

CITA Report on Four CAFTA-DR Commercial Availability Requests for Certain Stretch Denim Fabrics:

On May 13, 2009, CITA received four requests for commercial availability determinations (“Requests”) from American Design Industries (“ADI”) for certain stretch denim fabrics. On May 15, 2009, in accordance with CITA’s procedures (73 FR 53200, September 15, 2008), CITA notified interested parties of the Requests, which were posted on the dedicated website for CAFTA-DR Commercial Availability proceedings. In its notification, CITA advised that any Response with an Offer to Supply (“Response”) must be submitted by May 28, 2009, and any Rebuttal to a Response must be submitted by June 3, 2009. On May 27, 2009, Denim North America (“DNA”) submitted Responses to each of the four Requests. On May 28, 2009, Cone Denim/International Textile Group (“Cone”) and American Cotton Growers/Plains Cotton Cooperative Association (“ACG”) also submitted Responses to the Requests. On June 1, 2009, ADI submitted Rebuttals to each of the three Responses.

The records of the proceedings, including the Requests, the Responses and the Rebuttal comments may be found at: <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf> under the following reference numbers:

115.2009.05.13.Fabric.AmericanDesignIndustries
116.2009.05.13.Fabric.AmericanDesignIndustries
118.2009.05.13.Fabric.AmericanDesignIndustries
119.2009.05.13.Fabric.AmericanDesignIndustries

The specifications of the four fabrics that are the subject of the Requests are nearly identical, such that the Requests, Responses and Rebuttals from interested entities are identical in terms of the claims and assertions made regarding a responder’s ability to supply the subject products. Therefore, for the purposes of this Memorandum, the Chairman will organize the report and analysis of the Responses and Rebuttals by responder.

Submissions on the Record of the Proceedings:

Requests by American Design Industries:

In each of the four Requests, ADI asserted that it had conducted sufficient due diligence by contacting 31 potential suppliers in the CAFTA-DR countries, including 22 mills and 9 official associations. ADI stated that it had attempted to source the subject products in the United States by contacting three U.S. industry associations and three U.S. companies that were located on a webpage provided by the Department of Commerce’s Office of Textiles and Apparel (“OTEXA”). ADI claimed that the three companies it contacted in the United States, ACG (identified by ADI as “ACG Denim”), Pro Textiles, Inc. and Pride International Corp., were identified on the OTEXA website as all U.S. suppliers of apparel fabrics of twill denim. ADI asserted that it had not received any response to its inquiries from Pro Textiles, Inc. and Pride

International Corp., and that ACG had indicated in an email response that it could not supply the subject fabrics. Based on these efforts to source the subject fabrics in the United States, as well as other unsuccessful attempts to source the fabrics from suppliers in other CAFTA-DR countries, ADI claimed that the subject fabrics were not commercially available from a CAFTA-DR supplier.

ADI's Initial Due Diligence involving U.S. Suppliers: ADI's Requests described the company's due diligence efforts to source the subject fabrics from CAFTA-DR suppliers, including potential suppliers in the United States. The company stated that not only had it contacted three U.S. industry associations, it had contacted three individual companies ADI identified as "all denim companies listed under the official OTEXA database." CITA deemed, for the purposes of accepting the Requests, that ADI's due diligence was reasonable under the requirements of Section 4(b)(3) of CITA's procedures. However, CITA notes that the "official OTEXA database" cited by ADI is not an "official" list of U.S. suppliers for the purposes of a commercial availability proceeding. The list is not an exhaustive list of all potential suppliers, and is only intended to assist potential customers in identifying U.S. suppliers of various textile and apparel products. OTEXA has now included a note on its "U.S. Suppliers Database" that states that the list of companies provided does not represent a complete list of all potential U.S. suppliers, as inclusion in the list is based on voluntary submissions by U.S. companies. OTEXA also notes that limiting due diligence efforts solely to the companies listed in the database will not be deemed as reasonably sufficient for the purposes of commercial availability proceedings.

Responses with Offers to Supply and Rebuttal Comments:

American Cotton Growers/Plains Cotton Cooperative Association:

Responses: On May 28, 2009, ACG submitted Responses to all four of ADI's Requests, stating that ACG had the ability to supply the fabrics as specified. ACG also stated that the company is the textile division of the Plains Cotton Cooperative Association and has been producing denim fabrics for over 30 years. ACG claimed that it is capable of providing the subject fabric specified by ADI from its Texas production facility within 8 weeks of receiving an order. While it has not produced the exact fabrics specified by ADI in the past 24 months, ACG stated that it has produced similar fabrics. ACG provided the specifications of a fabric it offered to supply, asserting that it met ADI's specifications "within the variance allowed." ACG also provided its current production capacity (held as business confidential) in its Littlefield, Texas facility, as well as the quantity of the subject fabric that it could supply on a weekly basis. ACG stated that it is a vertical denim production facility and has the necessary equipment to produce stretch denim fabrics. ACG also asserted that while it does not have in-house core spun yarn capability, it can source the yarns specified from CAFTA-DR suppliers, providing the names of those suppliers (held as business confidential) from which it had sourced yarns for more than a decade. Finally, ACG acknowledged that it had engaged in dialogue with ADI during the due diligence process. However, when ACG received ADI's inquiry, it had mistakenly thought that the fabrics' specifications were based on the English system rather than metric, and, therefore, responded that it could not supply the fabrics. After being notified of the Requests, ACG

recognized that ADI's specifications were in metric, and stated that it is able to supply the subject fabrics.

Rebuttals: In its June 1, 2009 Rebuttals, ADI claims that ACG had the opportunity to supply the subject fabrics prior to the filing of the Requests, but failed to do so. ADI claims that if ACG had been interested in supplying the fabrics, it would have done so prior to the filing of the Request. ADI further states that ACG does not have core spun yarn capability, did not provide any detailed information about its machinery, and has not produced the fabrics as specified. ADI claimed that ACG never made an actual offer to supply the subject fabrics in its Responses. Finally, ADI argued that ACG's statements regarding its ability to supply the subject products do not meet CITA's requirements that a Response include an offer to supply, and should be deemed as "general comments."

Cone Denim/International Textile Group:

Responses: In its Responses, Cone objected to ADI's Requests and stated its ability to supply all four of the fabrics as specified. Cone stated that it had not been contacted by ADI during the due diligence process, but that the company is able to supply the subject. In each of its Responses, Cone described itself as a vertically integrated company, with facilities in North Carolina, Nicaragua and Mexico. Cone stated that not only could its North Carolina facility produce the subject fabric, that its currently idled plant in Nicaragua is prepared to resume production, and that it could utilize its Mexican facilities, as the fabrics would still qualify for duty-free treatment under the CAFTA cumulation provisions. While it held the brands of the equipment used in its North Carolina and Nicaraguan facilities as business confidential, it described equipment used for more than 10 stages of production of stretch denim fabrics. Cone also provided the quantity of stretch denim it had produced in the last 24 months in the CAFTA-DR region, as well as its current capacity (both held as business confidential).

Rebuttals: In its Rebuttal comments, ADI stated that it had met with the staff of Cone's facility in Nicaragua on many occasions. ADI claimed that it had raised concerns that Cone's current equipment could not produce the fabrics it required, and that Cone had acknowledged that it could not provide fabrics that would meet ADI's specifications. ADI stated that Cone's Nicaraguan facility is closed indefinitely and that "there is no one even answering the phones." ADI argued that Cone's Response is insufficient because it does not contain information on the equipment that would be used to produce the subject fabric or the fabric's construction and finishing. Finally, ADI asserted that because Cone only stated that it had the ability to produce the subject fabric, and never made an actual offer to supply the subject fabrics, CITA should consider the Responses as general comments and should be rejected.

Denim North America:

Responses: In its Responses to the four Requests, DNA advised CITA of its objection to ADI's Requests and stated its ability to supply all four of the specified fabrics in commercial quantities

in a timely manner. In each of its Responses, DNA provided the quantity (held as business confidential) of stretch denim it had produced at its Georgia production facility in the last 24 months, noting that it could easily shift any or all of its production to accommodate new orders. DNA also noted that for the past ten years, it has used Picanol air-jet looms to weave denim fabrics. DNA acknowledged that some modifications would be required in order to meet ADI's specifications exactly, including the installation of new reeds for its looms and sourcing the specified yarns. DNA asserted that it could make those adjustments quickly and deliver the specified fabrics to ADI in a timely manner, and that it has sufficient production capacity to meet ADI's needs. DNA claimed that had ADI contacted DNA prior to filing its Requests, the company would have offered to supply the subject fabrics.

Rebuttals: ADI submitted Rebuttal comments to DNA's Responses to each of the four Requests. In each of its Rebuttals, ADI claimed that DNA had "failed to demonstrate that it is capable of producing the subject fabric in commercial quantities in a timely manner..." ADI stated that as part of its due diligence efforts, it had contacted the National Council of Textile Organizations ("NCTO"), a trade organization for the U.S. textile industry. ADI noted that DNA was a member of NCTO, and claimed that NCTO's purpose was to monitor short supply petitions. ADI also argued that DNA had acknowledged that not only had the company not produced the exact fabric as specified, it did not currently have the necessary equipment for production. Finally, ADI claimed that because DNA never made an actual offer to supply the subject fabrics, and only stated that it was capable of producing the subject fabrics, DNA's Responses are insufficient because they provide only "general comments" and no "measurable criteria to take (the Response) seriously."

Analysis:

Requirements for Responses with Offers to Supply: ADI argued in its Rebuttals to all Responses that while the responders had all stated their ability to supply the subject products, none of the Responses included an "offer to supply" in accordance with CITA's procedures, and should therefore be rejected as general comments. However, ADI has misinterpreted CITA's requirements for Responses. Under Section 6(a) of CITA's procedures, a Response must include an objection to the Request and a statement of the responder's "ability to supply the subject product by providing an offer to supply the subject product." CITA's procedures do not require that the Response include the term "offer to supply." As a result, Responses that include an objection to the Request and a statement that the responder is able to supply the subject product are not general comments and meet CITA's requirements for Responses. All of the three responders' Responses included an objection to the Requests and statements of an ability to supply the subject products. Therefore, ADI's claims that the Responses from all three responders are general comments rather than offers to supply are unsubstantiated.

American Cotton Growers/Plains Cotton Cooperative Association: In Rebuttals to ACG's Responses, ADI asserted that ACG had been given the opportunity to offer to supply the subject fabrics in the course of ADI's due diligence, but that it had indicated that it could not supply the

subject fabrics. ADI also argued ACG did not demonstrate that it could supply the subject products in its Responses, given that it had not produced the subject fabrics, it did not have the ability to produce the core spun yarn necessary for production, and that it had not included any information on its machinery. In its Responses, ACG acknowledged that it had been contacted by ADI prior to the filing of its Requests. However, ACG explained that it had told ADI it could not supply the subject fabrics because it had mistakenly assumed that the fabrics' specifications were in the English cotton system, rather than in the metric measurements ADI had specified. Section 6(b)(3)(vi) of CITA's procedures states that if a responder did not respond in the course of the requestor's due diligence, a reasonable explanation was required in the Response. In this instance, ACG offered a reasonable explanation why it had initially indicated that it could not produce the subject fabrics. ADI also reported its past production and current capacity (held as business confidential) of similar stretch denim fabrics and asserted that, while it could not produce core spun yarns, it could acquire the yarns from CAFTA-DR suppliers. While ACG did not provide detailed information about the equipment it would use to produce the subject fabrics, ACG's description of its past production and current capacity, and its statement in its Responses that it had all the "necessary production equipment" to produce stretch denim fabrics as specified, satisfy the requirements of section 6(b)(3).

Cone Denim: In all of its Rebuttals to Responses from Cone, ADI stated that it had been in contact with Cone's Nicaraguan facility over the last two years, and claimed that it did not source fabrics from Cone because Cone acknowledged that it did not have the necessary machinery to produce fabrics to ADI's specifications. ADI asserted that Cone had the opportunity to offer to supply prior to the filing of the Requests, and that Cone could not supply now because its Nicaraguan plant had been shut down. However, there is no evidence to support these claims, in either its Requests or its Rebuttals, or of any contact with Cone in the course of due diligence. Also, there is nothing in CITA's procedures that would bar a CAFTA-DR supplier from submitting a Response, irrespective of whether the supplier had participated in a requestor's due diligence efforts prior to the filing of a Request. Moreover, in its Responses, Cone stated that its Nicaraguan facility was prepared to resume production, as well as its Mexican facilities. In addition, Cone reported that its North Carolina facility had produced similar stretch denim fabrics in the last 24 months, and had the necessary equipment to supply the subject products. ADI did not address Cone's claims regarding its North Carolina and Mexican plants in its Rebuttals. ADI claimed that Cone had not provided any description of the equipment involved in production, and did not provide any information about fabric construction, finishing or timelines for delivery. However, Cone did provide information on its equipment in its confidential versions of its Responses in satisfaction of Section 6(b)(3) of CITA's procedures. Moreover, given that Cone indicated that it could supply the subject fabrics as specified in a timely manner, Cone was not required to provide additional information as to the construction of the fabric it would supply or a timeline for production and delivery.

Denim North America: In its Rebuttals to DNA's Responses, ADI made mention of the fact that it had contacted the National Council of Textile Organizations ("NCTO") in the course of its due diligence efforts to inquire whether the subject products were available from its member companies. ADI asserted that NCTO had not responded to its inquiries, and alluded that there was a relationship between NCTO and DNA, as DNA is a member of the association. However, ADI never contacted DNA directly during the course of its due diligence. Moreover, as stated

above with respect to Cone, under Section 6(a) of CITA's procedures, DNA is not prohibited from submitting a Response to a Request, irrespective of whether NCTO or DNA had been contacted by ADI. ADI also claimed that DNA affirmed that it had not made the specified fabrics, but did not offer any substitutable product. ADI further argued that DNA acknowledged that it did not have certain equipment necessary for production of the subject fabrics, and that the supplier had not provided any information on the construction and finishing of the fabrics DNA claimed to be able to supply. However, DNA's description of its past production of similar products and descriptions of equipment used to produce the subject product satisfies the requirements of Section 6(b)(3)(iii) of CITA's procedures. While DNA did acknowledge that it did not currently have the yarns and reeds necessary to produce the fabrics as specified, it explained that it could easily acquire these materials and produce the fabrics in a timely manner. Also, because it claimed to supply the fabrics as specified, DNA was not required to provide any additional information on the construction or finishing of the subject products.

Determination by CITA:

Section 203(o)(4)(C)(ii) of the CAFTA-DR Implementation Act provides that after receiving a request, a determination is made whether the subject product "is available in commercial quantities in a timely manner in the CAFTA-DR countries." In the four pending proceedings, three separate CAFTA-DR suppliers submitted Responses indicating that they could supply the subject fabrics. In all four cases, while the information concerning the quantities of the subject fabric that could be produced was held as business confidential, the responders' reported capacity would satisfy the quantities required by ADI. CITA finds that all three companies, ACG, Cone, and DNA, provided sufficient information in their Responses to support their claim that they could supply the fabrics as specified in ADI's Requests in commercial quantities in a timely manner. The CITA also finds that ADI's Rebuttals did not demonstrate the responders' inability to supply the fabrics, as ADI's arguments were not substantiated by the facts presented on the record.

In accordance with Section 203(o) of the CAFTA-DR Implementation Act, Article 3.25 of the CAFTA-DR, and CITA's procedures, in considering a Request pursuant to the commercial availability provisions of the CAFTA-DR, should CITA determine that a subject product is available in commercial quantities in a timely manner in the territory of any Party to the CAFTA-DR Agreement, CITA will deny the Request. CITA finds that the information on the record of the four proceedings does not support ADI's assertions that the subject fabrics are not available in the CAFTA-DR countries in commercial quantities in a timely manner. Therefore, CITA denies the Requests.