



Consulting and Government Affairs Practice
700 13th Street, NW, Suite 930
Washington, DC 20005
Telephone: 202.393.4481
Fax: 202.393-4494
www.ssa-dc.com

REBUTTAL TO RESPONSE WITH AN OFFER TO SUPPLY

- - PUBLIC VERSION - -

December 19, 2011

Ms. Kim Glas
Chair, Committee for the Implementation of Textile Agreements
Office of Textiles and Apparel
U.S. Department of Commerce
14th and Constitution Ave., NW
Washington, DC 20230

Re: Rebuttal to Response with an Offer to Supply from Pettenati
File No. 161.2011.11.29.Fabric.SS&AforHansollTextileLtd

On behalf of Hansoll Textile, Ltd. (“Hansoll”, “Requestor”), and pursuant to the Committee for the Implementation of Textile Agreements’ (“CITA’s”) *Modified Final Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement* (“CAFTA-DR”) set forth in 73 Fed. Reg. 53200 (September 15, 2008) (“Final Procedures”), Sorini, Samet & Associates LLC (“SS&A”) submits this Rebuttal Comment (“Rebuttal”) to Pettenati Centro America, S.A. de C.V.’s (“Pettenati”, “Respondent”) Response With an Offer to Supply (“Response”), regarding the subject fabric described in the pending Commercial Availability Request (“Request”) No. 161.2011.11.29.Fabric.SS&AforHansollTextileLtd.

For CITA to accept the Pettenati Response as a *bona fide* Offer to Supply would be entirely inconsistent with the Final Procedures and undermine the entire Commercial Availability process that CITA has worked diligently to put into practice. Consequently, consistent with the Final Procedures, Pettenati’s Response to the Request should be disregarded by CITA.

First, the record clearly shows that Pettenati completely failed to respond to Hansoll’s repeated requests as to whether Pettenati would be willing to supply the subject fabric. Four separate requests were sent by Hansoll to Pettenati over a 30-day period, from

October 19 to November 18, 2011 seeking to engage Pettenati in the appropriate and necessary business-to-business dialogue. Not a single response was received by Hansoll from Pettenati. To allow Pettenati's failure to respond to repeated attempts at business-to-business communications to be the basis upon which Pettenati can subsequently file a Response with an Offer to Supply would render meaningless the purpose of the due diligence process and provide an incentive to companies to not respond to due diligence inquiries and to simply ignore the procedures CITA has established.

Second, the record does not show at any point that Pettenati was confused about the fabric specifications, and the detailed discussion about the denier conversion point is only a straw man they are seeking to use to *ex post facto* justify their complete failure to respond to the four business-to-business contacts from Hansoll. Moreover, there is no basis for any alleged confusion because they had available to them denier specifications in both metric and English measurements. Indeed, in their initial response to the initial inquiry from a third party (SS&A) that included the fabric specifications, Claudia Villacorta said on October 4, 2011 Pettenati does have the ability to produce the fabrics "in commercial quantities, along with requested performance criteria and with the supposed kind of yarn."¹ At no point in this process did Villacorta or anyone at Pettenati indicate any confusion or seek clarification about any of the specifications of the subject fabric, including the denier measurement or anything else. Pettenati simply failed to respond to the four business-to-business contacts from Hansoll.

Third, there is no basis in the Response to conclude that Pettenati can actually provide the fabric in commercial quantities in a timely manner consistent with normal business practice. Pettenati's claim is entirely contradictory, in that it states it has made the exact fabric in solid-color in 2011 and also has not made the fabric in the last 24 months. Pettenati also stated it would need four-to-six months to make the fabrics, without a supporting explanation, which is outside the normal course of business and an extraordinarily long lead-time.

Given the facts on record, to permit consideration of Pettenati's Response with an Offer to Supply would be entirely inconsistent with CITA's efforts to establish a viable and well-balanced process to thoughtfully consider the interests of all parties in the CAFTA-DR Commercial Availability process. Consequently, CITA should disregard the Response submitted by Pettenati and approve the pending Request.

If Pettenati is serious about its capabilities to supply the subject fabric, rather than simply seeking to obstruct legitimate commerce under the terms of the CAFTA-DR, it would have every right and opportunity under CITA's procedures to file a request to have this fabric removed from CAFTA-DR Annex 3.25.

¹ A record of this communication is included in the business confidential version of the Request.

Specific Rebuttals to Arguments and Evidence in the Response, in Sequence.

Section (1). No rebuttal.

Section (2). No rebuttal.

Section (3)(i), (ii) and (iii). The information supplied in Section 3(i), (ii) and (iii) of Pettenati’s submission is insufficient to support a Response with an Offer to Supply. As detailed below, the information is unclear regarding Pettenati’s experience and capabilities in producing the subject fabric. Pettenati’s Response simultaneously claims that:

(1) “Pettenati has not produced the exact product or a substitutable product in the preceding 24-month period,”² and that “Pettenati would need approximately 4-6 months lead time;”³ and

(2) “in 2011 Pettenati developed the exact solid-color fabric with DWR finishing, which is the type of fabric requested by Hansoll.”⁴

The statements above seem to indicate that Pettenati has not made the subject fabric or a substitutable fabric in the past two years, but also that Pettenati made the exact fabric in solid-color required by Hansoll in 2011. These statements are not only contradictory, but also the information presented in these two statements raises serious concerns about Pettenati’s experience and capabilities, including:

1. As quoted above, Pettenati claims it would need approximately four-to-six months lead time to produce the subject fabric, and the variation between four and six months would depend on the source of the yarn. However, Pettenati offers no justification for the extremely long lead-time, which is outside of the normal course of business. Simply declaring a four-to-six month lead-time without any justifying information does not constitute the ability to supply in a timely manner, even if Pettenati had not ever produced the fabric.
2. Pettenati clearly states above that it produced the exact fabric in solid-color required by Hansoll in 2011. Pettenati also makes this claim in three other areas of the Response.⁵ Such a claim leads Hansoll to question why Pettenati would need four-to-six months to supply the fabric. If Pettenati produced the fabric for

² Response, page 4, section (3)(i)

³ Response, page 4, Section (3)(iii)

⁴ Response, page 4, section (3)(ii)

⁵ Page 3, paragraph 2. Page 5, Section (3)(v). Page 7, Section (4)(i).

an unnamed buyer in 2011, to Hansoll’s exact specifications, it should be able to make an offer to supply the fabric to Hansoll with lead-times within the normal course of business.

3. Not only does Pettenati claim to have produced the exact solid-color fabric requested by Hansoll in 2011, but Pettenati also delivered the fabric to an unnamed buyer, with whom Pettenati is currently negotiating. This claim makes Pettenati’s lack of business-to-business dialogue with Hansoll even more inexplicable and unjustifiable.

Any of the aforementioned issues is justification for CITA’s disregard of the Response submitted by Pettenati. The information provided in the Response is inconclusive, inconsistent and cannot be basis of a legitimate Response with an Offer to Supply the subject fabric in commercial quantities in a timely manner.

Section (3)(iv). Pettenati inaccurately states that the Requestor, Hansoll, promised to provide Pettenati with a sample. In fact, without providing any reasonable explanation, Pettenati admittedly ignored every attempt Hansoll made to establish a business-to-business dialogue.⁶

Section (3)(v). If Pettenati is able to supply “the exact fabric that is subject of the Request,” then CITA’s Final Procedures require Pettenati to make and substantiate such a claim directly to the Requestor, Hansoll, during Hansoll’s undertaking of due diligence.⁷

Section (3)(vi). The Final Procedures require a Respondent to “provide a reasonable explanation in its Response as to why it did not respond to earlier inquiries by the Requestor in the course of due diligence.”⁸ Pettenati cites its communications with a third party (SS&A)⁹ and confusing criteria in Hansoll’s email inquiry as rationale for not engaging in direct business-to-business dialogue with Hansoll. This explanation is not reasonable for purposes of the Final Procedures. First, once Pettenati expressed an interest to SS&A in supplying the fabric, subsequent dialogue between SS&A and Pettenati is irrelevant for purposes of the Final Procedures because SS&A is a third party. Second, confusion is not a reasonable explanation. The denier numbers were consistently available to Pettenati. Moreover, Pettenati stated to SS&A that Pettenati could make the fabric without reference to any confusion about the denier numbers or any other specifications. Any alleged confusion by Pettenati regarding fabric specifications are only an attempt to manufacture an *ex post facto* rationale as to why Pettenati entirely ignored four separate attempts at business-to-business dialogue by Hansoll. Indeed, any alleged confusion could have been clarified in an email exchange with Hansoll.

⁶ Response, page 7, line 2

⁷ Final Procedures, section 6(b)(4)(i)

⁸ Final Procedures, section 6(b)(3)(vi)

⁹ Description of communications between Pettenati and a third party (SS&A)

After Pettenati was first contacted by a third party (SS&A) and expressed an initial interest in supplying the subject fabric, Hansoll attempted to engage in business-to-business dialogue with Pettenati. Per Section 4(3)(iii) of CITA’s Final Procedures, “Once interest is expressed between requestors and CAFTA-DR suppliers, subsequent communications should be conducted by appropriate officials of the requestor and CAFTA-DR supplier based on normal business practice.” As is clearly documented in the business confidential version of the Request, Hansoll, the Requestor, attempted to establish a business-to-business dialogue with Pettenati on four occasions, and Pettenati did not respond to any of Hansoll’s attempts. Pettenati admits that Hansoll’s direct attempts at business-to-business dialogue were ignored.¹⁰

Section (3)(vi). Pettenati claims that Hansoll’s Request did not mention Pettenati’s email of September 30, SS&A’s email of October 3, SS&A’s email of October 5, Pettenati’s email of October 5, and Pettenati’s email of October 13, 2011. These emails were documented in the business confidential version of the Request, and they were not included in the due diligence record described in Section III of the public version of the Request because the communications between Pettenati and the third party (SS&A) took place after Pettenati expressed interest in supplying the subject fabric, and therefore the communications were not relevant under the Final Procedures. Only direct business-to-business communication with Hansoll would have been relevant to record in the Request.

Pettenati claims it has no record of receipt of follow-up emails on November 15 and 18, 2011. Regardless of whether CITA considers a valid argument a claim of non-receipt of communications, the record clearly shows that Pettenati admits to intentionally ignoring the first two attempts at business-to-business communications from Hansoll. Copies of the follow-up emails are included in the business confidential version of the Request.

Section (4)(i). In paragraph one, Pettenati claims it was responsive to the Requestor. This is false because Pettenati inaccurately refers to a third party, SS&A, as the Requestor, when in fact Hansoll is the Requestor per Section 2(g) of the Final Procedures. SS&A is a third party for purposes of the Final Procedures. Pettenati never responded to due diligence communications from the Requestor, Hansoll, and therefore Pettenati’s statements under section (4)(i)-paragraph one of the Response are false.

In paragraph two, Pettenati includes information about its alleged capabilities and experience with the subject similar fabrics, but at no time was this information provided to the Requestor during the course of due diligence. Pettenati never responded to the Requestor in the undertaking of due diligence, and therefore the information presented in section (4)(i)-paragraph two is irrelevant.

¹⁰ Response, page 7, line 2

Section (4)(ii). Pettenati never responded to due diligence communications from the Requestor, Hansoll, and therefore Pettenati's statements under section (4)(ii) of the Response are false.

Section (4)(iii). Pettenati never responded to due diligence communications from the Requestor, Hansoll, and therefore Pettenati's statements under section (4)(iii) of the Response are false.

Section (4)(iv). Pettenati never responded to due diligence communications from the Requestor, Hansoll, and therefore Pettenati's statements under section (4)(iv) of the Response are false.

Section (4)(v). Pettenati never responded to due diligence communications from the Requestor, Hansoll, and therefore Pettenati's statements under section (4)(v) of the Response are false.

Section (4)(vi). Pettenati never responded to due diligence communications from the Requestor, Hansoll, and therefore Pettenati's statements under section (4)(vi) of the Response are false.

Section (4)(vii). No rebuttal.

CONCLUSION

For the reasons described in this Rebuttal, Hansoll urges CITA to disregard the Response submitted by Pettenati, and to determine that the subject fabric is unavailable in the CAFTA-DR region in commercial quantities in a timely manner.

Pettenati had ample opportunity to respond to Hansoll's multiple attempts to engage in business-to-business communications about the subject fabric, and the Response offers no reasonable explanation for Pettenati's lack of engagement. It would entirely undermine all of CITA's prior efforts to carefully establish a balanced process that takes into consideration all competing interests to accept a Response to a Request where due diligence documentation clearly shows the Respondent entirely failed to respond to business-to-business contacts with the Requestor. To deny a Request based on this circumvention of the Final Procedures would serve to incentivize potential suppliers to disregard the requirements under the Final Procedures, and would undermine the integrity of the CAFTA-DR Commercial Availability process, and could undermine trade and investment under the CAFTA-DR.

Under the Final Procedures, a Respondent must provide CITA with a clear demonstration of its ability to supply the subject fabric. Pettenati's Response did not provide such a demonstration. The CAFTA-DR Commercial Availability procedures offer mechanisms for Pettenati or any interested entity that develops new capabilities to petition to remove

items from CAFTA-DR Annex 3.25. Until such capabilities are truly proven, Hansoll urges CITA to approve the pending Request.

If you have any questions or require further information with regard to this Rebuttal, please contact Keith Jenkins at (202) 393-4481 x201, or kjenkins@ssa-dc.com.

Sincerely,



Keith Jenkins
Sorini, Samet & Associates, LLC

December 19, 2011

Date