

**STATEMENT OF WILLIAM C. SJOBERG,  
ADDUCI MASTRIANI & SCHAUMBERG, LLP  
BEFORE  
THE COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS  
IN  
161.2011.11.29.FABRIC.SS&AFORHANSOLLTEXTILELTD  
162.2011.11.29.FABRIC.SS&AFORHANSOLLTEXTILELTD  
JANUARY 9, 2012**

The purpose of my statement today is to provide, on behalf of Pettenati Centro America, S.A. de C.V. ("Pettenati"), legal support for Pettenati's December 13, 2011, Responses with an Offer to Supply (the "Responses") to Sorini Samet & Associates LLC's ("SS&A") November 28, 2011, Commercial Availability Requests filed on behalf of Hansoll Textile, Ltd. ("Hansoll") (the "Requests") and also to correct the mistaken legal assertions made by SS&A, on behalf of Hansoll, in its December 19, 2011, Rebuttals to Pettenati's Responses with an Offer to Supply (the "Rebuttals").

As a preliminary matter, I note that most of SS&A/Hansoll's arguments focus on the issue of whether SS&A is the "Requestor" pursuant Section 2(g) of CITA's *Modifications to Procedures for Considering Requests Under the Commercial Availability Provision of the Dominican Republic-Central America-United States Free Trade Agreement* 73 Fed. Reg. 53,200, 53,201 (Dep't Comm. 2008) (the "*MFP*"). According to SS&A/Hansoll, once Pettenati expressed a potential willingness to SS&A supply the requested fabric, all subsequent correspondence between SS&A and Pettenati was rendered meaningless. *See, e.g.*, Rebuttals at 4 ("[O]nce Pettenati expressed an interest to SS&A in supplying the fabric, subsequent dialogue between SS&A and Pettenati is irrelevant for purposes of the [*MFP*] because SS&A is a third party."). However, in accordance with the *MFP*, that is not the case.

Section 2(g) of the *MFP* defines a "requestor" as the following:

(g) *Requestor*. The "requestor" refers to the *interested entity* that files a Request, either a Request or a Request to Remove or Restrict, under the CAFTA-DR Commercial Availability provision, for CITA's consideration.

*MFP*, 73 Fed Reg. at 53,201 (emphasis added).

Section 2(b) of the *MFP* defines "interested entity" as the following:

(b) *Interested Entity*. An "interested entity" means a government that is a party to the Agreement, other than the United States; a potential or actual purchaser of a textile or apparel good; or a potential or actual supplier of a textile or apparel good. CITA recognizes that a legal or other representative may act on behalf of an interested entity. See section 203(o)(4)(B)(i) of the CAFTA-DR Implementation Act.

*MFP*, 73 Fed Reg. at 53,201.

Based on the foregoing, it is unquestionable that CITA recognizes that "Interested Entities" and "Requestors" can be synonymous. The only difference being that, to be considered a "Requestor," the "Interested Entity" must have filed a Request, which is exactly what SS&A/Hansoll did. SS&A is not a third party. Indeed, it has acted on behalf of Hansoll to file both the Requests and the Rebuttals that are subject to this hearing. SS&A and Hansoll combine to form the Requestor in these proceedings. At no time did SS&A or Hansoll indicate to Pettenati that Hansoll's inquiries were something other than serious and credible. At no time did SS&A indicate to Pettenati that Pettenati should look only to Hansoll for the "real" inquiries. For SS&A/Hansoll to now characterize SS&A's role as a third party is disrespectful to CITA, its procedures memorialized in the *MFP*, and the Commercial Availability Request process. Pettenati would like to reserve some time at the end of this hearing for further discussion of this issue *en camera*.

Given that analysis, I would like to now turn to the first issue, which also happens to be the first issue addressed by SS&A/Hansoll in its Rebuttals. Apparently, it is SS&A/Hansoll's position that because Pettenati did not respond to Hansoll's direct inquiries, i.e., those made directly by Hansoll and not through its surrogate, SS&A, Pettenati somehow "rendered meaningless the purpose of the due diligence process and . . . provide[d] an incentive to companies to not respond to due diligence inquiries and . . . simply ignore[d] the procedures CITA has established." Rebuttals at pages 1-2.

Nothing could be farther from the truth. As set forth on page 5 and Exhibits 5-6 of the Responses, Pettenati stopped responding to SS&A/Hansoll's inquiries when SS&A/Hansoll failed to provide the promised samples and lead times, i.e., on October 5, 2011, SS&A/Hansoll promised to provide samples of the requested fabrics (Responses at page 5 and Exhibit 5), on that same date Pettenati responded with the location to send the sample and information (Responses at page 5 and Exhibit 5), on October 13, 2011, Pettenati followed up with SS&A/Hansoll as to the status of the promised sample and information (Responses at page 5 and Exhibit 6), and SS&A/Hansoll did not fulfill its promise. Thus, contrary to SS&A/Hansoll's arguments, Pettenati did respond to the Requestor's due diligence inquiries and only stopped when the Requestor failed to fulfill a previous promise, which, if fulfilled, would have enabled Pettenati to continue the due diligence process.

The second issue I would like to address is that set forth on page 3 of the Rebuttal associated with Request 162.2011.11.29.FABRIC.SS&AFORHANSOLLTEXTILELTD. SS&A/Hansoll appears to be arguing that because Pettenati's capacity for the subject fabric of 228,600 linear meters per month is allegedly less than SSA/Hansoll's required (and confidential)

capacity for the subject fabric, CITA should grant SS&A/Hansoll's Request. Nonetheless,

Section 8(c)(3)(i) of the *MFP* states the following:

CITA may approve the Request in a restricted quantity if CITA determines that a CAFTA-DR supplier(s) can partially fulfill the Request for the subject product. The restricted quantity specifies the amount of the subject product that can be provided by the CAFTA-DR supplier(s).

*MFP*, 73 Fed. Reg. at 53,205. Thus, even if Pettenati cannot supply the quantity demanded by SS&A/Hansoll, should the Requests be approved, they should be approved with a "restricted quantity." In addition, Polartec, LLC's ("Polartec") Response with an Offer to Supply should also be considered when evaluating SS&A/Hansoll's requested quantity, as Polartec has also asserted that it too can produce the subject fabric in commercial quantities and supply it in a timely manner.

Following in sequence, I would like to address SS&A/Hansoll's erroneous claim that "the Requestor . . . [did not] promise[ ] to provide Pettenati a sample." Rebuttals at page 4 addressing Section (3)(iv) of the Responses. As previously stated, SS&A/Hansoll simply ignores the clear language of the *MFP*. A "Requestor" is an "Interested Entity." An "Interested Entity" can be a "legal or other representative . . . act[ing] on behalf of an interested entity." SS&A is clearly an "other representative" acting on behalf of Hansoll. SS&A, on behalf of Hansoll, promised to provide samples of the subject fabrics and lead times to Pettenati. When Pettenati did not receive the samples and information, Pettenati contacted SS&A, Hansoll's representative, to inquire as to the status of the samples and information, and did not receive a response. It is unclear to Pettenati why it should have begun the due diligence process anew when contacted directly by Hansoll, after having been through a series of inquiries and responses with Hansoll's representative SS&A, and after the latter stopped corresponding with Pettenati. If Hansoll was

sincere in its inquiries, it would not have started with the exact same inquiry with which SSA started (*compare* SS&A/Hansoll's September 30, 2011, e-mail to Pettenati, Responses at page 5 and Exhibit 3, *with* SS&A's/Hansoll's October 19, 2011 e-mail to Pettenati, Responses at page 5 and Exhibit 7), but instead would have fulfilled its promise by providing Pettenati with samples of the subject fabrics and requested lead times so that the due diligence process could continue.

SS&A/Hansoll also argue that "CITA's Final Procedures require Pettenati to make and substantiate [its claim that it is able to supply 'the exact fabric that is the subject of the Request'] directly to the Requestor, Hansoll, during Hansoll's due diligence." Rebuttals at page 4 addressing Section 3(v) of the Responses. As far as Pettenati is concerned, it made and substantiated its claim to the Requestor, SS&A, Hansoll's representative. *See MFP*, Sections 2(g) and 2(b). To then be forced to repeat its responses to Hansoll directly after having already corresponded with Hansoll's representative would amount to Pettenati having wasted its valuable time. Hansoll's position begs the question of why did it hire SS&A in the first place, if not to act on its behalf? If SS&A is acting on Hansoll's behalf, the two entities are indistinguishable for purposes of this proceeding.

Continuing Hansoll/SS&A's previously established theme of SS&A being a third party and, as such, SS&A apparently not acting on behalf of Hansoll, SS&A/Hansoll state that 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." Rebuttals at page 4 addressing Section (3)(vi) of the Responses. SS&A/Hansoll attempts to support its argument by citing Section 4(b)(3)(iii) of the *MFP* wherein CITA states the following:

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.

*MFP*, 73 Fed. Reg. at 53,203.

SS&A/Hansoll confuses CITA's definitions of Requestor/Interested Entity with its own self-serving concept of a third party. As now stated repeatedly, the *MFP* considers an "other representative," such as SS&A, an "interested entity that files a Request" to be a "Requestor" for purposes of the *MFP*. See *MFP*, 73 Fed. Reg. at 53,201 (Sections 2(g) and 2(b)). SS&A filed the Requests on SS&A's letterhead. It is inconceivable that a "Requestor" can also be the third party referenced above. Indeed, what is SS&A, but an appropriate official of the requestor? Pettenati is at a loss to identify record correspondence wherein Hansoll instructs Pettenati to no longer recognize SS&A as Hansoll's official representative for purposes of the Requests.

In addition, SS&A/Hansoll's position that SS&A is a third party harms its argument on pages 4-5 of the Rebuttals, which uses Section 4(b)(3)(iii) as the basis for that position, because critical language in that section is "[o]nce interest is expressed *between* requestors and CAFTA-DR suppliers." *MFP*, 73 Fed. Reg. at 53,203 (Section 4(b)(3)(iii)) (emphasis added). If Hansoll is attempting to claim that Pettenati's correspondence with SS&A was not between a CAFTA-DR supplier and a Requestor, it cannot also use the language of Section 4(b)(3)(iii) to argue that Pettenati's expression of interest satisfied that provision. According to SS&A/Hansoll, SS&A is a third party, in which case any interest that Pettenati expressed to SS&A would not qualify under this section. SS&A/Hansoll cannot pick and choose which due diligence correspondence is relevant for its argument.

The final issues that I would like to address today, before making one request and then presenting confidential information in an *en camera* proceeding, are set forth on pages 5-6 of the Rebuttals, which address Sections 3(vi) and 4(i)-(vi) of the Responses, alleging that Pettenati did not respond to SS&A/Hansoll's due diligence communications. With regard to those issues, SS&A/Hansoll relies on its erroneous position that SS&A is a third party and not an "Interested Entity" and, thus, a "Requestor" pursuant to the *MFP*. I have already addressed this erroneous position by establishing that, pursuant CITA's *MFP*, SS&A is an "Interested Entity" representing a potential or actual purchaser of the subject fabric and, thus, is a "Requestor" for purposes of this proceeding. As set forth in the Responses, Pettenati responded to SS&A/Hansoll's due diligence inquiries and only stopped because it was waiting for SS&A/Hansoll to fulfill its prior promise to supply a sample and information regarding lead times. In fact, when SS&A/Hansoll did not respond, Pettenati even followed up with SS&A/Hansoll to inquire regarding the status of the sample and information. Thus, it is not Pettenati that stopped the due diligence process, but the Requestor, SS&A/Hansoll.

The previously mentioned request that I have, before we break for a confidential discussion, is a request that SS&A/Hansoll describe the business of Hansoll. For the record, I am interested in whether Hansoll is a textile manufacturer that produces textiles and sells those textiles to apparel manufacturers or is an integrated textile and apparel manufacturer that produces textiles and, from those textiles, produces apparel for sale in the market.

Thank you. I am available to answer any questions you may have that may be discussed in this public forum.