**Report by CITA**

Determination to Approve a Commercial Availability Request for Certain Two-ply Polyester Yarn under the Dominican Republic-Central America-United States Free Trade Agreement (“DR-CAFTA”)

On June 1, 2016, CITA received a Request for a Commercial Availability Determination (Request) from Sandler, Travis & Rosenberg, P.A. on behalf of Polartec LLC. (Polartec) for a certain two-ply polyester yarn.

On June 3, 2016, in accordance with *Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement* (73 FR 53200, September 15, 2008) (“CITA’s procedures”), CITA notified interested parties of the Request, which was posted on the dedicated website for DR-CAFTA Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (Response) to any of the Requests must be submitted by June 15, 2016, and any rebuttal to a Response (Rebuttal) must be submitted by June 21, 2016.

On June 15th, CITA received two Responses with Offers to Supply: one from CS Central America S.A. de C.V (CSCA), and one from Unifi Manufacturing, Inc (Unifi). On June 24, 2016, Unifi withdrew its Response. On June 28, 2016, Polartec submitted its Rebuttal.

In accordance with Section 203(o)(4) of the DR-CAFTA Implementation Act, Article 3.25 of the DR-CAFTA, and section 8(c)(4) of CITA’s procedures, because there was insufficient information to make a determination within 30 U.S. business days, CITA extended the deadline to make its determinations by 14 U.S. business days, and called for a public meeting on July 8, 2016, to provide Polartec and CSCA with an opportunity to submit additional evidence to support their claims regarding the capability of CSCA to supply the subject yarn. At CITA’s request, additional information was submitted by CSCA on July 12 and July 13, 2016.

The record for this proceeding may be found at: http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf under “Pending Requests,” with the following reference number:

**202.2016.06.01.Yarn.ST&RforPolartec**

**Request by Polartec:**

In its Request, Polartec asked CITA to determine that a certain two-ply polyester yarn was not available from DR-CAFTA suppliers in commercial quantities in a timely manner.

Product Description – The product description of the subject yarn included several unique characteristics, including a filament count of 144 filaments and various performance criteria, all of which were reportedly required to impart specific properties to the fabric manufactured using the specified yarn, and ultimately the end use garment using that fabric. Polartec described the requirement for the yarn’s fine denier and high filament count as necessary to achieve a certain appearance in the downstream fabric. Another specification, elongation, was described as necessary to achieve other fabric properties, namely pilling performance.

Due Diligence – Polartec stated that it had contacted potential suppliers in the DR-CAFTA region to source the subject yarn. In its summaries of contacts with potential suppliers, Polartec described its exchanges with CSCA. Polartec reported that it had first contacted CSCA in February 2016, and provided CSCA with a sample of the Asian-sourced yarn it was currently using, but there was no indication that Polartec provided any written specifications along with the sample. The first formal due diligence inquiry, with a full product description, was sent on March 15, 2016. CSCA indicated its interest in supplying the yarn, and on March 28th, Polartec received CSCA’s first sample. Polartec reported that it had tested the yarn and a fabric sample made with the yarn, and found that the yarn did not meet the required specifications. Polartec also reported that the fabric made with the sample yarn underperformed in pilling tests, which it claimed resulted from the insufficient elongation properties of CSCA’s sample. When Polartec advised CSCA of the test results, CSCA stated that it had produced the sample on a pilot machine, and that it would address those deficiencies using its standard production equipment. CSCA provided two more samples on April 25th, along with specification sheets for those samples. Polartec reported that it had both of those samples tested by a non-affiliated academic lab, and reviewed CSCA’s specification sheets. Polartec stated that the test results indicated that the two samples CSCA provided were also outside specifications, particularly for elongation. On May 27th, Polartec advised CSCA that its latest samples did not meet specifications. Polartec reported CSCA’s response that it did not see a measurable difference between its sample yarns and the Asian yarn that was first provided to CSCA in February.

**CSCA’s Response with an Offer to Supply:**

On June 15, 2016, CSCA submitted a Response with an Offer to Supply (Response) and advised CITA of its objection to the Request and its ability to supply the subject yarn in commercial quantities in a timely manner.

Production Capability/Demonstration of Ability to Supply the Subject Yarn: In its Response, while acknowledging that it did not currently produce the yarn specified in the Request, CSCA reported its current capacity. CSCA described its current production capabilities in terms of the type of yarns it was already making, including yarns with fine denier and blends of cationic and disperse yarns that were similar to the yarn blend sought by Polartec. CSCA also reported the timeline to develop and supply the subject yarn.

Due Diligence: With respect to the due diligence communications it had with Polartec prior to the filing of the Request, CSCA stated that Polartec had provided "inconsistent information" regarding the required specifications of the yarn. Specifically, CSCA stated that while Polartec had initially provided a sample of the Asian yarn it was currently using in February, the product description included in its first formal due diligence inquiry on March 15, 2016 had different specifications than that of the sample yarn. CSCA claimed that it had worked to provide samples that would meet the specifications of the Asian yarn that Polartec had first presented to CSCA, rather than focus on the subsequent specifications sent in the due diligence inquiry. As for development of a yarn that would meet the product description's specifications, CSCA contended that for such a "unique" yarn, CSCA would need three months to develop the yarn; but that since CSCA had already been working with Polartec over the last few months, it would not take as long to develop a yarn that met Polartec's requirements.

**Rebuttal by Polartec:**

On June 28, 2016, Polartec submitted its Rebuttal addressing CSCA’s Response. Polartec stated that CSCA had not demonstrated its capability to supply the subject product in commercial quantities in a timely manner. Polartec referred to the samples provided by CSCA in March and April, noting that none of the samples met the yarn’s required specifications, notwithstanding CSCA’s assertions that it could produce the subject yarn. In its Rebuttal, Polartec stated that not only did CSCA’s samples not meet specifications, CSCA offered no explanation or justification as to why the samples it produced in April did not meet specifications. Polartec stated that even though CSCA claimed it needed three months to develop the product, CSCA was aware of the required specifications as of March 15th, and that the three month period would have expired in mid-June. With respect to CSCA’s contention that it was “confused” by the difference between the sample yarn it had received and the product description that was sent some weeks later, Polartec argued that the product description provided in the initial due diligence inquiry had not changed since it was first issued on March 15th. Finally, Polartec argued that CSCA did not provide detailed information regarding its production capability as required by CITA’s procedures. Specifically, Polartec claimed that CSCA did not report its current loom availability, its past production of similar yarns, and the type of equipment it would use to produce the yarns as specified, and therefore did not demonstrate that it was capable of supplying the subject yarn.

**Insufficient Information and Extension of Period for Determination:**

In accordance with Section 203(o)(4)(C)(iv) of the CAFTA-DR Implementation Act and section 8(c)(4) of CITA’s procedures, because there was insufficient information to make a determination after 30 days, CITA extended the period for making a determination by 14 U.S. business days. As provided by section 8(c)(4)(i) of CITA’s procedures, CITA scheduled a public meeting on July 8, 2016, to allow representatives of Polartec and CSCA to provide more information supporting their claims regarding CSCA’s capability to supply the subject yarn.

**Public Meeting:**

On July 8, 2016, CITA held a public meeting with representatives and officials of Polartec and CSCA. CITA advised both entities that the sole issue to be discussed in the course of the meeting was whether CSCA had demonstrated its capability to supply the yarn specified in the Request.

Opening statement by Polartec: In its opening statement, Polartec stated that the specified yarn and many similar yarns were used in certain fabrics made by Polartec. Polartec explained that these programs had been in existence for a number of years, and that the fabrics were used for apparel outside the United States. However, Polartec’s customer now wanted to use the yarn and fabric in apparel for the U.S. market. As a result, Polartec needed to have the same yarn and fabric properties as those of the existing programs. Polartec had developed the yarn with its Asian supplier, and it had consistently met Polartec’s and its customer’s expectations. As a result, given that Polartec had confidence in the properties and performance of the yarn it was currently using, it used the same specifications for the new program for the U.S. market.

Polartec noted that all of CSCA’s prior samples were deficient, and that it had submitted CSCA’s latest sample for testing by the North Carolina State College of Textiles (NC State) immediately upon receipt on June 21st. Polartec noted that while the latest sample came close to meeting one particular specification, it did not meet other required specifications. Polartec stated that it also used the CSCA yarn sample to knit a sample fabric, and presented a comparison of a fabric from its current production and the fabric made with CSCA’s latest sample, noting the difference in the two fabrics’ appearance. Polartec argued that it had given CSCA ample time to develop the subject yarn, and that the company had to have confidence in the ability of its yarn suppliers to consistently produce yarns that met its requirements. Polartec concluded by stating that CSCA’s latest sample, as evidenced by the NC State test results submitted at the public meeting for the record, did not meet several of the required specifications, and that CSCA had not demonstrated its capability to supply the yarn as specified in the Request.

Opening statement by CSCA: CSCA opened its remarks by providing CITA with documentation reporting results from tests it had commissioned from Gaston College certain specifications, all of which indicated that a sample, purportedly from the same batch as the sample provided to Polartec, met these specifications. CSCA advised CITA that it was still waiting on test results for one specification, and expected those within a few days. CITA agreed to accept that information for the record.

After submitting the test results for the record, CSCA addressed the difference in appearance between a sample of Polartec’s current fabric and a fabric made with CSCA’s sample. According to CSCA, the difference could be accounted for by the proportion of the cationic filaments to disperse filaments used in producing the two-ply yarn. CSCA stated that its specialty was producing fine denier yarns with cationic/disperse blends similar to that specified in the Request. CSCA further stated that while Polartec made its first informal inquiry in February, CSCA did not offer a sample at that time because it did not have a relationship with Polartec, and that CSCA does not make a sample in response to every inquiry, given the prohibitive expense. CSCA reported that it only made a sample when it understood that Polartec was pursuing a commercial availability determination. CSCA explained that it did not make a sample that met the description in Polartec’s formal inquiry because the sample it had received of the Asian yarn did not meet those specifications. CSCA further asserted that it was standard practice in the yarn industry to meet specifications of a yarn and/or fabric sample provided by a potential customer, and that it focused more on the needs of the fabric producer with respect to a fabric’s performance requirements rather than the yarn’s characteristics, since yarn production could be modified in several aspects to meet a fabric’s specific requirements. CSCA stated that this was the reason it had asked Polartec to provide the fabric samples it made using sample yarn CSCA had provided in April – it was interested in those fabrics’ pilling performance, given that the only feedback provided by Polartec on the first sample fabric was an issue with pilling. CSCA also stated that it felt that the specifications required by Polartec were outside industry standard, and unreasonable. For example, CSCA stated that while Polartec required a 30+% elongation, the industry standard was for 17-27% elongation. CSCA further stated that the range provided by Polartec represented a +/-3% range, but that the industry standard was a +/- 5% range. CSCA contended that CITA could not judge its capability for production based on a range outside the industry standard.

Questions from CITA: CITA asked several questions of Polartec and CSCA. CITA referred to the test results of CSCA’s latest sample, and asked Polartec whether, for a particular specification, the difference in the sample’s performance and the required specification was particularly significant. Polartec responded by saying that while CSCA’s performance for that particular specification had improved from previous samples, it was still outside the specified range. Polartec further claimed that while CSCA’s last sample was closer to meeting that specification’s requirements, several other criteria had not been met. Polartec also noted that CSCA’s sample, according to the tests conducted by NC State and commissioned by Polartec, had not met a different specification. Polartec stated that it could not “bet” on CSCA’s assertions that it was capable of producing the subject yarn, when CSCA’s samples indicated that the supplier could not consistently meet all the required specifications.

CITA asked Polartec about the margin of error for the testing methodologies used by NC State, and Polartec described a standard deviation of two percent. Polartec further explained that the test results were the average of 20 different data points. When asked about the weight given to each specification, Polartec explained that it looked at the totality of the specifications, since each had an impact on the performance and appearance of the yarn, and ultimately the finished fabric. When asked whether Polartec had tested the yarns it was currently using, the company explained that the reason it did not test its current yarn inventory was because the yarn had already undergone extensive fabric and field testing in the course of its initial development in Asia, resulting in specifications that would impart the performance needed by its customer for the fabric and garment.

When CITA asked about the reported discrepancies between the Asian yarn sample sent to CSCA and the subject yarn’s specifications, Polartec explained that it had been and was using the yarn in other programs, reiterated that the yarn had already gone through numerous testing protocols, and that after several years, it had confidence that the yarn supplied by its Asian supplier would meet the required specifications, and no longer needed to test the yarns.

CITA asked Polartec what would be a reasonable period of time to develop the subject yarn. Polartec responded that CSCA itself had claimed it only needed three months, and since Polartec had first contacted CSCA, almost four months had elapsed.

CITA also asked CSCA to describe how it modified its standard production, in terms of equipment and production processes, to achieve a yarn that met the required specifications, and specifically, what the supplier had done to modify its productionfrom the time it had produced the 2nd and 3rd samples in April, to the last sample it provided. CSCA stated that it could produce the product as specified and that the last sample it provided to Polartec demonstrated its capability.

CITA asked CSCA why there was a discrepancy between the test results Polartec presented and those that CSCA presented. CSCA explained that the cone provided to Polartec came from the same batch as the cone CSCA submitted for testing. CSCA further explained that a batch of cones could be expected to have some degree of variation within the batch; even within a single cone, there would be variations in the test results of samples taken from different sections of the cone.

CSCA claimed that after it had provided its samples to Polartec in April, since elongation was the one reported specification those samples had not met, as reported by Polartec in its Request[[1]](#footnote-1), for the last sample, produced in June, it had focused on producing a sample that met the elongation specification.

CITA followed up its question to CSCA to inquire about reasonable variations for various performance properties included in the product description. CSCA stated that for elongation, a +/-5% variance was industry standard, and the +/-1.5% range that Polartec specified in its product description was not something that any producer could consistently maintain. With respect to shrinkage, CSCA reported that a +/-1% variation was the standard in the industry. With respect to Polartec’s reported result for a different specification, which was based on Polartec’s internal testing, CSCA stated that the result was not realistic, and explained that the level of performance for that specification reflected the amount of contrast in the fabric. CSCA claimed that Polartec’s reported test result for that specification was in direct conflict with Polartec’s complaint that the fabric made from a CSCA sample did not have sufficient contrast; CSCA explained that a fabric with more contrast would involve a different level of performance for that specification, rather than the test result that Polartec reported for CSCA’s latest sample.

CSCA also stated that the performance requirement for another specification was not relevant, as it does not affect the appearance of the fabric. At this point, Polartec stated that that particular specification was relevant during the fabric knitting process, since it made the production of a knitted fabric using the subject yarn much easier. CSCA stated that a higher performance level for that specification would not make sense, since it would require more washing of the fabric and would affect the dyeing process. CSCA contended that the industry standard for that specification was 1.0-1.5%, and that the range specified in the product description was outside industry standard. CSCA’s sales manager stated that while blended yarns could be difficult to match, CSCA tailored its yarns to the specific needs of its customer.

Closing statements: In closing, Polartec stated that it had made many attempts to source the yarn from CSCA, resulting in four different samples, none of which met the required specifications. Polartec also stated that CSCA refused to provide information on its equipment, and that it could not make a “million dollar bet” based on CSCA’s “theory” that it could supply the subject yarn.

In its closing remarks, CSCA stated that Polartec’s specifications were being used solely for the purpose of obtaining a short supply designation, and were not intended to determine whether CSCA’s yarn could produce the type of fabric that Polartec needed. CSCA contended that they have proven that they can control their yarn production process to allow Polartec to produce the fabric they want.

**Subsequent Information Presented for the Record:** In the public meeting, CSCA stated that it had not yet received test results for the remaining specification, and CITA agreed to accept these results after the public meeting. On July 12, 2016, CSCA submitted test results on the remaining specification from Goulston Technologies (“Goulston”), a private, non-academic lab. On July 13th, CSCA submitted a test result from Gaston College on the same specification. The Gaston College result indicated that the sample met that specification.

**Analysis:**

In accordance with Section 1 of CITA’s procedures, CITA must carefully scrutinize information provided on the record in making a determination whether the subject product is available in commercial quantities in a timely manner from potential suppliers in the CAFTA-DR countries.

Due Diligence: Section 6(b)(4) of CITA's procedures requires that a Response must provide a complete description of the due diligence undertaken by the CAFTA-DR supplier to substantiate the ability to supply the subject product, or one substitutable. In its Response and in the course of the public meeting, CSCA stated that it had focused on the specs of the Asian yarn it had received and tested in February. Even though CSCA did receive Polartec's due diligence inquiry with a full description of the subject yarn on March 15, 2016, in the public meeting, CSCA contended that it was standard business practice for yarn spinners to focus on the fabric made with a current yarn, since yarns could be tailored in production to meet the requirements of the fabric. CSCA explained that this was why the first three samples CSCA produced were based on their goal to meet the Asian yarn's specification. In its Response, CSCA argued that as a result of the "inconsistent information" between the Asian sample and the product, it had focused on meeting the specifications of the Asian yarn for its first three samples.

While CITA recognizes that a discrepancy between the reported specifications of the Asian sample and the specifications included in the product description could be confusing, there was no indication that CSCA contacted Polartec to clarify exactly what specifications were required, even though it had acknowledged that it was aware that Polartec was seeking a commercial availability designation, which would entail meeting (or offering a substitute for) the required specifications. Therefore, CSCA's reliance on the Asian yarn's specifications as the basis of its producing the first three samples was not reasonable, and could have resulted in a finding that CSCA had not done its due diligence in substantiating its ability to supply the subject product as specified. However, after it had submitted its Response, CSCA continued to develop the yarn for Polartec, and submitted another sample in June 2016, prior to the public meeting. In the public meeting, CSCA stated that it had focused on producing a sample that met the requirement for elongation. As a result, over the course of the proceeding, CSCA did attempt to make a yarn meeting the subject yarn's specifications, and therefore met CITA's requirements for due diligence on the part of a potential supplier.

Substitutability and Specifications outside Industry Standards: In the course of the public meeting, CSCA indirectly raised the issue of substitutability and stated its contention that Polartec’s specifications were outside industry standards and therefore, by implication, unreasonable. Section 8(c)(4) of CITA’s procedures limits information to be presented in a public meeting to that which would “substantiate the information provided” on the record, including claims regarding the offer of a substitutable product (*see* section 8(c)(4)(ii)). However, neither in the course of due diligence nor in its Response did CSCA raise the issue of the reasonableness of the specifications provided in Polartec’s Request, or that it could offer a substitute in the course of due diligence or in its Response. As a result, CSCA’s claims during the public meeting on these issues constitute new arguments, and are prohibited from inclusion in CITA’s considerations. CITA notes that while these arguments may not be considered in this proceeding, CSCA or another potential supplier could raise these arguments in a subsequent proceeding for a Request to Remove or Restrict the subject yarn.

Production Capability/Demonstration of Ability to Supply – Section 6(b)(3) of CITA’s procedures states that a responding CAFTA-DR supplier’s Response must include “information supporting the claim” to be able to supply the subject product.

CSCA provided Polartec with several samples throughout the course of due diligence and the instant proceeding, submitting its last sample to Polartec prior to the public meeting. Both Polartec and CSCA commissioned non-affiliated academic labs, NC State and Gaston College, respectively, to conduct certain tests on the samples.[[2]](#footnote-2) Based on the information presented on the record, both labs conducted tests for certain specifications, and both labs conducted those tests in accordance with industry standard methodologies (or those equivalent) referenced in the subject yarn’s product description.

On July 12, 2016, CSCA submitted test results for the remaining specification from Goulston. However, in its submission, CSCA did not present any information regarding the nature of its relationship with Goulston. Moreover, publically available information on Goulston (found on the company’s website) did not indicate that it routinely conducted testing services for any entity other than its customers.[[3]](#footnote-3) Subsequently, on July 13th, CSCA submitted test results on the same specification from Gaston College, the non-affiliated academic lab that conducted all other tests reported for the record. As a result, because there is no information regarding the affiliation of CSCA with Goulston, CITA finds that Goulston’s test results would not be as persuasive as those provided by Gaston College, and based the analysis for that specification on Gaston College’s test results.

CITA notes that the test results reported by Polartec indicate that the sample provided by CSCA did not meet any specifications with one exception. In contrast, CSCA’s reported test results indicated that the sample did meet the specifications required by the product description of the subject yarn. The reports from both labs indicated that the testing methodologies used were appropriate for that particular specification, and were either identical or functionally equivalent to those referenced in the product description. Based on its knowledge of the industry, CITA does not have any reason to question the veracity of either lab’s results. Nor is there any known mechanism to compare the results from the two labs, as there may be differences in the specific testing methodology used in accordance with the relevant standard, the condition of the sample as tested, and the conditions of the lab at the time of testing. Therefore, the results are inconclusive with respect to whether CSCA’s sample has met the required specifications. As a result, CITA must look to other record evidence to determine CSCA’s capability to produce the subject yarn.

Section 6(b)(3)(iv) of CITA’s procedures states in part:

Regardless 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.  Such information could include past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product.

In its Response, CSCA stated that it did not currently produce the subject yarn, and reported its current capacity. CSCA also described the timetable for development and production of a yarn meeting the required specifications. CSCA reported that it currently produced yarns similar to the type of yarn specified with respect to yarns of finer denier and the blend of cationic and disperse single ply yarns. However, the yarns it described were of 72 filaments, not the 144 filament yarn required, and CSCA did not report that it had any experience producing yarns with the same or similar performance properties, especially elongation, shrinkage or oil pick up, to those of the subject yarn. Moreover, CSCA did not report any detailed information about its actual production process, whether in terms of the equipment it had or would use, or the modifications it had made over the course of developing the yarn that resulted in the last sample, purported to meet the specifications in the product description. CSCA was specifically asked in the course of the public meeting to describe the modifications it would need to make to its current production process to produce a yarn meeting specifications, but CSCA did not provide any detailed relevant information, and stated only that it had demonstrated its capability by providing its last sample.

Throughout the course of the proceeding, apart from describing its current production, CSCA did not provide any detailed relevant information regarding its capability to produce the subject yarn, specifically with respect to: (1) how its experience with its current yarn production imparted the necessary expertise to make yarns with the specified physical and performance characteristics; or (2) any necessary modifications to its current production processes of other fine denier and/or cationic and disperse blend yarns to produce the subject yarn. CITA finds that, given the differences in the types of yarns CSCA currently produces and the specifications of the subject yarn, this information is critical, and therefore relevant, to adequately demonstrate CSCA’s capability to supply the subject yarn, which, while somewhat similar to the yarns currently produced by CSCA, requires significantly different physical characteristics and performance properties. CSCA had several opportunities to present CITA with the information required under its procedures, but failed to do so in the course of due diligence, in its Response, or in the public meeting. Therefore, CSCA did not provide sufficient relevant information regarding its production capability, as required under CITA’s procedures.

**Conclusion and Recommendation:**

As a result, because CSCA did not present sufficient relevant information on its production capability, CITA finds that CSCA has not demonstrated that it has the capability to produce the yarn as specified in the Request. Therefore, CITA has determined that the subject product is not available in commercial quantities in a timely manner from a supplier in the CAFTA-DR region, and approves the Request to add the subject product to Annex 3.25 of the CAFTA-DR in unlimited quantities.

CITA notes that under Section 9 of CITA’s procedures, six months following CITA’s determination to approve the Request, a potential supplier in the CAFTA-DR region may submit a Request to Remove or Restrict the subject yarn. In accordance with CITA’s procedures, should the potential supplier adequately demonstrate that it is capable of supplying the subject yarn, or one substitutable, CITA would determine to approve the Request to Remove or Restrict the yarn from Annex 3.25, effective six months after the date of CITA’s determination.

1. CITA notes that prior to information submitted in and after the public meeting, previous test results submitted by both Polartec and CSCA did not consistently report the samples’ performance for one particular specification. Neither Polartec nor CSCA submitted test results for another required specification, at any point in the proceeding. [↑](#footnote-ref-1)
2. Polartec did not commission NC State to test for one particular specification. Rather, Polartec presented results from a test it performed in-house. [↑](#footnote-ref-2)
3. Information regarding Goulston Industries was found on the following website: www.goulston.com [↑](#footnote-ref-3)