33.0510
<b>Textile Category</b>	410

Rothschild and Kay have considered alternatives to the fabrics subject to this request. Except for reasonable fiber tolerances, every fiber construction of woolen coating fabric is unique and none substitutable for another because of customer expectations and requirements. Considering the class or range of blended woolen fabrics covered by this request, there is no fabric outside the class that can be considered substitutable.

## **II. Quantity Requested**

Rothschild and Kay require 2,300,000 yards (2,103,120 meters) of the specified fabric. As the RFQ sent to potential suppliers indicates, Rothschild and Kay require a combined total of 2,000,000 yards (1,828,800 meters) of the core fabrics in the class of fabrics requested. The first core fabric is 80 percent wool and 20 percent nylon ("Core Fabric No. 1"). The second core fabric is 70 percent wool, 20 percent nylon, and 10 percent cashmere fabric ("Core Fabric No. 2"). Our clients require 1,500,000 yards (1,371,600 meters) of Core Fabric No. 1 and 500,000 yards (457,200 meters) of Core Fabric No. 2. The required quantities of the two core fabrics provide the strongest and most demonstrable indication of the substantial commercial quantities of blended woolen coating fabrics Rothschild and Kay require.

Rothschild and Kay require initial delivery within ten to twelve weeks from the date of an order. The quantity of the initial order will vary depending on the exact fabric. For example, the required initial order of Core Fabric No. 1 is 400,000 yards (365,760 meters), while the required initial order of Core Fabric No. 2 is 100,000 yards (91,440 meters). Moreover, Rothschild and Kay will require reserve delivery within 6 weeks from the date of an order. The quantity of fabric a supplier will be required to maintain in reserve will again vary depending on the exact fabric. A supplier, for example, will need to maintain a reserve of 1,100,000 yards (1,005,840 meters) of Core Fabric No. 1 and a reserve of 400,000 yards (365,760 meters) of Core Fabric No. 2. Our clients receive delivery (ex factory) on average in 63 days.

## **III. Due Diligence Undertaken to Determine Availability of the Subject Fabrics in the DR- CAFTA Region**

Rothschild and Kay have made significant efforts to obtain the subject fabrics from manufacturers in the DR-CAFTA region. First, our clients identified all of the historically known U.S. producers of woolen outerweight apparel fabrics still in operation based on their personal knowledge of the industry, and their specific knowledge of former U.S. woolen coating fabric suppliers, most of which are known to have closed their mills in the past ten years. Since 1996 at least 12 U.S. woolen mills have closed. *See* [http://www.nationaltextile.org/nta/history/wmc\\_past.htm](http://www.nationaltextile.org/nta/history/wmc_past.htm) (accessed January 14, 2008). Indeed, one such mill, Victor Forstmann Inc., closed in April 2007. *See* <http://www.nationaltextile.org/nta/history/forstmann.htm> (accessed January 11, 2008).

In addition, Rothschild and Kay referred to *Davison's Textile Blue Book*, the most complete reference available with regard to producers of fabrics and other textile products. *Davison's* purports to provide a list of all mills in the DR-CAFTA region along with a complete description of each mill's textile production capabilities. Lastly, we consulted with the National Textile Association ("NTA"), at <http://www.nationaltextile.org/guide/2apparel.htm>. NTA is historically known as the trade association for wool industry companies, and has housed the Wool Manufacturers Council since 1956. See <http://www.nationaltextile.org/nta/history/index.htm> (accessed January 11, 2008).

These efforts lead to the identification of three mills as potential suppliers of woven woolen outerweight apparel fabrics in the DR-CAFTA region, none of which have ever actively solicited our clients' business or ever supplied our clients with more than nominal amounts of fabric. Rothschild and Kay sent a RFQ to the three identified producers. The RFQ set forth fabric specifications, delivery requirements, and quantity requirements. Our clients followed the RFQ correspondence by engaging in further direct discussions with each of the mills. Rothschild and Kay gave each identified mill the opportunity to consider supplying the required quantities of the subject fabrics in a timely manner. As a result of our clients' communications with the identified manufacturers our clients confirmed that none of the companies would offer to supply the fabrics in the quantities and delivery times required by our clients for their DR-CAFTA coating production.

We note that our clients' RFQ specifically inquired about the two most commonly produced fabrics within the subject fabric specifications. These are the two core fabrics of our request and account for at least 2 million yards required by Rothschild and Kay per season. While this commercial availability request includes fabrics other than the two core fabrics, based on our clients' experience and knowledge of the market for coating fabrics, any supplier unable to supply these common core fabrics is also unable to supply fabrics with the slight fiber content variations that make up the class of fabric that is the subject of this request.

The table below identifies the suppliers and specific personnel with which our clients inquired about the availability of the subject fabrics. The table summarizes the contacts made and responses received. Copies of the RFQs are attached at Exhibits A through C.

<b>Sources Contacted</b>	<b>Response</b>
<p><b>Pendleton Woolen Mills</b> <b>John Bishop</b> <a href="mailto:johnpb@penwool.com">johnpb@penwool.com</a> 2220 NW Broadway PO Box 3030 Portland, OR 97208</p>	<p>Our client transmitted its RFQ to Mr. Bishop via email on October 8, 2007, and received no response. After leaving several voicemail messages, our client reached Mr. Bishop by telephone and had two conversations on November 1, 2007. These follow-up conversations confirmed that Pendleton Woolen Mills received the RFQ and did not plan to respond. They also confirmed that Pendleton is not in the business of selling large quantities of blended woolen coating fabrics required by our clients.</p>
<p><b>Warren Corporation</b> <b>Lisa Cornish</b> <a href="mailto:lisa.cornish@warrencorp.com">lisa.cornish@warrencorp.com</a> 8 Furnace Avenue Stafford Springs, CT 06076</p>	<p>We contacted Ms. Cornish via UPS and email on November 2, 2007 and presented our clients' RFQ. Our clients engaged in several conversations with Warren following the RFQ, and extended several times the period in which Warren could respond to the RFQ. On January 7, 2008, Warren confirmed that it would not offer to supply the large quantities of blended woolen coating fabrics required by our clients.</p>
<p><b>Woolrich Woolen Mills</b> <b>Marty Geisser</b> <a href="mailto:mgeisser@woolrich.com">mgeisser@woolrich.com</a> 485 Seventh Avenue New York, NY 10018</p>	<p>Our client transmitted its RFQ to Mr. Geisser via email on October 8, 2007, and received no response. Our client followed up directly with Mr. Geisser and reached him by telephone on October 31, 2007. As a result of the conversation, our client confirmed that Woolrich Woolen Mills received the RFQ and did not plan to respond. The conversation also confirmed that Woolrich is not in the business of selling large quantities of blended woolen coating fabrics required by our clients.</p>

Our clients' due diligence efforts demonstrate that none of the known U.S. producers of woolen coating fabrics will supply the requested fabrics in commercial quantities in a timely manner.

#### **IV. Substitutable Products**

First, it should be noted that Rothschild and Kay have received no offers to supply any fabrics claimed to be substitutable for the requested fabrics and no suggestions from any mill that it had a substitutable fabric available. Nonetheless, Rothschild and Kay have considered potential alternatives to the requested fabrics and are unaware of any suitable substitutes for the subject fabrics. Our clients require the blended woolen coating fabrics for the mass market, and our clients' customers demand coating weight fabric of the specified construction. These blended woolen coating weight fabrics are generally considered less fine than 100 percent wool or fine animal hair fabrics or fabrics with more than 80 percent wool or fine animal hair. The subject coating weight fabrics have a different feel, texture, and market appeal than 100 percent wool or fine animal hair coating weight fabrics or coating weight fabrics with more than 80 percent wool or fine animal hair. They also perform differently in that they are generally more durable than 100 percent wool or fine animal hair coating weight fabrics or coating weight fabrics with more than 80 percent wool or fine animal hair.

Moreover, due to the scope of the requested fabrics, it is difficult to imagine how the question of substitutability could be raised. The range of blended fabrics covered by our fabric specification and the three percent fiber content allowance permitted by our specification ensure that there will be few questions, if any, concerning substitutability among blended woolen fabrics. For example, the question as to whether a fabric consisting of 25 percent man-made fiber and 75 percent wool, cashmere or camelhair fiber is substitutable for a fabric consisting of 20 percent man-made fiber and 80 percent wool, cashmere or camel-hair fiber is moot given the definition and specifications of the required fabric.

#### **V. Additional Information: Orders Filled from Outside the DR-CAFTA Region**

To demonstrate the commercial nature of Rothschild's and Kay's quantity and timing requirements for the requested fabrics, and to provide CITA with additional information on the substantial requirements of our clients and how they can only reasonably be met by a significant number of high capacity and commercially active woolen coating weight fabric mills, we are providing details on our clients' combined purchases of the requested fabrics for the Fall 2007 season.<sup>1</sup>

The chart and table attached at Exhibit D demonstrate the purchase by our clients of over 2.3 million total yards of the subject fabrics in an average delivery time (order to ex mill) of 63 days. Moreover, approximately 85 percent of all of the subject fabrics are delivered between February and July. In other words, the commercial production cycle does not allow a full twelve months for production of the vast majority of necessary

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<sup>1</sup> Data on purchases and delivery for the Fall 2008 is incomplete at this time, but is expected to be generally consistent with last year's data.

fabrics. Exhibit D shows that to obtain these quantities and the delivery and flow of goods necessary to meet the requirements of their customers, our clients relied upon a total of 18 different mills in various countries around the world. Our clients placed 351 individual orders, none of which had any guarantee of future production associated with it. The average delivery from order date to mill ready date was 9 weeks.

As seen by the detailed purchase data provided by our clients in Exhibit D, their required commercial quantities of the subject fabrics are substantial, and timeliness, even for large orders, typically means full delivery within about 9 weeks. For example, in a routine purchase, Kay placed an order for 55,000 yards on July 17, 2007 at a mill with which it had never before done business and the order was shipped on August 15, 2007. This is what commercially available in a timely manner means for blended woolen coating fabrics.

We submit this additional information to illustrate Rothschild's and Kay's fabric requirements. The numerous mills represented in the attached chart and table each supply portions of our clients' overall fabric requirements – consistent with the requested specifications, necessary quantities (including the necessary reserve quantities), and requested delivery lead times – in commercial quantities and in a timely manner. The sheer number of mills used, number of orders made, and quantities of fabric purchased and delivered consistently throughout the coat production season from February to October is evidence that one or two or even three mills could not reasonably be found to be able to supply the subject fabrics in the commercial quantities and timely manner requested and required by our clients.

**VI. Conclusion; Request for Approval; Request for Open Access to Record of Case.**

The foregoing establishes that the fabrics described in this petition are not available in commercial quantities in a timely manner from any producer in the DR-CAFTA region. Rothschild and Kay have made significant efforts to locate producers capable of supplying the commercial quantities of subject fabrics in a timely manner as they require. At the conclusion of our clients' due diligence efforts, it is clear that there is not a mill in the DR-CAFTA territory that will offer to supply our clients' requirements for the subject fabrics.

Accordingly, we request on behalf of Rothschild and Kay that CITA add the specified blended woolen fabrics to the Short Supply List in accordance with Section 203(o)(4) of the DR-CAFTA Implementation Act.

Should any potential supplier respond with an offer to supply the fabrics, we request open access to the information submitted by such supplier for consideration. It is inconsistent with normal business practice to expect our clients to commit to any supplier for large quantities of a product without knowledge of, for example, the potential supplier's current capacity and history of production of the requested product. Such

information must not be kept from our clients under the guise that it is confidential business information. Ordinary business information regarding a potential supplier's production is not exempt from release to the public under the Freedom of Information Act ("FOIA") absent a showing that release presents a likelihood of substantial competitive injury. Release of details on quantities of the specific fabrics subject to this request that have been produced in the past, and total capacity and available capacity generally is not likely to cause any competitive injury to a textile mill. On the contrary, it is precisely the type of information that a mill uses to market its capabilities to secure business.

However, even if such information is exempt from disclosure under FOIA, the reasons for protecting the information from the public do not extend to protecting the information from disclosure to Rothschild and Kay. Congress expressed its intent in House Report 109-182 on the DR-CAFTA Implementation Act that all parties have "open access to the full evidence being considered by CITA as well as the opportunity to respond to the full evidence before a determination is made." Accordingly, regardless whether an exemption to FOIA justifies treating information as business confidential with respect to the public at large, Rothschild and Kay are entitled to "open access" to any information submitted by a potential supplier as well as the opportunity to respond to such information. If CITA prefers, we are prepared as counsel to enter into an agreement or administrative order to protect from our clients confidential information received from potential suppliers through CITA.

Thank you in advance for your consideration of this matter. If CITA is in need of any additional information regarding this request, please contact the undersigned at (202) 756-3455 or [jason.waite@alston.com](mailto:jason.waite@alston.com).

Sincerely,

/s/ Jason M. Waite

Jason M. Waite

### **Due Diligence Certification**

I, Mark Friedman, President of S. Rothschild & Co., Inc., certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

By: /s/ Mark Friedman  
Mark Friedman  
President  
S. Rothschild & Co., Inc.

Dated: January 14, 2008

I, Jason M. Waite, Partner in the law firm of Alston & Bird LLP, counsel to S. Rothschild & Co., Inc., certify that (1) I have read the attached submission, and (2) based on the information made available to me by Mark Friedman, I have no reason to believe that this submission contains any material misrepresentation or omissions of fact.

By: /s/ Jason M. Waite  
Jason M. Waite

Dated: January 15, 2008

### **Due Diligence Certification**

I, Barry Kringstein, President of Herman Kay & Co., certify that (1) I have read the attached submission, and (2) the information contained in this submission is, to the best of my knowledge, complete and accurate.

By:     /s/ Barry Kringstein      
Barry Kringstein  
President  
Herman Kay & Co.

Dated: January 15, 2008

I, Jason M. Waite, Partner in the law firm of Alston & Bird LLP, counsel to Herman Kay & Co., certify that (1) I have read the attached submission, and (2) based on the information made available to me by Barry Kringstein, I have no reason to believe that this submission contains any material misrepresentation or omissions of fact.

By:     /s/ Jason M. Waite      
Jason M. Waite

Dated: January 15, 2008

# **ATTACHMENT A**

**BUSINESS CONFIDENTIAL INFORMATION**

Contents: Copies of the RFQ and blank Response Form sent to Pendleton Woolen Mills.

# **ATTACHMENT B**

BUSINESS CONFIDENTIAL INFORMATION

Contents: Copies of the RFQ and blank Response Form sent to Woolrich Woolen Mills.

# **ATTACHMENT C**

BUSINESS CONFIDENTIAL INFORMATION

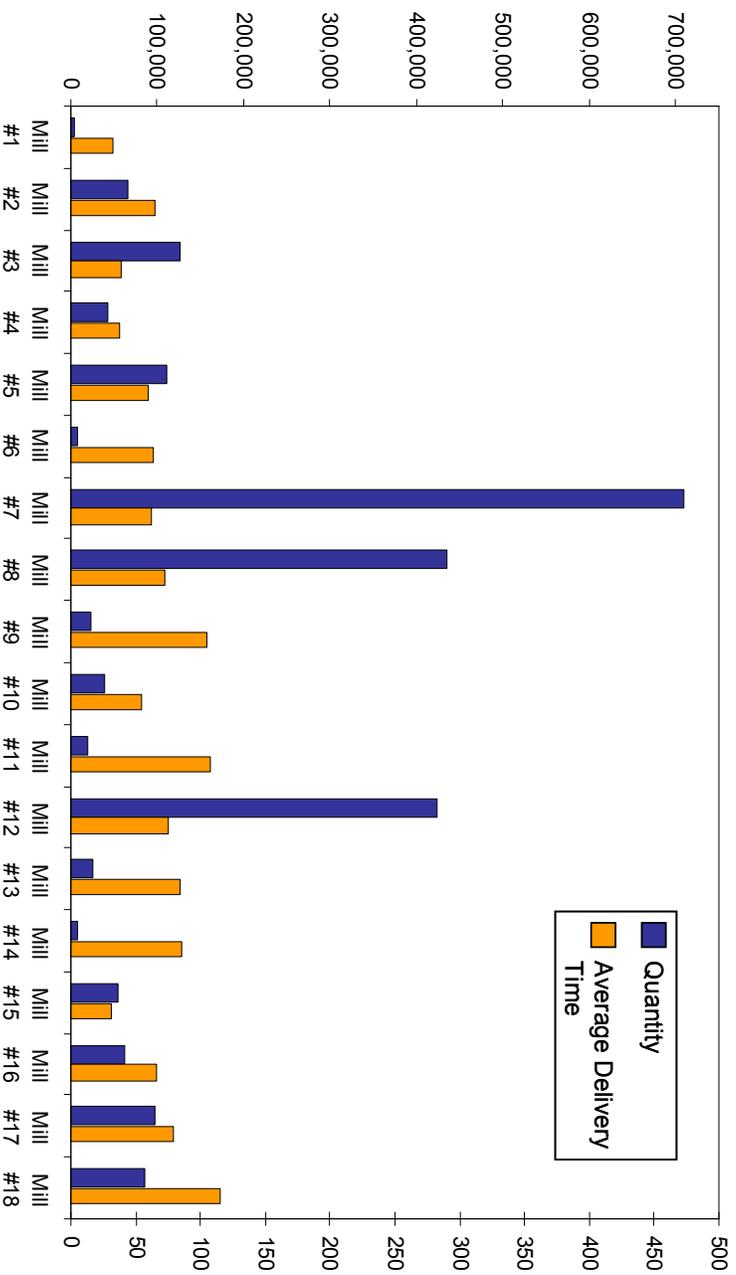
Contents: Copies of the RFQ and blank Response Form sent to Warren Corporation.

# **ATTACHMENT D**

# Order Data for Fall 2007

Total Quantity  
Ordered  
(Yards)

Average Delivery  
Time in Days  
(Order Date to Mill  
Ready Date)



<b>Rothschild and Kay Order Data for Fall 2007</b>	<b>Mill</b>	<b>Number of Orders (in yards)</b>	<b>Total Quantity Ordered</b>	<b>Average Delivery Time (in days)</b>
	Mill # 1	1	4,000	33.00
	Mill # 2	15	66,894	64.27
	Mill # 3	54	126,775	39.13
	Mill # 4	14	41,825	37.93
	Mill # 5	12	111,104	59.50
	Mill # 6	4	7,200	64.00
	Mill # 7	87	709,208	62.22
	Mill # 8	118	435,484	72.92
	Mill # 9	7	22,700	105.14
	Mill # 10	5	38,300	54.60
	Mill # 11	1	19,377	108.00
	Mill # 12	14	424,022	75.00
	Mill # 13	3	25,434	84.00
	Mill # 14	1	7,486	85.00
	Mill # 15	3	54,859	31.00
	Mill # 16	3	61,293	66.00
	Mill # 17	7	97,889	79.00
	Mill # 18	2	85,120	115.00
<b>Total:</b>	<b>18 different mills</b>	<b>351 orders</b>	<b>2,338,970 yards</b>	<b>63.27 days per order</b>