EMBAJADA DE LA REPÚBLICA DOMINICANA
1716 22ND STREET N. W.
WASHINGTON, D. C. 20008

EDW-183-08

July 9, 2008

Mr. R. Matthew Priest
Chairman
Committee for the Implementation of Textile Agreements
U.S. Department of Commerce
Room H3100A
14th Street & Constitution Ave., NW
Washington, DC 20230

PUBLIC VERSION

Re: Rebuttal Comments to DR-CAFTA Short Supply Request by Monte Textil/File Number 73.2008.06.18.Fabric.govofDominicanRepublic

Dear Mr. Chairman:

The following rebuttal comments are being submitted in response to Comments made by Monte Textile (Monte) regarding our request to add a certain fabric to Annex 3.25 of the DR-CAFTA (File number 73.2008.06.18.Fabric.govofDominicanRepublic).

Monte has failed to demonstrate that it has the capability to make the fabric in question. In fact, based on information Monte presents in its Response, it is clearly not capable of producing the subject fabric. Monte has systematically refused to provide samples of the subject fabric in support of its claim. Instead, it has presented in its Response a broad recitation of its general production capabilities. Finally, the comments submitted by Monte should have been rejected by CITA because they do not fulfill the requirements for a response with an offer in a commercial availability proceeding as required under the Committee's Final Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic – Central America United States Free Trade Agreement (Federal Register Vol. 72, #13256 hereinafter "Procedures"). Specifically:

- The Response indicates that Monte cannot produce the requested product, and does not dispute Requester's stated requirement that fabrics with variations in specifications are not substitutable
- The Response does not contain an "offer to supply"
- The Response does not provide data on its production
- The Response does not provide detailed information regarding Monte's abilities
- The Response does not provide an indication of the timeliness of its asserted capability.

The Response clearly indicates that Monte cannot produce the subject fabric

The subject fabric is made in part from single yarns with an average yarn number falling within a range of 74-78 metric. However, Monte states unequivocally in its Response that it can

only produce fabrics of single yarns ranging from 5 to 68 metric. This statement is identical to communications made by Monte last year, when Juan Carlos Castaneda stated on October 15, 2007, "We can only produce fabrics up to 40 denier yarns". In its Response to our previous Request, dated June 27, 2007, Monte made an identical statement . Further, and as noted in our previous Request relating to this fabric, Monte's website clearly stated that its production range ends at 68 metric. Thus, it is patently clear, from Monte's own statements, that it cannot produce the subject fabric.

A fabric made from 40/1 yarns differs markedly from a fabric made from 45/1 yarns in terms of hand, feel and drape. A fabric containing 40/1 yarns is not substitutable as it would not possess these properties and would be unacceptable to the Customers of apparel manufacturers in the Dominican Republic, importers in the United States, and the ultimate consumers.

Monte does not make any representations whatsoever regarding the substitutability of a fabric that it could make for the subject fabric. It is therefore clear that Monte is not intending to produce a fabric that is substitutable for the subject. Instead, Monte is making a mistaken claim that it can produce the subject fabric as specified in our Request.

Monte also includes numerous superfluous and meaningless data in support of its claim that it can produce the subject fabric. For example, it claims it can produce fabrics of polyester, but the subject fabric does not contain any polyester; that it can produce twisted or 2 ply yarns, but the subject fabric is made of singles yarns; that it prints fabrics, but the subject fabric is dyed, not printed. Monte does not include in this statement a claim to be able to manufacture, or has experience manufacturing, fabrics containing spandex, other than its claim to be able to make the subject fabric. One can only assume that Monte has never made fabrics containing spandex and does not have the ability to do so. Thus, Monte's Response demonstrates that it is not capable of making the subject fabric.

The subject fabric is a unique and very dense fabric containing over one hundred picks per square centimeter. Previously, Monte provided to Grupo M a fabric swatch book, presumably intended to show the breadth of its capabilities. However this substantial collection, which contains numerous fabric samples, does not contain a fabric that approaches the subject fabric in terms of density. This leads one to question Monte's claim that it is able to produce the subject fabric.

The Response does not provide sufficient information on its capabilities to produce the subject fabric

Monte provides a brief, generalized overview of its capabilities to produce cotton and/or polyester fabrics: "We spin yarn, weave, print, dye and finish fabrics…" Such a statement could be made by virtually any vertically integrated mill in the world, yet provides no detail as to whether Monte has the specific ability to produce the fabric in question.

Monte also states in its Response that it can "make any constructions (sic) of warp ends per cm and filling picks per cm". This is a significant claim. It is doubtful that any single mill in the world is capable of producing every possible construction commercially made. If Monte is indeed capable of making any construction whatsoever, this statement should provide some

description of its machinery and other special capabilities that allow them to make such a massively wide variety of fabrics. Indeed, the Procedures require Responders to provide details of their production capabilities. However, as noted below, Monte made general statements without providing details of necessary capabilities. As such, we find no basis for CITA to accept this unsubstantiated claim. Further, the Response provides no information in this regard on which to make an informed determination. CITA should therefore ignore it.

Had Monte provided the requisite information, it would be very useful to all parties in determining whether Monte is truly capable of making the subject fabric or not. The missing information speaks volumes by its omission and buttresses our position that Monte cannot produce the subject fabric.

We also note that Monte provided identical language in support of its Responses on seven separate fabrics. Such Responses provide "general information" contrary to CITA requirements. These substantively identical Responses include a reference to its ability to produce only fabrics with a yarn number of 68 metric or less. In one instance , the blanket statement was clearly at odds with the stated claim of being able to produce the subject fabric – one with a yarn number in excess of 68 metric. While it is obvious that this particular Response contained an internal contradiction, it illustrates carelessness in providing a generic Response, and a lack of due diligence that CITA requires in preparing such a document. Further, it casts doubt on the veracity and applicability of all of the remaining statements in the document.

A Response that does not include the requisite details, as is the case with Monte's Response, is meaningless. It should be rejected.

Samples

Monte does provide some detail with respect to its policy for producing samples for prospective customers. The production of a sample for a prospective customer is a normal and standard business practice that is observed by virtually every fabric producer on the planet. No potential customer could rationally be expected to issue purchase orders to a mill merely on the mill's self serving statement that it can produce the fabric. However, Monte has apparently taken on a new policy with respect to samples that differs markedly from these standard business practices.

Monte claims in its Response that it will not provide a sample unless a potential customer agrees to purchase 100 yards of the proposed fabric at an unspecified "development cost" in an unspecified time. This is a highly unusual practice. As noted in our Request, ADOZONA polled its largest apparel exporting members to determine their normal business practices with respect to payment for samples. Virtually none has ever been requested to pay for the production of a fabric sample, whether for a new or existing supplier, other than the recent requests made in connection with this exercise. Further, this practice is a departure from Monte's own practices.

- In May 2007, Monte promised to send samples to Grupo M . At no time during that dialogue did Monte suggest that payment for samples would be required.
- During the July 2007 meeting, an officer of Monte stated that they normally negotiated prices prior to the production of counter samples, yet made no mention of any charges for the

production of those samples.

- During October, 2007, Grupo M and Monte Textil had several communications regarding the subject fabric and others. Prices were negotiated. It was after the negotiation of prices that Monte initially made a request to be paid for sample production.

Monte did, reportedly, provide samples of this specific fabric to CITA last year, but these samples were never made available to the Government of the Dominican Republic, Grupo M, or their representatives. We have no way of knowing whether this sample meets the specifications required under the Request. If Monte had samples on hand, the samples should have been provided to Grupo M.

The possession of a sample meeting the required specification would indicate past experience producing the subject fabric. However, Monte does not make any claims whatsoever as to its past experience making the subject fabric. As noted below, one can only come to the conclusion that Monte has never made the subject fabric. We therefore doubt that the sample submitted to CITA last year met the required specifications.

The Response fails to meet many of the requirements under CITA's Procedures

The comments submitted by Monte fail to meet CITA requirements, significantly in the following manner:

1. The response does not contain an "offer to supply". CITA procedures require that

> "6. Submitting a Response in a Commercial Availability Proceeding.
> (a) Response Submission. An interested entity may file a response submission to a request CITA accepted advising CITA of its objection to the request and its ability to supply the subject product by providing an offer to supply the subject product as described in the request." (emphasis added)
>
> Monte's response states only that its "standard business practice" is to sell an order of a minimum of "100 yards of fabric" at the "cost of fabric development". Hence, the establishment of capability is speculative as to the time required, the cost and the certainty of its success in producing an acceptable sample. It cannot constitute an offer to supply. It is an offer to attempt to develop with a open ended cost.

2. The Response does not provide data on its production of the subject fabric. CITA procedures in Paragraph 6(b)(3) require that:

> ...a party "report the quantity, in metric units, that the CAFTA-DR supplier produced of the subject product, or a substitutable product, in the preceding 24-month period". Monte's Response does not do so. One can only assume that Monte has not produced the subject fabric during the most recent 24-month period.

The Procedures further require, for products that have experienced cyclical demand or are not currently produced, that the Responder indicate the quantity that has been supplied or offered commercially in the past, with an explanation of the reasons it is not currently produced or

offered. Monte fails to make any mention of its production of the subject fabric whatsoever. It is therefore apparent, based on Monte's statements, that it has never produced the subject fabric.

3. "The response must provide detailed information regarding the supplier's ability to supply the subject product of the request." (CITA Frequently Asked Questions). Monte Textil's request contains general statements on many critical issues, including:

a. "most modern machinery" without specifying the manufacturers or model numbers;

b. "more" fabric styles" without specifying the detailed capability of the new machinery;

c. "quality and production has increased" without providing detailed information on either;

d. "a lot" of fabric developments without providing detailed information on the relevant fabric; and

e. "We are "capable of producing" the sateen (98% cotton, 2% spandex) in the Petition even though Monte's description of what it produces in the previous paragraph fails to meet the specified Yarn Numbers in the Petition, and fails to include any products other than cotton and polyester or their blends.

4. Monte Textil does not raise an argument concerning the supply of substitutable products or Grupo M's stated requirement of fiber content, yarn sizes, construction or any other physical parameter. Without raising substitutability in its Response, Monte has accepted Requester's requirements.

5. Monte Textil does not provide an indication of the timeliness of its asserted capability to supply the product requested by the petition, including the time required for "product development". The response does not reach the timeliness of supply.

Conclusion

The information set forth by Monte in its Response is woefully inadequate with respect to the information that CITA requires to be included in such documents. Monte does make a few generalized statements about its capabilities that by no means provide the information that CITA requires in order to reject the petition. Further, Monte's own statements specify that they are expressly incapable of making the subject fabric and do not question the Petition on substitutability. Finally, if Monte possessed the capability it could simply provide a sample of the subject fabric to its potential customers. It reportedly provided some samples related to the prior Request on this fabric, but these samples were not made available to Petitioner or determined to conform to the Request's specifications. Instead, Monte has devised a series of ever changing and unconventional "policies" with respect to developing and providing samples. These actions do not indicate that Monte is capable of making the subject fabric nor is making a bone fide offer to supply the fabric in commercial quantities in a timely manner.

Flavio D. Espinal
Ambassador

EMBAJADA DE LA REP. DOMINICANA EN WASHINGTON, D.C.