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June 21, 2016

PUBLIC VERSION

Mr. Joshua Teitelbaum, 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: Rebuttal Comments to Commercial Availability Request for Certain Two-Ply Polyester Yarn
CITA Reference No.: 202.2016.06.01.Yarn.ST&RforPolartec

Dear Mr. Teitelbaum:

On behalf of our client, Polartec, LLC ("Polartec") we hereby submit these rebuttal comments in connection with the Offer to Supply submitted by Unifi Manufacturing Inc. ("Unifi")¹ and CS Central America, S.A. de C.V. ("CSA")² in the above cited request for a finding of commercial unavailability pursuant to the provisions of Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR" or "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").

¹ See Letter To Mr. Joshua Teitelbaum, Chairman, Committee for the Implementation of Textile Agreements From Ms. Jane L. Johnson, Unifi Manufacturing Inc. Re: Response with an offer to supply, dated June 13, 2016 ("Unifi Response").

² See Letter To Mr. Joshua Teitelbaum, Chairman, Committee for the Implementation of Textile Agreements From Mr. Jorge Salazar, CS Central America S.A. de C.V. Re: Response With an Offer to Supply, dated June 14, 2016 ("CSA Response").



The commercial availability provision of the CAFTA-DR requires that before a product can be added to the short supply list, CITA must find that the product is not available in commercial quantities in a timely manner. This is a two-part test that requires the availability of the product in: (1) commercial quantities; and (2) a timely manner. As discussed below, neither CSA nor Unifi can demonstrate that the requested yarn is available in commercial quantities and in a timely manner.

Polartec has invested significant time and resources over the past several months attempting to develop this yarn with Unifi and CSA in the CAFTA-DR region. As demonstrated in our petition, Unifi and CSA are not producing the requested yarn at this time, nor are they capable of producing the yarn, despite the time and effort Polartec dedicated to working with both Unifi and CSA to develop the requested yarn. Therefore, we believe there is no dispute that the yarn is not commercially available in a timely manner. Further, the responses submitted by CSA and Unifi failed to meet the requirements of CITA's Procedures for submission of such documents. Accordingly, we request that CITA approves our request to include the requested yarn on Annex 3.25 as soon as possible.

**UNIFI IS NOT CAPABLE OF PRODUCING THE REQUESTED YARN
DESPITE YEARS OF DEVELOPMENT ATTEMPTS**

Unifi's response alleges that it is able to produce the requested yarn. However, Unifi's prolonged and ultimately unsuccessful development process for the requested yarn demonstrates that it is not able to produce the yarn in commercial quantities in a timely manner. Unifi's objection to this short supply request appears to be a last-minute attempt by Unifi to prevent the inclusion of this yarn on the short supply list even though Unifi has admitted on several occasions that it is unable to produce the requested yarn.³ Further, Unifi's claim that a new raw material supplier will solve all their production problems is rampant optimism. Yarns involving micro-deniers such as the requested yarn are very difficult to work with and reformulating the raw materials will only complicate and delay the production process, not simplify or shorten it.

Polartec has been working with Unifi since December 2013 to develop the requested yarn.⁴ However, in early 2014 Unifi concluded that it was unable to produce the requested yarn. Polartec and Unifi would hold meetings several times a year and each time Polartec would ask Unifi if they could develop the requested yarn. In fall 2015 Unifi began the most recent development process in which Unifi repeatedly attempted to develop a yarn with the requested

³ See Letter To Mr. Joshua Teitelbaum, Chairman, Committee for the Implementation of Textile Agreements From Mr. Mark Tallo, counsel to Polartec, LLC Re: Commercial Availability Request Certain Two-Ply Polyester Yarn, dated June 1, 2016 ("Polartec Petition") at 10-11 and Exhibit Q4 through Q6. See also, Attachment 1.

⁴ See Attachment 1.



specifications, but ultimately determined that it was, again, unable to do so.⁵ As of the time of this submission, it has been over two and a half years since Unifi initially attempted to develop the requested yarn, ten months since Unifi began its most recent efforts to develop the requested yarn and three months since Unifi confirmed that they were unable to produce the requested yarn. It is curious that only after Polartec filed its request for CAFTA-DR short supply that Unifi found this new raw material that will solve its previous production issues and allow Unifi to make the requested yarn.⁶ This “discovery” is perfectly timed to prevent these proceedings from moving forward—without Unifi having to produce a viable sample. This appears to be an attempt by a company that has been unable to produce the requested yarn to now prevent the inclusion of Polartec’s requested yarn on nothing more than the allegation that the “discovery” of a perfect raw material will now allow it to produce the requested yarn. This eleventh-hour unsubstantiated claim is not sufficient to demonstrate that Unifi is capable of producing the requested yarn.

As noted below, Unifi failed to provide detailed information or support to substantiate its assertion that this new raw material supplier will solve the problems Unifi previously experienced. Further, the use of a new raw material will likely require several weeks, if not months of production testing before a viable sample yarn could be produced, if one can be made at all. Then, if a viable sample yarn is produced, according to Unifi, it will be another four to six weeks before commercial production can begin.⁷ Thus, it is probable that even if Unifi is able to produce the requested yarn—and we have seen no evidence to support this claim—commercial production will not begin for another 4-6 months. Availability in 14 to 16 months from the most recent development attempt cannot be considered commercially available in a timely manner.

Because Unifi in over two and a half years of development has been unable to supply the requested yarn, CITA must find that the requested yarn is not commercially available. Unifi’s speculative and last-minute conclusion that they can produce this yarn now when they have been unable to do so in the past 30 months cannot be relied upon as evidence that they can produce the requested yarn in a timely manner. We, therefore request that CITA disregard Unifi’s comments and find that the requested yarn is not available in commercial quantities in a timely manner.

UNIFI FAILED TO SUPPORT ITS CLAIM WITH DETAILED INFORMATION

Section 6(b)(3)(iii) of the Procedures requires that a respondent “must provide detailed information on its current ability to make the subject product in commercial quantities in a timely

⁵ See Polartec Petition at 10-11 and Exhibit Q4 through Q6.

⁶ Unifi simply states that it “was recently informed by Nan Ya Plastics Corporation, America (“Nan Ya”), that Nan Ya can supply the new raw material fiber merges” Unifi Response at 2. However, Unifi fails to explain when and why Nan Ya notified them of the availability of the new raw material.

⁷ *Id.*



manner.” (Emphasis added.) CITA’s Procedures indicate that this detailed information includes current production capacity,⁸ current loom availability,⁹ past production of similar products¹⁰ and/or descriptions of equipment.¹¹ Unifi failed to provide this detailed information. Instead, Unifi merely provides cursory information regarding many of these topics but lacks any detailed information to substantiate its claim that it can produce the requested yarn now when it was unable to do so at any time in the past two and a half years.

In light of this lack of detailed information required by CITA to determine whether a requested supplier can produce the requested yarn, we are left to conclude based on the information on the record that Unifi is not able to produce the requested yarn. Therefore, we submit that the subject yarn is not available in commercial quantities in the CAFTA-DR countries and should, therefore, be added to Annex 3.25 of the Agreement.

CSA IS NOT ABLE TO PRODUCE THE REQUESTED YARN DESPITE MONTHS OF DEVELOPMENT

As noted previously, Polartec initially contacted CSA in February 2016 to begin development of the requested yarn. Unlike Unifi, CSA never stated that it was unable to produce the requested yarn, however, the multiple samples that CSA provided to Polartec failed to meet the requested specifications and CSA failed to provide adequate explanations or justifications as to why the sample yarns did not meet specifications.

The due diligence process with CSA followed a predictable pattern. First CSA claimed that they could produce the requested yarn. CSA then would develop a sample that by its own admission was significantly outside of the requested specifications. Finally, Polartec tested the sample and confirmed that the sample failed to meet the requested specifications. This process then began again with a repeated assertion that CSA could produce the requested yarn.

Over the five-month production cycle, CSA produced three samples and all failed to meet the requested specifications.¹² Consistent with CSA’s petition, CSA states in its Response, that it has “certainty” that it can produce the yarn with the “specifications required.”¹³ But Polartec has heard this claim before. CSA, in its Response provides no information or evidence to support its

⁸ Procedures at 6(b)(3)(iii).

⁹ Procedures at 6(b)(3)(iii).

¹⁰ Procedures at 6(b)(3)(iv).

¹¹ Procedures at 6(b)(3)(iv).

¹² See Polartec Petition at 12-17.

¹³ See CSA Response at 1.



renewed conclusion that it is now able to produce the requested yarn when it has failed to do so previously.

We note that CSA in its Response states that Polartec provided “inconsistent information as to the products they want to be developed.”¹⁴ This allegation is not true. The specifications provided to all companies throughout the due diligence process never changed. CSA received the same specifications as every other potential supplier and those specifications were always identical. In addition, Polartec provided a yarn sample to CSA from its Asian supplier. CSA, in its Response, claims that the elongation of the sample yarn was “substantially lower” than the specifications of the requested yarn. The exact elongation percentage was removed from the public version of CSA’s Response, however, based on an email communication from CSA on June 10th CSA claims the elongation for the Asian yarn was 24%. While Polartec did not test the sample yarn prior to sending it to CSA, Polartec is suspect of CSA’s claim that the elongation is 24%.¹⁵ We note that CSA has not provided Polartec or CITA with the testing method used to determine the claimed 24% elongation or independent test results to confirm that the elongation for the sample yarn is 24%.¹⁶ Further, Polartec’s third party lab testing confirmed the elongation at 32%.¹⁷

However, assuming, *arguendo*, that the elongation was 24% for the sample yarn, the elongation for the samples provided by CSA were not even close to meeting this specification. For the three sample yarns that CSA provided the highest elongation was 15.91%.¹⁸ Thus, even if CSA was confused and believed the elongation requirement was 24%, CSA repeatedly failed to meet even this lower threshold and on their best attempt could only reach 15.91% elongation. This is only 66% of CSA’s perceived lower elongation requirement and about 50% of the actual elongation requirement for the requested yarn.

Furthermore, we note that CSA states that the “standard development time, for very unique and tailor made yarns is approximately 3 months”¹⁹ If we assume that Polartec’s yarn is a “very unique and tailor made yarn”, this means that CSA, according to its standard development time, should have been able to develop it by the end of April since it began

¹⁴ CSA Response at 2.

¹⁵ See Attachment 2 .

¹⁶ Polartec has reason to question CSA’s testing results. A comparison of the CSA yarn specification sheets for CSA’s sample yarns in Exhibit 1 of Polartec’s Petition with the independent lab results in Exhibit 2 of Polartec’s Petition note significant differences between the specifications that CSA measures for the yarn and the specifications that the independent lab measured.

¹⁷ See Attachment 2 .

¹⁸ According to independent third-party lab testing conducted by North Carolina State College of Textiles. See Polartec Petition at Exhibit 2.

¹⁹ CSA Response at 2.



development in early February.²⁰ CSA's inability to produce the requested sample within the normal industry development timeframes for very unique and tailor made yarns indicate that it is not able to produce the yarn in commercial quantities in a timely manner.

CSA has demonstrated through its repeated attempts to produce a sample yarn that it is unable to produce the requested yarn in commercial quantities in a timely manner. CSA repeatedly stated that they could produce the requested yarn and then provided samples that did not meet the requested specifications. CSA again claims that they can produce the requested yarn, but provides no support for this contention. We submit that CSA's repeated claims to be able to produce the yarn followed by failures to do so provide sufficient evidence to CITA that CS America is unable to produce the requested yarn in commercial quantities in a timely manner.

CSA ALSO FAILED TO SUPPORT ITS CLAIM WITH DETAILED INFORMATION

As noted above, section 6(b)(3)(iii) of the Procedures requires that a respondent "must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner." (Emphasis added.) CITA's Procedures indicate that this detailed information includes current production capacity,²¹ current loom availability,²² past production of similar products²³ and/or descriptions of equipment.²⁴ CSA also failed to provide this detailed information. Instead, CSA merely stated that they currently produce cationic + disperse yarns and the standard development and production lead time. However, CSA failed to provide any detailed information to substantiate its claim that it can produce the requested yarn when it was unable to do so previously.

In light of this lack of detailed information required by CITA to determine whether CSA can produce the requested yarn, we are left to conclude based on the information on the record that CSA is not able to produce the requested yarn. Therefore, we submit that the subject yarn is not available in commercial quantities in the CAFTA-DR countries and should, therefore, be added to Annex 3.25 of the Agreement.

²⁰ Specifically, CSA notified Polartec by email dated February 4, 2016 that they "would love to develop this yarn" and that they already have the 80/72 in their product line and "will try the test run the 50/72 cat +30/72 disperse POY and the combined textured product version..." and that they "will keep you informed as we progress the stages." See Polartec Petition at 7-8 and Exhibit LL2.

²¹ Procedures at 6(b)(3)(iii).

²² *Id.*

²³ Procedures at 6(b)(3)(iv).

²⁴ *Id.*



POLARTEC IS EAGER TO FIND U.S./CAFTA-DR SUPPLIER & WILL SUPPORT REMOVAL OF THIS YARN IF ONE IS FOUND

Polartec is an American company that believes in supporting other American and Central American companies, including Unifi and CSA. [*****

*****] When it became clear that Unifi could not make the requested yarn, Polartec informally reached out to other potential suppliers and finding that none were currently making the product began its formal due diligence process under CAFTA-DR’s commercial availability procedures.

While that process resulted in Polartec’s ultimate decision to request short supply designation for this yarn, Polartec is still eager to find U.S. or CAFTA-DR suppliers for this yarn.²⁵ However, because of its sourcing requirements and looming customer orders that require this yarn, Polartec is facing serious economic harm if this yarn is not imminently designated as short supply under CAFTA-DR. Because Polartec is committed to supporting other U.S. and Central American companies Polartec will switch to U.S./regional production as soon as a U.S./regional supplier can produce a viable sample of a CAFTA-DR eligible yarn within the requested specifications and can begin commercial production. In addition, Polartec will support a request to remove this yarn from the short supply list pursuant to CITA’s removal process. As CITA is aware, the designation of a product as not commercially available in a timely manner is not permanent. The parties specifically built flexibility into the short supply designation process to ensure that the commercial availability list could evolve along with regional production.

Since Polartec was unable to find a U.S. supplier that is capable of producing the requested yarn and because it requires the immediate inclusion of this yarn on the CAFTA-DR commercial availability list to supply current orders for its customer’s goods that are entering the U.S. shortly, we request that CITA grant Polartec’s request to designate the requested yarn as not available in commercial quantities in a timely manner.

This fabric is being made in Polartec’s facilities located in Lawrence, Massachusetts , Hudson, New Hampshire and Cleveland, Tennessee and which employ 692 individuals. The inability to source this yarn from a DR-CAFTA country or to have it designated as in short supply would mean duties will be imposed on the finished goods. These duties range from 17% to 32% and will cause a significant burden directly to Polartec. If duties are inevitable, then Polartec’s recourse will be to minimize costs by eliminating shipping yarns to the U.S. for knitting in the U.S.

²⁵ As demonstration of this fact, Polartec has continued to work with CSA to develop the requested yarn, even after the current request was filed with CITA. For example, as recently as June 12, 2016 and again on June 17th 2016, Polartec confirmed the yarn specifications and on June 17th asked if CSA would “be submitting a sample cone(s) which will meet the spec below? If so, we will verify with 3rd party testing, and if OK will then move forward with the sample pound process.” See Attachment 2 .

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and instead to relocate fabric production to its facilities in the Asian country where the yarn is produced. Manufacturing of the finished goods would then take place in that same country causing losses to Polartec's knitting operation in the U.S. and the apparel maker in Honduras. We respectfully request that CITA follow its own criteria and reject the claims by Unifi and CSA due to a demonstrated inability to produce the requested yarn in commercial quantities in a timely manner and under CITA procedures they have both failed to meet the basic requirements of demonstrating that they can produce the requested yarns.

CONCLUSION

The evidence on the record of this proceeding demonstrates that the 100% polyester two-ply yarn that Polartec seeks is not available in commercial quantities in a timely manner from CAFTA-DR producers. We, therefore, request that CITA add the specified yarn to Annex 3.25 of the Agreement.

Thank you for your consideration of this request. If you have any questions or require further information, please contact me at 202-730-4968 or mtallo@strtrade.com.

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

By: 

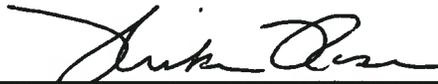
Mark Tallo, Esq.

Due Diligence Certification

I, Mike Rose, Vice President, Global Product Development, currently employed by Polartec LLC, certify that I:

- 1.) have read the attached submission, and
- 2.) the information contained in this submission is, to the best of my knowledge, complete and accurate.

Signed: _____


Mike Rose

Date: _____

6/21/16

DUE DILIGENCE CERTIFICATION

I, Mark Tallo, of Sandler, Travis & Rosenberg, P.A., counsel to Polartec LLC, certify that:

- (1) I have read the attached submission, and
- (2) based on the information made available to me by Mike Rose, Vice President, Global Product Development, I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

Signed: 
Mark Tallo

Date: June 21, 2016

ATTACHMENT

(CONFIDENTIAL VERSION ONLY)

Confidential version contains copies of Polartec's confidential correspondence, as described in the foregoing letter.