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October 10, 2007

VIA EMAIL AND UPS

**PUBLIC**  
**VERSION**

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: Perry Manufacturing Company's Rebuttal to Responses  
Case: 36.2007.09.20.Fabric.Alston&BirdforPerryManufacturing  
Three-thread circular knit fleece fabrics*

Dear Mr. Priest:

On behalf Perry Manufacturing Company ("Perry Manufacturing"), 100 Woltz Street, P.O. Box 1027, Mount Airy, North Carolina 27030, and pursuant to Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement ("CAFTA-DR") Implementation Act and the Committee for Implementation of Textile Agreements ("CITA") Final Procedures<sup>1</sup> for submitting Commercial Availability Requests, we submit the following Rebuttal Comments with respect to the Response with an Offer submissions of Texpassa S.A. ("Texpassa") and Elcatex Centro Americanos y Textiles ("Elcatex") in the above-referenced commercial availability proceeding. CITA should disregard these submissions, because they fail to meet the requirements for a Response with an Offer.

As described in CITA's Final Procedures for the commercial availability petitioning process, a Response with an Offer must advise CITA of a responding company's "ability to supply the subject product by providing an offer to supply the subject product as described in the request." CITA requires that a responding entity state the quantity of the requested fabric that it can supply, the quantity of the requested fabric that it has produced in the previous two years, and, if a product is not currently produced, the quantity that has been offered in the past and the reason it is not currently produced.

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<sup>1</sup>Final Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement, Comm. for the Implementation of Textile Agreements, 72 Fed.Reg. 13,256 (Mar. 15, 2007).

If the product is new to a responder, the responder should give detailed information about its ability to make the product. Both Elcatex and Texpasa have failed to meet these requirements.

**I. Elcatex**

Perry Manufacturing attempted twice, during its due diligence review of the availability of the required fabrics, to contact Elcatex. On July 26 and on August 17, 2007, we sent email correspondence to Elcatex's General Manager, Mr. Jesus Canahuati, at his email address at [chuy@elcatex.com](mailto:chuy@elcatex.com). We obtained Mr. Canahuati's name from Davison's Textile Blue Book online and his email address from a listing of individuals contacted by the government of the Dominican Republic prior to its recent commercial availability request. Our emails were not returned and we therefore believe the emails were successfully delivered to Mr. Canahuati. We received no response to either email request.

Elcatex's current letter fails to meet CITA's requirements for a Response with an Offer. First, the Elcatex submission does not offer to supply the requested product. Elcatex states in its letter that it "can offer to supply" a particular fabric formulation. A side-to-side comparison of Elcatex's formulation and the formulations in Perry Manufacturing's commercial availability request demonstrates that Elcatex has not offered to supply either the requested fabrics or a substitutable fabric.

	<b>Perry Manufacturing: First Formulation</b>	<b>Perry Manufacturing: Second Formulation</b>	<b>Elcatex</b>
<b>Fiber Content</b>	72 to 78 percent cotton, 22 to 28 percent polyester	77 to 83 percent cotton, 17 to 23 percent polyester	65% cotton, 35% polyester
<b>Face Yarn</b>	Metric: single ply, ring spun cotton of metric yarn numbers 41 to 48  English: single ply, ring spun cotton of English yarn numbers 24 to 28	Metric: single ply, ring spun cotton of metric yarn numbers 47 to 54  English: single ply, ring spun cotton of English yarn numbers 28 to 32	70 denier, 34 F
<b>Tie Yarn</b>	Metric: polyester filament of 49 to 51 denier	Metric: polyester filament of 49 to 51 denier	30/1 technical face
<b>Fleece Yarn</b>	Metric: single ply staple of 57 to 63 percent cotton and 37 to 43 percent	Metric: single ply staple of 67 to 73 percent cotton and 27 to 33 percent	12/1 50 cotton/50 poly

	polyester of metric yarn numbers 24 to 30  English: single ply staple of 57 to 63 percent cotton and 37 to 43 percent polyester of English yarn numbers 14 to 18	polyester of metric yarn numbers 24 to 30  English: single ply staple of 67 to 73 percent cotton and 27 to 33 percent polyester of English yarn numbers 14 to 18	carded open back
<b>Gauge</b>	20 to 24	20 to 24	18
<b>Knit Type</b>	Three-thread circular knit	Three-thread circular knit	3 thread circular knit
<b>Weight</b>	Metric: 285 to 330 grams per square meter  English: 8.42 to 9.75 ounces per square yard	Metric: 266 to 308 grams per square meter  English: 7.85 to 9.08 ounces per square yard	9.2 oz
<b>Width</b>	Metric: 172 to 183 centimeters  English: 68 to 72 inches	Metric: 146 to 183 centimeters  English: 58 to 72 inches	16.25, 17.25, 17.75, 18.25 . . . 31.25, 31.75, 32.25 tubular widths
<b>Finish</b>	Napped on the technical back; bleached, yarn dyed, or piece dyed	Napped on the technical back; bleached, yarn dyed, or piece dyed	Napped on the technical back; piece dyed
<b>Performance Criteria</b>	Not more than 5 percent vertical and horizontal shrinkage and not more than 4 percent vertical torque	Not more than 5 percent vertical and horizontal shrinkage and not more than 4 percent vertical torque	6 x 6 shrinkage

As this table demonstrates, the only specification with respect to which the fabric offered by Elcatex meets Perry Manufacturing's requirements is knit type. In other words, Elcatex describes a three-thread circular knit fleece fabric. The similarities end there. The deviations from Perry Manufacturing's specifications, on the other hand, are many:

- Perry Manufacturing's two fabric formulations require a minimum cotton content of 72 or 77 percent. Elcatex offers a fabric that is only 65 percent cotton.

- Perry Manufacturing requires the use of ring spun cotton in the fabric face. Elcatex does not state whether the cotton it proposes to use would be ring spun cotton.
- Perry Manufacturing requires a face yarn of ring spun cotton and a tie yarn of polyester. Elcatex appears to propose to use its cotton technical face yarn in place of tie yarn and to use 100 percent polyester yarn in the fabric face.
- Perry Manufacturing requires that the ring spun cotton yarn in its two fabrics be of English Yarn Numbers 24 to 28, or 28 to 32.<sup>2</sup> Even if Elcatex offered a fabric with cotton face yarn instead of cotton tie yarn, the yarn offered is outside the permissible range for Perry Manufacturing's first fabric formulation.
- Perry Manufacturing requires a fleece yarn of English Yarn Numbers 14 to 18. Elcatex offers fabric with a fleece yarn that is of English Yarn Number 12.
- Perry Manufacturing requires a minimum of 57 or 67 percent cotton in the fleece yarns for its two fabric formulations. Elcatex offers a fabric with fleece yarn that is only 50 percent cotton.
- Perry Manufacturing requires 20 to 24 gauge fabrics. The fabric offered by Elcatex is 18 gauge.
- Perry Manufacturing requires fabrics with weights of 8.42 to 9.75 ounces or 7.85 to 9.08 ounces. Elcatex offers a fabric of 9.2 ounces, which is too heavy to meet the weight requirements for Perry Manufacturing's second fabric formulation.
- Perry Manufacturing requires widths ranging from 146 to 183 centimeters, or 58 to 72 inches, for its two fabric formulations. Elcatex does not state whether it can meet these requirements. Elcatex provides only tubular widths and does not clarify whether the listed measurements are in inches, centimeters, or some other unit of measure.
- Perry Manufacturing requires that the specified fabric be available bleached, yarn dyed, or piece dyed. Elcatex fails to offer bleached or yarn dyed fabric.

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<sup>2</sup> We note that CITA requires responding entities to provide metric measurements for data. Elcatex has not specified whether its measurements are metric or English, as units are provided only for the fabric weight, but it appears that, like the weight measurement in ounces, Elcatex's other specifications are also in English measurements. The failure to provide metric data appears therefore to be another deficiency in Elcatex's response. Because only English measurements were provided, we have based our comparisons on English measurements, but we have continued to provide metric measurements in the table included with this letter in order to comply with CITA's requirements.

- Perry Manufacturing requires fabric with no more than 5 percent vertical and horizontal shrinkage, but the fabric that Elcatex offers could have up to 6 percent vertical and horizontal shrinkage.
- Perry Manufacturing requires fabric with a maximum of 4 percent vertical torque. Elcatex does not state that it can meet this performance requirement.

Thus, the fabric offered by Elcatex is different in almost every respect from the fabrics required by Perry Manufacturing.

Moreover, Elcatex, in what appears to be a suggestion in its response that the fabrics are substitutable, states that its fabric, with a 12/1 fleece yarn, would have “slightly more loft or fabric thickness” than what Perry Manufacturing requested. More is not necessarily better though. Perry Manufacturing does not need and cannot use a fabric with more loft or thickness than that which it has requested. Perry Manufacturing requires the fabrics described in its commercial availability request, because no other fabrics will meet the requirements of Perry Manufacturing’s customers. Not only would the thickness differ, but the fabric would have fiber content, gauge, and performance characteristics that fail to meet the particular requirements of Perry Manufacturing’s customers. Perry Manufacturing’s customers for the programs for which Perry Manufacturing has made this request simply would not purchase apparel made with the three-end fleece described by Elcatex.

The fabrics that Perry Manufacturing requires are uniquely formulated to meet the needs of Perry Manufacturing’s customers. The technical face of the fabric has a soft, rich texture that differs substantially from other available fleece fabrics. Despite the relatively light weights of Perry Manufacturing’s fabrics, they impart to finished garments a hand or feel that is characteristic of heavier weights. Garments of Perry Manufacturing’s fabrics hold shape when worn, suggesting fullness and body.

Particularly important to Perry Manufacturing is the shrinkage characteristic of its fabrics. For example, finished garments include hooded, jacket-type garments that typically become misshapen through shrinkage if made with other fleece knit constructions. Perry Manufacturing has worked extensively with manufacturers to achieve the desired shrinkage performance. Perry Manufacturing has worked for many years to find reliable sources for this fabric in Central America and the Caribbean and has never encountered a mill that can match these shrinkage and other critical characteristics.

Even if Elcatex had, however, offered to supply the fabrics that Perry Manufacturing actually requested, Elcatex fails to specify whether it currently makes the fabric it describes, how much three-end fleece fabric it has produced in the previous two years, and, if it is not currently making the requested fabrics, why not. The only quantity requirement that Elcatex fulfills is to state what it believes to be its capacity to make the requested fabric. Unfortunately, this capacity – 50,000 yards per week – is inadequate to meet Perry Manufacturing’s demands. As noted in its commercial availability request,

Perry Manufacturing requires three times this much fabric each week. Because Elcatex's response fails to meet CITA's requirements, CITA should disregard it.

## **II. Texpasa**

We attempted to contact Texpasa via email on July 26 and on August 17, 2007. Our emails were not returned as undeliverable, and Texpasa's response letter indicates that they were received. Texpasa alleges that this correspondence was misdirected to "a legal representative who has no knowledge of what [Texpasa] manufacture[s] and does not speak a word of English." This legal representative is Rene Castaneda, whose email address is listed in Davison's Textile Blue Book as the contact email address for the company. Davison's Textile Blue Book also names Texpasa's General Manager, Roberto Quan, but we were unable to locate an email address for Mr. Quan in the Davison publication, on Texpasa's website, or in any recently filed commercial availability requests.

The response that Texpasa submitted as a Response with an Offer fails to meet CITA's requirements for such a response. Texpasa asserts generally that it has made and sent samples to Perry Manufacturing of a fabric that "is almost identical to what [Perry Manufacturing is] petitioning." Texpasa states, therefore, that making the requested fabric would "only require minor changes in the yarn." Perry Manufacturing has no record of having received samples from Texpasa. CITA is clear in its Final Procedures for commercial availability proceedings that "[g]eneral comments in support of or opposition to a commercial availability request do not meet the requirements of a Response with an Offer." Texpasa provides no details about its fabric production or its ability to meet Perry Manufacturing's requirements. Thus, Texpasa's response does not rise above the level of "general comments in . . . opposition to" Perry Manufacturing's request.

Furthermore, Texpasa treated as confidential the amount of fabric it has produced and can produce. While CITA ordinarily permits quantity information to be treated as confidential, Perry Manufacturing cannot know whether Texpasa can supply the requested fabrics if Texpasa will not state that it can meet Perry Manufacturing's quantity requirements. To the extent that Texpasa is concerned about sharing its production capabilities in a public version of its response letter, the obvious answer would have been for Texpasa to respond privately to Perry Manufacturing's due diligence inquiries. Alternatively, Texpasa could have asserted that it can produce "at least" the amount of fabric required by Perry Manufacturing or that it has produced "more" than this amount of fabric on a weekly/monthly basis in the past, but Texpasa makes no general statement either. Texpasa's website, at [www.texpasa.com](http://www.texpasa.com), states that Texpasa can produce 1,000,000 pounds of fabric per month. Accordingly, the quantity of fabric required by Perry Manufacturing would constitute approximately 70 percent of Texpasa's existing monthly capacity. In the absence of an assurance to the contrary, Perry Manufacturing is concerned that Texpasa cannot supply the required quantity of fabric.

Because Texpasa's response fails to meet CITA's requirements, CITA should disregard this response.

**III. Conclusion**

Because neither responding company has offered to supply the type or quantity of fabric that Perry Manufacturing requires, Elcatex and Texpasa's response letters fail to meet CITA's requirements. CITA should disregard these responses and should determine that the requested fabrics are commercially unavailable from CAFTA-DR producers.

Sincerely,



BJ Shannon

Attachments

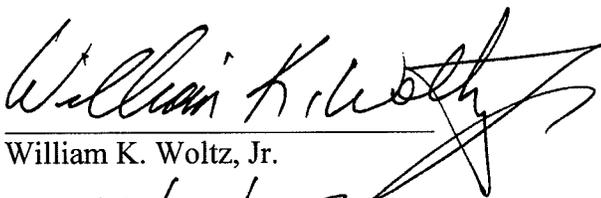
cc: Mr. Jonathan M. Fee, Alston & Bird LLP

LEGAL02/30555009v3

**INTERESTED ENTITY'S DUE DILIGENCE CERTIFICATION**

I, William K. Woltz, Jr., Chief Executive Officer, Perry Manufacturing Company, certify that:

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

Signed:   
William K. Woltz, Jr.

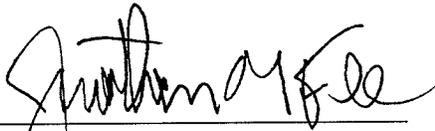
Date: 10/10/07

**LEGAL COUNSEL'S DUE DILIGENCE CERTIFICATION**

I, Jonathan M. Fee, of Alston & Bird LLP, counsel to Perry Manufacturing Company, certify that:

1. I have read the attached submission.
2. Based on the information made available to me by William K. Woltz III, I have no reason to believe that this submission contains any material misrepresentation or omission of fact.

Signed: \_\_\_\_\_

  
Jonathan M. Fee

Date: \_\_\_\_\_

10/10/07