

CITA Report on CAFTA-DR Commercial Availability Request
for Certain Yarn-Dyed Striped Poplin Fabrics:
121.2009.05.15.Fabric.SS&AforCintasCorp

On May 15, 2009, CITA received a request for a commercial availability determination (“Request”) from Sorini Samet & Associates LLC, on behalf of Cintas Corporation (“Cintas”) for certain yarn-dyed striped poplin fabrics. On May 19, 2009, in accordance with CITA’s procedures (73 FR 53200, September 15, 2008) (“procedures”), CITA notified interested parties of the Request, which was 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 June 1, 2009, and any Rebuttal to a Response must be submitted by June 5, 2009. On June 1, 2009, Alston & Bird, LLP, on behalf of Springfield LLC (“Springfield”), submitted a Response to the Request. On June 5, 2009, Cintas submitted a Rebuttal to the Response.

The record of the proceeding, including the Request, the Response and the Rebuttal may be found at: <http://web.ita.doc.gov/tacgi/CaftaReqTrack.nsf> under the following reference number: 121.2009.05.15.Fabric.SS&AforCintasCorp

Submissions on the Record of the Proceeding:

Request by Cintas:

In its Request, Cintas described the subject fabric as a yarn-dyed striped poplin to be used in the manufacture of uniform apparel. In its product description of the subject fabric, Cintas noted that the finishing process required moisture management, pre-cure permanent press, and 10% mechanical stretch in the filling direction. Cintas explained that it had been sourcing the subject fabric from Russell Corporation (“Russell”) but that the Alabama plant notified Cintas that it was no longer taking orders. Cintas included in its Request a copy of the notice from Russell (held as business confidential) [which referred to Russell’s understanding that Cintas had sufficient supply through 2009 and safety stock into the first quarter of 2010]. Cintas asserted that it had made a thorough exploration of potential suppliers in the CAFTA-DR countries. There was no indication that Cintas contacted Springfield prior to filing the Request.

Response with an Offer to Supply by Springfield:

Springfield offered to supply the subject fabric, meeting all specifications of the Request. Springfield noted that, even though it supplies other fabrics to Cintas, the requestor had not contacted the company in the course of due diligence, though Springfield believed that the oversight was inadvertent. Once Springfield had been notified of Cintas’ Request, it engaged Cintas in a dialogue about the subject fabric.

Springfield stated that it was a manufacturer of woven uniform fabrics made of polyester, polyester blends, cotton, cotton blends and many other synthetic fibers. Springfield further explained that while it had not made fabric meeting the exact specifications of the subject fabric or a yarn-dyed poplin in the past 24 months, it had sufficient expertise in the manufacture of

similar woven uniform fabrics to produce a fabric of the required specifications. Springfield reported its production of poplins and yarn-dyed fabrics in the last 24 months, and noted that the quantity requested by Cintas could easily be met by Springfield's current capacity. Springfield further noted that it had recently acquired new equipment and hired additional staff in order to meet demand for yarn-dyed striped fabrics that had previously been supplied by Russell. Springfield explained that it would work with current suppliers to spin and dye the specified yarns, specifically Parkdale Mills and/or Wellstone Mills for the greige yarns, and Burlington Manufacturing Services for yarn dyeing. As for finishing, Springfield stated that it was possible that the fabric could be finished in-house, but that it may contract with two other companies, Yates Bleachery Co., and King America Finishing to provide some of the finishing processes. In attachments to its Response, Springfield provided information on these companies, indicating that the named suppliers were in the business of providing products and services as claimed by Springfield.

Springfield reported that due to Russell's departure from the industry, it had taken steps to expand its capacity and increase its efficiency in the production of yarn-dyed, striped fabrics. Springfield asserted that it had acquired additional equipment and hired additional staff, including personnel with expertise in yarn-dyed fabrics, which would enable it to be even better prepared than in the past to supply Cintas with the subject fabric.

Springfield stated that it had been in recent communication with Cintas regarding lead times for production. The responder explained that after Cintas had sent samples, Springfield would analyze the samples to determine yarn colors that would match the sample after finishing. Once a sample had been approved by Cintas, Springfield reported that it could produce an initial quantity of 11,500 square meters of fabric toward Cintas' annual production requirement of 138,000 square meters.

Rebuttal Comments by Cintas:

In its Rebuttal, Cintas explained that it had not contacted Springfield in the course of due diligence because the responder has never supplied Cintas with yarn-dyed shirting fabrics. Cintas reported that it had been in contact with Springfield's manager for certain fabrics not the subject of this Request, including yarn-dyed shirtings. However, Springfield never advised Cintas that it could supply fabrics that meet the specifications included in the Request, even though it was well aware of Cintas' need for woven yarn-dyed poplin fabric.

Cintas argued that Springfield's assertion that it had the capability to produce the subject yarn-dyed poplin fabric was based only on Springfield's past production of non-yarn-dyed poplin fabrics, and yarn-dyed striped fabrics. Cintas asserted that just because Springfield has produced poplin fabrics and other yarn-dyed striped fabrics, it does not mean that it is capable of making a completely different type of fabric – namely, yarn-dyed poplins. Cintas also claims that Springfield described its past production experience without sufficient detail, only stating that “yarn sizes, fiber contents, and other details vary across orders.”

Cintas argued that Springfield's proposal to coordinate suppliers necessary to produce the subject fabric was insufficient. Cintas stated that while Springfield had identified a number of potential

suppliers, it had not done any due diligence with those suppliers regarding the subject fabric, nor had Springfield presented information regarding timetables or offers. Cintas argued that it had experience with similar “consortium supply models” involving Springfield. Cintas explained that it had been approached by former Dan River managers to supply yarn-dyed shirtings through a consortium of suppliers. Cintas stated that the consortium performed poorly in terms of delivery and quality. Cintas reported that when one supplier could not continue, the commercial lender involved with that supplier contacted Springfield for the “purpose of managing the business through WIP and raw materials ran-out.” Cintas argues that given its past experience with consortium supply models, it would need additional details about Springfield’s proposed business model to be confident that it would be a legitimate supplier of the subject fabric in commercial quantities in a timely manner.

Cintas asserted that Springfield could not accurately estimate delivery dates of the subject fabric when “dealing with a consortium of suppliers and service providers.” Moreover, Cintas claimed that Springfield’s proposed timeframes did not include the time Cintas would need to perform extensive product reliability testing, reportedly beyond industry-standard testing, on the responder’s samples. Cintas further argued that it would be an “arduous and time-consuming task” and that it would exceed the time of Russell’s anticipated closure in August 2009.

Analysis:

Due Diligence on the part of Cintas and Springfield: In its Rebuttal, Cintas claims that Springfield “was well aware of Cintas’s need for woven yarn-dyed poplin fabric” but “never attempted to market the fabric in question to Cintas.” However, there is no evidence that Springfield was aware of Cintas’s need to find a new supplier prior to the filing of the Request. This point notwithstanding, CITA notes that nothing in its procedures, specifically under Section 6(b)(4), which outlines the requirements for a Response, requires that a responder contact a requestor prior to the filing of a Request if it had not been contacted in the course of due diligence.

Springfield’s Ability to Supply the Subject Product: Under Section 6(b)(3)(iii) of CITA’s procedures, a Response must include “detailed information on (a responder’s) current ability to make the subject product in commercial quantities in a timely manner. Such information could include current production capacity, current loom availability, and standard timetables to produce.” Section 6(b)(3)(iv) of CITA’s procedures requires that, if a responder has not produced the subject fabric, it can provide information regarding “past production of similar products and/or descriptions of equipment and identification of suppliers necessary to produce the subject product.” Cintas argues that Springfield’s “past production of poplin fabrics (not yarn-dyed) and its production of yarn-dyed striped fabrics (not poplin)” is insufficient to substantiate Springfield’s ability to supply the subject fabric. However, CITA notes that, based on its knowledge of textile production, the production processes for yarn-dyed and other types of poplin fabrics are substantially similar and use similar equipment.

Springfield reported that it had produced substantially greater quantities of poplin in the past 24 months than the 138,000 square meters required by Cintas in its Request. Again, based on

CITA's knowledge of textile production, CITA finds that Springfield's expertise in weaving other poplin fabrics is essentially the same as it would need to produce a yarn-dyed poplin. Moreover, the responder's past production of non-poplin yarn-dyed fabrics also demonstrates Springfield's familiarity with the use of such yarns in the weaving process. Springfield also reported that once it had become aware of Russell's departure from the industry, it had taken steps to expand its ability to produce yarn-dyed fabrics by acquiring equipment to provide greater efficiency in weaving such fabrics and hired new staff which had the skills and experience to produce yarn-dyed fabrics. Finally, Springfield provided information about its proposed timetables, which includes the time to analyze Cintas' existing samples and work with its suppliers to produce its own samples for Cintas' inspection. Springfield also provided a timetable to produce the fabric once Cintas approved the sample, and reported that it had more than enough capacity to supply Cintas with the quantity it required.

In its Rebuttal, Cintas argues that Springfield "offers an insufficient proposal to effectively coordinate a consortium of suppliers to produce the subject fabric." However, CITA notes that the consortium supply model is standard in the industry for textile manufacturers that are not vertically integrated. Since Springfield is not a vertically integrated mill, it must source certain inputs from outside suppliers, including yarns and certain finishing services. According to Springfield, it supplies other fabrics to Cintas. Therefore, Cintas should be aware that Springfield would require suppliers for yarns and possibly for finishing processes. Cintas stated that it had a previous poor experience with a consortium supply model in which Springfield was involved. However, the example which Cintas reported in its Rebuttal did not indicate that Springfield was directly involved or that it had any control of the suppliers for that program, and that its inclusion in the production program came late in the process.

In addition, given that Cintas has an existing relationship with Springfield, had the requestor had any past experience with Springfield's poor performance regarding quality or delivery, Cintas had the opportunity to report such experiences as a demonstration of Springfield's inability to supply the subject product. Cintas made no such report. Cintas also argued that Springfield has not done its due diligence with respect to its suppliers, noting that it had not provided any information on timetables or offers. However, under Section 6(b)(4)(v) of CITA's procedures, a responder need only provide the "identification of suppliers necessary to produce the subject product." In this instance, Springfield has identified the suppliers it would need for yarns and finishing processes. Contrary to Cintas' assertions, Springfield is not required to either contract with those specific suppliers for the purposes of manufacturing the subject fabric at the time of its Response, or provide detailed information regarding its arrangements with those suppliers.

Finally, Cintas argued that the timeframes included in Springfield's Response are not accurate because they fail to account for the time Cintas requires to test sample production under its unique laundering conditions. CITA notes that there is nothing in the description of the subject product to indicate that it required performance criteria beyond industry standards. Cintas is purportedly trying to find a new supplier to source the subject fabric, given that its current supplier will cease its production of yarn-dyed poplins in August 2009. Therefore, Cintas will presumably have to source the subject fabric from a new supplier, and would have to go through the same testing process regardless of whether Springfield or some other company supplies the fabric. Further, as Cintas has an existing relationship with Springfield and did not report any

problems with Springfield as a supplier, Cintas has not demonstrated that there would be greater concern regarding the quality or delivery times of Springfield's products more than any other new supplier. Lastly, Cintas argued that should it attempt to source the fabric from Springfield, by the time it would take to develop a sample, test that sample under Cintas' conditions, and have the fabric produced and delivered, it may exceed the time of Russell's anticipated closure. However, in Cintas' Request, its own supporting documentation includes evidence that would not support its argument that Cintas cannot accommodate a timetable offered by Springfield.

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." CITA finds that Springfield provided sufficient information in its Response to support its claim to supply the fabric as specified in the Request in commercial quantities in a timely manner. CITA also finds that Cintas' Rebuttal did not demonstrate Springfield's inability to supply the subject fabric, and that Cintas' 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 does not support Cintas' assertion that the subject fabric is not available in the CAFTA-DR countries in commercial quantities in a timely manner. Therefore, CITA denies the Request.