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June 1, 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: Commercial Availability Request
Certain Two-Ply Polyester Yarn

Dear Mr. Teitelbaum:

On behalf of our client, Polartec, LLC ("Polartec") we hereby submit this request for a finding of commercial non-availability pursuant to the provisions of Section 203(o)(4) of the Dominican Republic-Central America-United States Free Trade Agreement ("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") with respect to a certain yarn, described below, to be used in the manufacture of apparel in a CAFTA-DR country. We respectfully request that the subject yarn described below be added to the list in Annex 3.25 of the Agreement in unrestricted quantity because the yarn is not available in commercial quantities in a timely manner from a supplier in the CAFTA-DR countries.

(1) Detailed Product Information

The subject yarn is certain two-ply polyester yarn that is classified in subheading 5402.33.60 of the Harmonized Tariff Schedule of the United States (HTSUS). The yarn has the following specifications, some of which are expressed in ranges:

Yarn Description:	Certain two-ply polyester yarn that ranges from 122 Metric (73.8 denier /82 decitex) to 103 Metric (87 denier/97 decitex). The yarn is classified in subheading 5402.33.60 of the Harmonized Tariff Schedule of the United States (HTSUS).
Fiber	100% Polyester (60%-66% Cationic, 34%-40% Disperse)
Number of Plies:	2
Yarn Size:	122 Metric (73.8 denier /82 decitex) to 103 Metric (87 denier/97 decitex)
Filaments:	144 total
Yarn Properties:	False Twist Textured – Mechanical process by which POY material(s) are heated, drawn, twisted/untwisted, and heat set in order to add bulk and comfort characteristics. 3.12 to 3.45 Break force/Tenacity (CN) (ISO2062) 30.68 to 33.92% Elongation (ISO2062) 7.5 to 8.5 % Crimp contraction (ASTM D4031) 8.0 to 8.8% Shrinkage (ASTM D2259) 154 to 170 Interlace per meter (manual count in 10cm section - extrapolated to 1m) 2.5 to 2.7% Oil pick up (ASTM D2257)
HTSUS:	5402.33.60
Quantity:	[***] kilograms ([***] lbs.) annually
Remarks:	NOTE: The yarn size designations describe a range of yarn specifications for yarn before knitting, dyeing and finishing of the fabric. They are intended as specifications to be followed by the mill in sourcing yarn used to produce fabric. Dyeing, finishing, and knitting can alter the characteristic of the yarn as it appears in the finished fabric. This specification therefore includes yarns appearing in the finished fabric as finer or coarser than the designated yarn sizes provided that the variation occurs after processing of the greige yarn and production of the fabric. The specifications for the yarn apply to the yarn itself prior to cutting, sewing and finishing of a finished garment. Such processing may alter the measurements.

The product specifications, including, fiber content, yarn size and yarn properties are reasonable and stated in terms of accepted terminology and standards.

These standards and specifications were explained to all potential suppliers. Timing was expressed as the annual quantity.

(2) Quantity

Polartec requires approximately [***] kilograms ([***] lbs.) per year.

(3) Due Diligence

(i) Generally

The following is a summary of Polartec's contacts and due diligence that demonstrates its legitimate intent and good faith and reasonable efforts to obtain the subject yarn from CAFTA-DR suppliers. We note that despite our best efforts to provide contact names, titles and addresses for each company, in some circumstances we were unable to find or verify some of this information as the contacts were made entirely via email based on the best information available.

Polartec directly contacted all potential suppliers to locate sources for the subject yarn, as well as the industry associations in all CAFTA-DR countries. Details of the salient points of Polartec's communications with the various companies and trade associations in the region with regard to whether they or their members could supply the subject yarn within the requested specifications are described below.[1] Copies of the contacts are provided in the attachment of the confidential version of this submission.

INDUSTRY ASSOCIATIONS

Association:	***Adozona***
Contact(s):	José M. Torres, Executive Director (adozona@codetel.net.do)
Address:	AV. Sarasota #20, 4to. Piso, Torre Empresarial AIRD, Apartado Postal 3184 Santo Domingo, R.D.
Reply and Date:	03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {A1} 03/18/2016: Association advised that no companies in Dominican Republic produce the subject yarn. {A2}

Association:	***Costa Rican Chamber of Textiles***
Contact(s):	Annia Sequra, Director (asegura@textilescr.com)
Address:	Apartado 1512 1002 Pase de Estudiantes San Jose, Costa Rica

[1] Titles of the individuals contacted are listed in all cases where they are known. Information for some of the companies was provided by the relevant industry association or companies without complete contact information. Polartec contacted the individuals recommended and/or the contact person with whom they typically correspond with for business purposes.

Reply and Date: 03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {B1}
03/22/2016: Second request. {B2}

No reply received.

Association: ***Guatemala Apparel and Textile Association (VESTEX)***
Contact(s): Luis Oscar Estrada, Manager (lestrada@apparel.com.gt)
Address: 15 Avenida 14-72 zona 13 2ndo. Nivel
Guatemala, Guatemala C. A 01013

Reply and Date: 03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {C1}
03/22/2016: Second request. {C2}

No reply received.

Association: ***Honduran Manufacturers Association***
Contact(s): Astrid Barnica, Client Services (servicioalcliente@ahm-honduras.com)
Address: Edificio Yude Canahuati 3 y 4 Piso, Avenida Circunvalacion S. O.
Apartado Postal 2658
San Pedro Sula, Honduras

Reply and Date: 03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {D1}
03/22/2016: Second request. {D2}
03/28/2016: Association indicated that no factories produce 100% polyester yarn, however suggested that Polartec contact Honduras Spinning Mills, S.A. {D3} As noted in the correspondence below, Polartec contacted Honduras Spinning Mills to determine whether they could supply the requested yarn. *See* Exhibits {J1-4}.

Association: ***National Council of Textile Organizations***
Contact(s): Sara Beaty, Vice President (sbeaty@ncto.org)
Address: 910 17th Street, NW, Suite 1020
Washington, D.C. 20006

Reply and Date: 03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {E1}
03/22/2016: Second request. {E2}

No response received.

Association:	***Nicaraguan Textile Association (Anitec)***
Contact(s):	Dean Garcia, Executive Director (director@anitec.net)
Address:	Zona Franca "Las Mercedes" km 12 ½ Carretera Norte, Building #29 Managua, Nicaragua
Reply and Date:	03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {F1} 03/22/2016: Second request. {F2}

Association:	***El Salvador's Chamber of Textiles and Apparel (CAMTEX)***
Contact(s):	Patricia Figueroa, Executive Director (direccion@camtex.com.sv) Mauricio Rodriguez, Manager (mrodriguez@camtex.com.sv Lourdes Avelar, Data Analyst (lavelar@camtex.com.sv)
Address:	Calle Liverpool y Roma, edificio ASI San Salvador, El Salvador
Reply and Date:	03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {G1} 03/18/2016: Association advised that Unifi could potentially produce the yarn and copied Francisco Mendieta from Unifi. {G4} No response from Unifi was received. As noted below, Unifi indicated that it was unable to supply the requested yarn. *See* Exhibits {Q1-4}.

Association:	***El Salvador's Chamber of Textiles and Apparel (CAMTEX)***
Contact(s):	Patricia Figueroa, Executive Director (direccion@camtex.com.sv) Mauricio Rodriguez, Manager (mrodriguez@camtex.com.sv Lourdes Avelar, Data Analyst (lavelar@camtex.com.sv)
Address:	Calle Liverpool y Roma, edificio ASI San Salvador, El Salvador
Reply and Date:	03/16/2016: Initial inquiry regarding members' ability to produce subject yarn. {G1} 03/18/2016: Association advised that Unifi could potentially produce the yarn and copied Francisco Mendieta from Unifi. {G4} No response from Unifi was received. As noted below, Unifi indicated that it was unable to supply the requested yarn. *See* Exhibits {Q1-4}.

Association:	***Synthetic Yarn & Fiber Association (SYFA) and American Fiber Manufacturers Association (AFMA)***
Contact(s):	Diane Bayatafshar, Managing Director SYFA (diane@thesyfa.org) & Director of Operations AFMA (diane@afma.org)
Address:	3033 Wilson Blvd., Suite 700, Arlington, VA 22201

Reply and Date: 04/26/2016: Initial inquiry regarding members' ability to produce subject yarn. {S1 & S2}
04/26/2016: Association recommended that Polartec contact Unifi and Nan Ya Plastics Corp. {S3} As noted below, Unifi is unable to supply the requested yarn. *See* Exhibits {Q1-6}. Nan Ya Plastics was not responsive. *See* Exhibits {T1-3}.

COMPANIES:

El Salvador:

Company: ***Exportadora Textufil, S.A. de C.V.***
Contact(s): Elias Bahaia, General Manager (elias@textufil.com)
Address: 12 Av Sur Contiguo Fabrica Diana, Soyapango, San Salvador
El Salvador

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {H1}
03/17/2016: Company advised that it could supply the yarn in December 2016. {H2}
03/18/2016: Polartec requested additional information to confirm company's ability to produce the requested yarn. {H3} No response was received from the company.
03/22/2016: Polartec followed up with company. {H4}

No response received.

Company: ***Industrias de Hilos, S.A. de C.V.***
Contact(s): Fredi Lazo, Sales Manager (sales@industriadehilos.com)
Address: Km 11.5 Carr Panamericana, Final 4ta Av Norte Ilopango
San Salvador, El Salvador

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {I1}
03/22/2016: Second request. {I2}

No response received.

Honduras:

Company: ***Honduras Spinning Mills, S.A. de C.V.***
Contact(s): Salam Saif, (salman.saif@grupokarims.com)
Address: ZOLI Cofradía, Km. 11, crrt. a Occidente, Cofradía, Cortés, Honduras

Reply and Date: 03/29/2016: Initial inquiry regarding company's ability to produce subject yarn. {J1}
04/01/2016: Second request. {J2}
04/01/2016: Company forwarded our request to Adrian in the Company's marketing department. {J3}
04/04/2016: Third request. {J4}

No response received.

Guatemala:

Company: ***Tejidos Corporativos***
Contact(s): Stefan Meany, Sales Manager (stefanmeany@yahoo.com)
Address: Km 18.5 Carr al Mayan Golf Club, Villa Nueva, Guatemala

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {K1}
03/22/2016: Second request. {K2}

No response received.

United States:

Company: ***CS America***
Contact(s): Ahmet Atahan, Sales Manager (ahmetatahan@yahoo.com)
IT Joo, President/CEO (itjoo@cscentralamerica.com)
Address: 1305 Graham Street, Burlington, NC 27217

Reply and Date: 02/4/2016: Polartec email summarizing telephone conversation in which CS America stated that they do not currently offer the subject yarn as a commercial product. {LL1}
02/04/2016: CS America response 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." {LL2}
02/24/2016: CS America requested small cone of subject yarn. {LL3}
02/25/2016: Polartec sent cone of subject yarn to CS America via FedEx (Tracking No. 775729871412) which was delivered on 2/29/2016 {LL4}
03/15/2016: Initial formal inquiry regarding company's ability to

produce subject yarn. {L1}
03/18/2016: CS America internal communication to produce a sample of requested yarn. {L2}
03/19/2016: Polartec reminded CS America that sample of subject yarn was sent to CS America on February 25th and asked for a sample by March 26 {LL5}
03/19/2016: CS America stated that they were "scheduling production" to make the requested yarn and that it was "not a running item for us and it requires fresh new production of 2 different POYs." CS America also asked whether Polartec really had "to go that much fine super micro?" CS America also apologized for not "following up right away with the receipt of the sample." {LL6}
03/21/2016: Polartec email summarizing conversation with CS America noting that: CS America indicated it has the capability to produce the subject yarn and will ship a sample by Friday 3/25/16; CS America recognized the uniqueness of the fine denier product and is confident of their ability to produce the yarn; and CS America will challenge a short supply request {LL7}
03/21/2016: CS America requested pictures of dyed fabric to "better understand the heather effect you need and compare/fine tune the blend index. {LL8}
03/21/2016: Polartec provided the picture of dyed fabric, as requested. {LL9}
03/24/2016: Telephone call between Polartec and CS America. No notes were taken during the call, however Polartec followed up with an email stating that the original request in February was for production that has already been knit and that if CS America can develop a viable yarn Polartec will switch to the CS America yarn. {LL10}
03/25/2016: CS America email to Polartec stating "I can commit to supply you with this yarn and intercept your Asian yarn needs by the end of APR{IL}…. If my yarn for some reason doesn't perform as I said earlier, you may have a better argument with me on if we are commercially ready." {LL11}
03/28/2016: CS America sent sample yarn to Polartec. {L3}
03/28/2016: Polartec email to CS America stating that Polartec is hopeful that the sample yarn sent by CS America is successful and that if CS America can demonstrate its ability to produce the yarn that the short supply designation will be temporary, if it is needed. {LL12}
04/08/2016: Polartec email stating that the heather look is ok and that the fabric is being tested. {L4b}
04/08/2016: CS America email stating that "{i}t seems the fabric with our yarn came out good except for peeling {sic} aspect of it. The sample yarn we sent out was from the Pilot machine which did not give us the best toughness in yarn spec. I can assure our production lot will eliminate any peeling issue. At least I can guarantee the same level as the Asian yarn." {L4a}

04/13/2016: Polartec sent samples of fabric produced from CS America sample yarn to CS America demonstrating laboratory test results. {L4}
04/13/2016: Meeting at an association event between Polartec and CS America. No notes were taken at the meeting.
04/18/2016: Email from IT Joo to G. Smith, President of Polartec following up on the informal meeting between Polartec and CS America. In this email CS America stated that it "could not support this 80/144 Cat/Disp getting into the short supply list." The reason for CS America's objection to the addition of Polartec's fabric was because it would jeopardize CS America's 80/72 Cat/Disp yarn business which is "the most important single item for {CS America}…." CS America also stated that they regretted offering the 80/72 in February when initially contacted by Polartec for the requested yarn instead of working with Polartec to develop Polartec's requested yarn (Exhibit LL2). {L5}
04/25/2016: CS America developed two additional sample yarns in response to Polartec's request and requested "more fabric samples to perform additional peeling {sic} test". {L6}[2]
04/26/2016: Email from CS America providing details of two additional yarn samples and shipment information. {L7}
05/02/2016: Polartec requested spec sheets for sample yarns. {L8}
05/03/2016: CS America provided Certificates of Analysis for each sample yarn. {L9}
05/27/2016: Polartec notified CS America that independent lab tests confirmed that the most recent yarn samples failed to meet Polartec's yarn specifications as noted by CS America's specifications for sample yarns. {LL13}
05/27/2016: CS America inquired as to which specific specification the yarn failed to meet and stated that they did not "see any meaningful difference in specs of my yarn vs Asian." CS America's IT Joo also stated "I may chose {sic} not to challenge if my yarn spec shows clear problems in specs." {LL14}
05/27/2016: Polartec provided the original requested yarn specifications and the independent lab test results and specifically called attention to the elongation results. {LL15}

Company: ***Dillon Yarns/Nan Ya Plastics Corp.***
Contact(s): Bob LoCola, Sales Manager (blocola@dillonyarn.com)
Address: 53 East 34th Street, Patterson, NJ 07514

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {M1}
03/18/2016: Company indicated it was unable to supply the requested yarn. {M2}

[2] Polartec did not provide additional fabric samples because Polartec had already concluded from its own testing of the yarn that the first yarn failed to meet the requested specifications.

Company: ***Michael S. Becker, Inc.***
Contact(s): Mike Becker, President & CEO (Msb_inc@bellsouth.net)
Address: 1357 Industry Drive, Burlington, NC 27216

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {N1}
03/16/2016: Company stated that it "do{es} not have the raw materials available to us to make this yarn." {N2}
04/26/2016: Polartec email to Company summarizing conversation between Polartec and Michael S. Becker, in which Michael S. Becker stated that they could not produce the requested yarn "due to technical complexities and challenges associate {sic} texturing/processing this 144 micor-denier filament product." {N3}
4/27/2016: Company email confirming Polartec's summary of the conversation stating: "this is correct." {N4}

Company: ***O'Mara, Inc.***
Contact(s): Tommy George, Sales Manager (Tgeorge@omarainc.com)
Address: 160 Fashion Avenue, Rutherford College, NC 28671

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {O1}
03/22/2016: Company indicated it was unable to supply the requested yarn. {O2}

Company: ***Sapona Yarns***
Contact(s): Pete McMichael, Executive Vice President (pdmcmichael@saponamfg.com)
Address: 2478 Cedar Falls Road, Cedar Falls, NC 27230

Reply and Date: 03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {P1}
03/17/2016: Company indicated it was unable to "source proper materials…to supply this yarn". {P2}
04/27/2016: Company email summarizing phone conversation with Polartec on 4/27/2016 {P4}[3] in which Sapona Yarns stated that "{e}ven if we could source the materials we have no experience with yarns this fine and are not confident that we could develop a suitable replacement yarn with our machine base. This is not a yarn Sapona would pursue producing even if materials were available." {P4}

Company: ***Unifi, INC***
Contact(s): Byron Sharron, Vice President of Polyester Sales

[3] No written notes were taken during the brief phone call. Instead, Polartec followed the phone call with the provided email summary.

(bsharron@unifi.com)

Address: Wayne York, Manager, Product Development (wyork@unifi.com)
7201 W. Friendly Ave., Greensboro, NC 27410

Reply and Date:

03/15/2016: Initial inquiry regarding company's ability to produce subject yarn. {Q1}
03/16/2016: Company indicated that they may be able to supply the requested yarn in El Salvador. {Q2}
03/17/2016: Email from Polartec summarizing telephone conversation with Unifi, in which Unifi indicated that they were unable to produce the requested yarn because the raw materials to produce this yarn are not available.[4] {Q3}
03/17/2016: Email from Unifi confirming that they are unable to produce the requested yarn. {Q4}
03/30/2016: Polartec verbally asked Unifi to try to produce the requested yarn despite the availability of the raw material input.
04/10/2016: Email from Unifi (Wayne York, Manager, Product Development) indicating that test production of requested yarn failed because the "quality was unacceptable and the yarn had to be wasted due to excessive streaks, uneven dying, broken filaments and nubs." {Q5} This was internal yarn production that was conducted at Unifi and no sample was sent to Polartec.
04/11/2016: Email from Unifi (Bill Rhew II) stating that "we are not able to produce this commercially for Polartec…" {Q6}

Company: ***United Yarn Produces Co., Inc.***
Contact(s): Josephine Gosman, Director of Global Sourcing (josephine@unitedyarn.com)
Address: 53 E. 34th Street, Patterson, NJ 07514

Reply and Date: 03/21/2016: Initial inquiry regarding company's ability to produce subject yarn. {R1}
03/21/2016: Company advised it did not have any sources that could supply the finished product. {R4}

Company: ***Nan Ya Plastics Corporation, America***
Contact(s): John Freeman, Assistant Director of Sales (JohnF@nalc.npcam.com)
Address: 140 E. Beulah Road, Lake City, SC 29560

Reply and Date: 05/04/2016: Initial inquiry regarding company's ability to produce subject yarn. {T1}
05/05/2016: Company advised it was primarily a POY and FDY, but they had some texturing capacity and that Polartec buys certain yarn from its distributor Dillon Yarns. See due diligence with Dillon Yarns

[4] No written notes were taken during the phone call. Instead, Polartec followed the phone call with the provided email summary.

above and at Exhibit M1-2. Nan Ya also questioned whether UNIFI could provide the yarn. {T2}
05/05/2016: Polartec indicated that it was contacting all suppliers, including Unifi, and asked again whether Nan Ya could supply the requested yarn. {T3}

No response received.

(ii) Identification of CAFTA-DR suppliers

As part of its due diligence, Polartec directly contacted the trade associations representing the CAFTA-DR countries' textile industries as a means to convey the inquiry to association members. Based on its knowledge of the industry and the nature of the subject yarn (*i.e.* 100% polyester, two-ply, etc.). Polartec identified those individual companies throughout the CAFTA-DR region that could conceivably produce the yarn in question. Accordingly, these efforts to identify CAFTA-DR suppliers were reasonable in light of the yarn at issue.

(iii) Use of Third Parties and Business-to-Business Contact

All communications were handled directly between Polartec and the individual companies and associations. Further, all contacts were made at the level appropriate to communicate information on the yarn needed, the specifications and standards, and the reason for those standards.

We note that two suppliers stated that they could potentially produce the requested yarn: Exportadora Textufil, S.A. de C.V. and CS America. As noted above, Exportadora Textufil stopped communicating with Polartec despite repeated attempts by Polartec to engage in a business-to-business discussion. We therefore, are forced to conclude that Exportadora Textufil is unable to supply the requested yarn in commercial quantities.[5]

CS America also indicated that it could produce the requested yarn and provided Polartec with three separate samples of yarn. However, CS America's stated yarn specifications and Polartec's laboratory testing revealed that each of the three CS America yarns have substantially different properties and specifications from the yarn that Polartec requires. These major differences in the specifications of the three sample yarns provided by CS America cast serious doubt on its ability to actually produce the subject yarn. It is absolutely critical that the yarn in question meet the stated performance criteria. A yarn that cannot match the stated requirements is simply unusable to Polartec and its customer and therefore is not substitutable.

[5] We also note that while Nan Ya Plastics America stated that they have "some texturing capacity" they failed to continue to engage in a business-to-business discussion regarding the fabric. In addition, Polartec's communication with Dillon Yarns, Nan Ya's distributor, indicating that they could not supply the requested yarn leads Polartec to conclude that Nan Ya is unable to supply the requested yarn in commercial quantities.

From a commercial perspective, the differences between the yarn required by Polartec and the yarns produced by CS America are significant. The technical differences and shortcomings of the yarns proposed by CS America are listed below. In particular, the elongation is inconsistent with the requirements of the subject yarn and render the proposed yarn unusable by Polartec and its customers.

Polartec's request requires that the yarn's elongation be between 30.68% and 33.93%. The CS America yarns, as depicted in the CS America yarn specification sheets, have listed elongation percentages between [***]. *See* Exhibit 1. Polartec's third-party lab testing conducted by North Carolina State College of Textiles confirmed that the all three yarns fell [***] of the acceptable range requested by Polartec. Polartec's independent third-party lab testing found that the elongation for the yarns ranged from [***]—all well [***] Polartec's elongation requirement of 30.68% to 33.93%. *See* Exhibit 2.

The elongation test demonstrates the point at which the yarn can stretch until it breaks. The [***] elongation requirement for Polartec's yarn is necessary for a variety of reasons, including the heavy brushing and napping that is done to the fabric to achieve the unique worn look and feel of the fabric. Fabric made from the CS America yarn with [***] elongation will result in a loss of integrity of the fabric. For example, during the brushing and napping process individual fibers will break with [***] force than fibers that are within Polartec's elongation requirement. As demonstrated by Polartec's lab testing of fabric produced with the first of CS America's yarn samples (Exhibit 3), the [***] broken fibers resulted in severe pilling on the surface of the fabric.[6]

Furthermore, CS America appears to concede that they are not able to supply the requested yarn (Exhibit L5),[7] and CS America's inability to provide a sample yarn that matches the requested specifications confirms that they are unable to do so. Instead, CS America clearly states that they are objecting to Polartec's request to protect another yarn that they are producing. *Id*. CS America fears that if Polartec's yarn was placed on the short supply list that its customers for a different yarn (100% polyester 80 denier/72 filament yarn) would switch their sourcing to use the short supply provision for Polartec's 80 denier/144 filament yarn. However, this concern is baseless because an 80/144 yarn is fundamentally different and cannot be easily

[6] Pilling tests of fabric produced from the CS America yarn resulted in a score of 2 on the Martindale Pilling Test, which indicates severe fuzzing or pilling. Polartec considers anything below 4 as failing. The Martindale Pilling Test is conducted with a circular test specimen of the fabric, which is passed over a friction surface comprising of the same fabric at a defined force in the form of a Lissajous figure, with the test specimen able to rotate easily around an axis through its center, perpendicular to the plane of the test specimen. Fuzzing and pilling are assessed visually after defined stages of rub testing. Polartec's standard for this fabric is 7000 rubs. Specimens are assessed against a set of photographic standards and given a numeric rating of 1 through 5, with 5 being no change and 1 being dense surface fuzzing and/or severe pilling covering the whole surface of the specimen.

[7] CS America's specification sheets for the yarn produced in response to Polartec's request indicate that the performance specifications for all three yarns are well outside the Polartec's requested specifications. CS America's failure to provide yarns, despite repeated attempts, that satisfy Polartec's requested specifications make it obvious that CS America is not capable of producing the requested yarn.

substituted for an 80/72 yarn. In particular, the 80/144 yarn is significantly finer and therefore makes it much harder to handle when knitting fabric and results in a much lighter fabric. The substantial differences between the 80/144 and 80/72 make it very unlikely that current users of 80/72 will switch to 80/144. In addition, we note that this concern was not raised by any other supplier, including Unifi who produces large amounts of 80/72 yarn.

Regardless of whether CS America's contention that customers will abandon their 80/72 yarn in favor of the 80/144 yarn is accurate or not, the decision to approve a short supply request must be based on the ability of regional suppliers to provide the requested yarn in commercial quantities in a timely manner. The speculative actions of third parties cannot impact the decision making process to add a yarn or fabric to the short supply list.

Because CS America's yarns cannot meet the requested specifications, despite repeated attempts, and it is not substitutable, we respectfully request that CITA grant Polartec's commercial unavailability request and add the subject yarn to Annex 3.25 of the Agreement.

(iv) Description of the Subject Product

The yarn specifications were provided to all potential suppliers and represents reasonable product specifications, including fiber content, yarn size and finishing processes expressed in accepted terminology and standards.

(v) Provision of Samples

As noted above, in the course of the business dialogue, Polartec provided the yarn specifications to all potential suppliers. Polartec did not provide samples of the yarn to any potential supplier.

(vi) Substitutability of Products

No company suggested any yarns that were substitutable for the subject yarn. While CS America alleged that its 80 denier/72 filament yarn and Polartec's 80 denier/144 filament yarn were identical, it then conceded that the 80 denier/144 filament yarn "obviously has a better hand feel." *See* Exhibit L5. However, as noted above, the 80/144 yarn is significantly different and cannot be substituted for 80/72 yarn because of the drastic differences in the yarn properties and in particular, weight. Polartec began working with Unifi in fall 2015 to develop an 80/72 yarn[8] that could match the performance criteria of the 80/144 yarn. These tests with various versions of 80/72 yarns resulted in a much heavier fabric that did not perform as well and were immediately rejected by Polartec's customer. Only after Polartec and Unifi ruled out the ability to use an 80/72 yarn did Polartec pursue short supply for the 80/144 yarn.

Even if we assumed that these two yarns contained the same specifications and performance properties with the exception of the number of filaments, we maintain that these

[8] At the same time, Polartec was working with Unifi to develop the requested 80/144 yarn, however, as noted elsewhere in this petition, Unifi was unable to produce the 80/144 yarn.

yarns are drastically different in their performance and cannot be substituted for each other.[9] For example, the 144 filament micro-denier yarn is necessary for moisture wicking and evaporation performance of the fabric. A primary function of the fabric produced from this yarn is to wick moisture away from the body and disperse the water into the atmosphere for quick drying. A fabric produced with 72 filament yarn does not contain the moisture wicking and drying properties required for Polartec's fabric because it contains half the surface area of the 144 filament yarn. We, therefore, submit that the 72 filament yarn cannot serve as a substitute for Polartec's requested 144 filament yarn.

(vii) Commercial Unavailability of Inputs (i.e. Downstream Products)

While three suppliers (Michael S. Becker, Sapona Yarns, and Unifi) mentioned the difficulty in obtaining certain inputs in their response to Polartec's request, all three indicated that even if they were able to obtain the qualifying inputs they would not be able to produce the requested yarn due to technical limitations. For example, Michael S. Becker indicated in a follow-up conversation with Polartec that even if the raw materials were available, they would not be able to supply the yarn due to the technical complexities and challenges associated with the production of this yarn. *See* Exhibit N3-4. Similarly, Sapona Yarns clarified that they "have no experience with yarns this fine" and that "{t}his is not a yarn Sapona would pursue producing even if materials were available." Exhibit P3.

Finally, Unifi, attempted to produce the yarn despite limitations on the availability of the inputs and was unable to produce a viable yarn. *See* Exhibit Q5. Unifi's yarn was deemed unacceptable by Unifi due to broken filaments and nubs, excessive streaks and uneven dying. *Id.* Unifi concluded that they could not make any improvements in the production process and concluded that they could not technically produce a yarn with the requested specifications. *See* Exhibit Q6.

CITA's Procedures indicate that CITA will reject a Request if it "determines that a subject product would be commercially available *but for* the commercial unavailability of a certain input of the subject product." *Procedures* at 5(a)(1) (emphasis added). Thus, CITA is only required to reject a petition if the sole reason that the subject product is not commercially available is due to the unavailability of an input. The three companies that have alleged a difficulty in obtaining an input of the requested yarn have further clarified that they could not produce the requested yarn even if they were able to obtain the input. Because none of these companies indicated they could produce the requested yarn, even with the input, the required "but for" causation is lacking and CITA, therefore, should not reject the request on "downstream product" grounds.

(viii) Polartec Has Undertaken Reasonable Efforts to Source Requested Yarn

CITA's Procedures require that requestors demonstrate that they have "made reasonable efforts to obtain the subject product from CAFTA-DR suppliers." *Procedures* at 4(b)(3). We submit that the steps outlined above demonstrate that Polartec has made

[9] In addition, as CS America admits, the 144 filament yarn that Polartec is requesting has dramatically better hand feel, which although it is not a measurable criterion, it is one that is nonetheless desirable and necessary for Polartec's customers.

reasonable efforts to source the requested yarn from CAFTA-DR suppliers. Polartec has contacted all known trade associations in the CAFTA-DR region, included specialty polyester yarn associations and all individual companies identified by the associations and others specifically identified by Polartec based on its knowledge and experience in the industry.

Of these numerous contacts, only one supplier, CS America has engaged in a business-to-business dialogue to demonstrate that it can produce the requested yarn. Polartec has made good faith reasonable efforts to source the requested yarn from CS America. Polartec has given CS America ample time to demonstrate that it can produce the requested yarn. And while CS America continues to claim that they can produce the requested yarn, their sample production has repeatedly failed to demonstrate this.

As noted above, Polartec began its attempt to develop this yarn with CS America in early February and CS America stated that they would conduct tests and keep Polartec "informed as we progress". *See* Exhibit LL1. Polartec sent CS America a sample of the requested yarn in late February. In mid-March Polartec followed up with its formal request to supply the yarn. CS America provided the first sample yarn on March 28th and stated: "I can commit to supply you with this yarn…by the end of APR{IL}." See Email dated 3/25/2016 included as Exhibit LL11. However, CS America also conceded that "{i}f my yarn for some reason doesn't perform as I said earlier, you may have a better argument with me on if we are commercially ready." *Id.* As noted previously, that first sample yarn, provided on March 28th failed to meet the requested specifications. After notifying CS America that the yarn failed to meet the requested specifications, CS America, assured Polartec that production lots would meet specifications and the failure of the sample yarn was due to the tight production timeframe and because a pilot machine was used to produce the sample.[10]

Throughout April, CS America continued development of the requested yarn and in late April provided two additional samples of the requested 80/144 yarn. These two samples also failed to meet the requested specifications. In fact, the specifications were almost identical to the first sample yarn produced. Thus, despite the additional time to refine its production processes for the second and third samples, the specifications of the yarn did not change appreciably and the samples continued to drastically underperform with regard to key specifications that are critical to the ultimate use of the yarn.

The specifications of the requested yarn were known to CS America back in February and it is clear based on CS America's own specifications as well as the test results provided by Polartec that the initial sample yarn produced in March did not satisfy the specifications of the requested yarn. CS America stated that it could meet the requested specifications and had the entire month of April to refine their production process to meet these. However, in late April, CS America offered two additional samples that—based on their own specifications and independent third party lab tests—were virtually identical to the initial sample from over a month earlier. CS America knew they were unable to produce the yarn in March and took another month to refine the production process, but failed to produce a yarn that was anywhere close to

[10] In Polartec's experience, yarns made on pilot machines should provide better performance and closer adherence to technical specifications than production machines because of the quality of pilot machines and the increased attention applied to production runs on pilot machines.

meeting the requested specifications. There was no significant progress made in the suitability of the yarns from the first sample to the third sample. CS America did not demonstrate any progress in meeting Polartec's specifications over the course of four months.

Further, we note that this yarn is technically difficult to produce as demonstrated by Unifi's attempts to produce a suitable 80/144 yarn throughout the fourth quarter of 2015 and first quarter of 2016. Unifi's realization that they did not have the technical capabilities to reliably produce the requested yarn makes us skeptical that CS America can do so despite its repeated claims to the contrary. This compounded with CS America's inability to make any progress in developing a yarn that meets the requested specifications despite four months of development forces Polartec to conclude that CS America is unable to meet the specifications for the requested yarn. It appears that CS America is not acting in good faith and knows that it is not capable of producing the requested yarn, but is instead hijacking the short supply process. Polartec has provided CS America with ample opportunity to demonstrate that it could produce a yarn within the requested specifications and CS America has failed to do so.

(4) Substitutable Products

Polartec has developed its yarn specifications to meet its customer's requirements. It is absolutely critical that the yarn in question meet the stated performance criteria because a yarn that cannot match the stated requirements would not permit Polartec to meet the demands of its customer. The specifications provided above are expressed in ranges to give producers, as much flexibility as possible, but Polartec is unaware of any yarn outside these ranges that is substitutable for the requested yarn.

Conclusion

Because the attached documentation confirms that the 100% polyester two-ply yarn that Polartec seeks is not available in commercial quantities in a timely manner from CAFTA-DR producers, and because no other yarn is substitutable for the yarn Polartec seeks, we 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.

ATTACHMENT

(CONFIDENTIAL VERSION ONLY)

Confidential version contains copies of Polartec's confidential request letters and confidential responses, as described in the foregoing letter.

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 1, 2016

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: 6/1/16