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## REBUTTAL TO RESPONSE WITH AN OFFER TO SUPPLY

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- - 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  
14<sup>th</sup> and Constitution Ave., NW  
Washington, DC 20230

Re: Rebuttal to Response with an Offer to Supply from Polartec  
File No. 162.2011.11.29.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 Polartec, LLC’s (“Polartec”, “Respondent”) Response With an Offer to Supply (“Response”), regarding the subject fabric described in the pending Commercial Availability Request (“Request”) No. 162.2011.11.29.Fabric.SS&AforHansollTextileLtd.

### **Rebuttal Summary**

Polartec’s Response submitted to CITA does not meet the requirements of a respondent under the Final Procedures regarding due diligence. The Final Procedures state that during the course of the Requestor’s undertaking of due diligence, the CAFTA-DR supplier “must have stated its ability to supply or not supply the subject product.”<sup>1</sup>

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<sup>1</sup> Final Procedures, Section 6(4)(i)

Polartec’s response to the original due diligence was unequivocal: that the Respondent, Polartec, does not produce the subject fabric, and the Respondent did not pursue further engagement regarding the subject fabric. The only explanation offered for the failure to comply with the Final Procedures is that the Respondent had not considered the capabilities of a business partner that could participate in a hypothetical supply chain to produce the subject fabric.<sup>2</sup> Such an attempt to oppose a valid Request that adhered to the Final Procedures should not be allowed by CITA.

In addition, and an equal justification for CITA to dismiss the Response, Polartec’s Response does not meet the requirements of a respondent under the Final Procedures regarding production capability. A respondent “must provide detailed information on its current ability to make the subject product in commercial quantities in a timely manner.”<sup>3</sup> The information provided in the Response is general, not detailed and references potential supply chain participants by name, yet the Response provides no or insufficient information regarding their operations and capabilities with regard to the subject fabric.

CITA should conclude that the information provided in Polartec’s Response falls outside the requirements of a requestor in the Final Procedures, and if given deference by CITA it would undermine the CAFTA-DR Commercial Availability process.

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

1. In paragraph three of the Response, Polartec inaccurately claims to have supplied certain information regarding its past production capabilities to SS&A. Polartec states:

“On October 26, 2011 we received a due diligence inquiry from Keith Jenkins of Sorini, Samet & Associates asking if we could supply a 100% polyester 3 end fleece product in both solid and heather heather fabrics. We replied that we did not currently produce 3 end fleece fabric but had produced in the past a number of 3 end fleece fabrics with the knitting machinery we owned at the time. This is posted in the record on 27 October 2011.”

SS&A did in fact send a due diligence inquiry to Polartec on October 26, 2011, as indicated in the Response; however, below is the response received by SS&A from Polartec on October 27, 2011:

“We do not produce 3 end fleece. If you are interested in a [\*\*\*] then we can discuss.”

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<sup>2</sup> Response, paragraph four

<sup>3</sup> Final Procedures, Section 6(3)(iii)

No other information was provided in Polartec's email of October 27, 2011 than what is quoted above. Polartec's response to SS&A's inquiry did not address its past production capabilities. Polartec's email of October 27, 2011 definitively states that Polartec does not produce 3 end fleece fabrics. A full copy of Polartec's email response to SS&A is included in the business confidential version of the Request.

It can perhaps be inferred that Polartec is attempting to merge the substance of Polartec's due diligence exchange with the substance of an entirely separate email exchange on October 7, 2011 between SS&A and another third party, [\*\*\*], who is known to serve as an outside consultant for Polartec. The attempted merging of the substance of these two entirely separate exchanges may be an attempt by Polartec to augment Polartec's actual response to the due diligence inquiry for the purpose of satisfying the requirements of a respondent under the Final Procedures.

SS&A's dialogue with [Mr. Sentementes] predated SS&A's October 26-27, 2011 due diligence exchange with Polartec by over two weeks. [\*\*\*] informed SS&A that Polartec does not manufacture 3 end fleece, and [\*\*\*] also informed SS&A that Polartec used to manufacture such fabrics in the early 1990s. Although not relevant for purposes of the Final Procedures because neither third party meets the definition of a requestor or a CAFTA-DR supplier, a copy of this correspondence is included in the business confidential version of this Rebuttal.

The record clearly shows that Polartec did not supply information regarding its past production of three-end fleece to SS&A on October 27, 2011 or any other date. Such information regarding Polartec's past production capabilities was supplied to SS&A by a third party before Polartec was ever contacted during the due diligence process. The information presented by Polartec in its Response attempts to convey that Polartec presented SS&A with more detail about its past production capabilities than was actually stated. CITA now has access to the full record of all communications.

The information on record confirms Polartec has not made three-end fleece fabrics for approximately two decades. Polartec did not address its past production capabilities, or express its intent to produce three-end fleece in the future, in the due diligence exchange with SS&A. Polartec also did not address its past production capabilities, or express its intent to produce in the future, with SS&A or Hansoll at any point between the time of due diligence until the date the Response was publically filed with CITA. The first time SS&A or Hansoll learned from Polartec that it had past production capabilities and a desire to supply the subject fabric, was in Polartec's Response with an offer to supply. This Response an Offer to Supply is well outside the parameters of CITA's requirements of a respondent and the absence of any direct dialogue by Polartec with Hansoll is contrary to CITA's Final Procedures.

2. Paragraphs four and seven of the Response cite the capabilities of another greige knitter, Beverley Knits (“Beverley”), for which Polartec includes additional, yet insufficient, information regarding Beverley’s ability to supply the subject fabric. Paragraph seven indicates Beverley does not currently possess 28-cut cylinders to make the exact style requested by Hansoll. Hansoll’s specifications for the subject fabric indicate the need for a 28 gauge fabric, which requires a 28-cut cylinder. The lack of required machinery by a contract supplier clearly demonstrates that the Respondent does not provide sufficient information under the Final Procedures. The claim that a contract supplier will purchase additional machinery, without providing details on the needed machinery, time frame to acquire or the contract supplier’s past experience with new machinery is not sufficient to support a legitimate offer to supply.

Further, in paragraph seven Polartec cites Beverley’s capacity to be in excess of 200,000 yards of greige per month. Hansoll’s fabric specifications that were sent to Polartec indicate a maximum need of over [\*\*\*] yards per month,<sup>4</sup> which is [\*\*\*] than Beverley’s capabilities as stated by Polartec. The stated inability of a contract supplier to meet the demands of the Requestor’s quantity clearly demonstrates that the Respondent does not provide sufficient information under the Final Procedures.

In paragraphs four and eight of the Response, Polartec cites other firms in the CAFTA-DR region have the machinery and capability, through which Beverley could manage the production of additional greige fabric to meet Hansoll’s needs. Specifically, Polartec cites the capabilities of Contempora Knitting, Clover Knits and Texpasa, without citing any supporting information. Citing companies that would make up [\*\*\*] requires much more detailed information than just the name of a company to support a legitimate Response with an offer to supply under the Final Procedures. No further information on production capability or lead-times is provided for Contempora Knitting, Clover Knits or Texpasa, and therefore the citing of such suppliers by name does not meet the requirements of the Final Procedures for submitting a Response. Indeed, the Response does not provide sufficient information to demonstrate that the proposed Polartec-led supply chain could supply the subject fabric in commercial quantities in a timely manner.

## **Conclusion**

For the reasons described in this Rebuttal, Hansoll urges CITA to disregard the Response submitted by Polartec, and to determine that the subject fabric is unavailable in the

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<sup>4</sup> Polartec only supplies the quantity values in English measurements, where the Final Procedures require a respondent to provide a conversation to metric units. Final Procedures, Section 6(b)(2).

CAFTA-DR region in commercial quantities in commercial quantities in a timely manner.

The CAFTA-DR Commercial Availability procedures offer mechanisms for Polartec, 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 requests that CITA 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](mailto:kjenkins@ssa-dc.com).

Sincerely,



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Keith Jenkins  
Sorini, Samet & Associates, LLC

December 19, 2011

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Date