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The Director, Investigations 3
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CANBERRA ACT 2601

By email: investigations3@adcommission.gov.au

Dear Sir/Madam,

**Re: Dumping Investigation No. 548 – Certain Kraft Paperboard Exported to Australia from the United States of America.
Submission by the Applicant – Visy Glama Pty Ltd (“Visy Glama”)**

We refer to the submission of Graphic Packaging International LLC and Graphic Packaging International Australia Converting Ltd (collectively referred to as “GPI”) dated 13 May 2020.

We also refer to GPI’s further submission uploaded to the public record on 4 June 2020.

Sections 1-3 of this submission in reply deal with GPI’s submission of 13 May 2020 and section 4 of this submission in reply deals with GPI’s further submission of 4 June 2020.

Visy Glama notes the contentions of GPI raised in its submissions and wishes to make it clear that such contentions do not have any validity based up the facts of this case, or at law. In particular, Visy Glama’s position is that it is self-evident from the commercial background to this case that the products sold by Visy Glama and GPI are completely substitutable and there should be no controversy around this issue.

Fundamentally, Visy Glama is seeking protection against dumped imports for its niche microflute business, being a 0.7mm thick premium quality paper based product (also known

as “N” flute) that is almost exclusively used to manufacture large format beverage multi-packs.¹ GPI is mischievously and without merit seeking to create confusion and conjecture by aggregating Visy Glama’s microflute product with a significantly thicker (typically 1.5 - 1.8 mm) mass produced cardboard product that is known in the industry as “E” flute. This E flute product, due to its vastly different thickness and strength, has a wide variety of uses in food and industrial packaging but is rarely, if ever, used in beverage can multi-packs. The Commission should not let GPI’s confused and fundamentally flawed submissions distract it from the accurate analysis as set out in the Commission’s Consideration Report.

Visy Glama will now deal with each of GPI’s contentions raised in its submission of 13 May 2020.

1. GPI CONTENTION: THE INJURY CLAIMED BY VISY IS NO GREATER THAN THAT LIKELY TO OCCUR IN THE NORMAL EBB AND FLOW OF BUSINESS.

GPI asserts specifically that the application is based upon loss of a single contract² and that this is not actionable conduct under Part XVB of the *Customs Act* because the claimed injury is not greater than the normal ebb and flow of business.³ GPI cites the Ministerial Direction of Material Injury 2012 in support of its contention.⁴

The Ministerial Direction provides the Commission with additional guidance on the question of the identification of material injury pursuant to s269TAE of the *Customs Act*. Section 269TAE(1)(g) prescribes that, in making a finding of material injury to an Australian Industry, regard may be had to any effect that the exportation of goods has had or is likely to have on the relevant economic factors in relation to the Australian Industry. Relevant economic factors are listed in s269TAE(3) and include such factors that are relevant to this case such as a loss of sales, loss of market share, reduced profitability and price depression.

The Ministerial Direction is designed to clarify certain aspects of s269TAE (and not supplant its application). In this regard, GPI has been very selective and misrepresents the Ministerial Direction in that the Ministerial Direction makes it clear that dumping measures are warranted where the injury is material in degree and, in addition, that the nature of the material injury will depend upon the circumstances of each case.

In this case, Visy Glama fully rejects the proposition that its complaint is simply a consequence of the normal ebb and flow of business. It further rejects the assumption that this case is premised on the loss of one supply contract. In this regard Visy Glama notes the following considerations:

¹ Miscellaneous microflute production includes [REDACTED] [CONFIDENTIAL – DESCRIPTION OF OTHER PRODUCTS] [REDACTED] [CONFIDENTIAL – CONTRACT AND PRODUCTION INFORMATION]

² GPI submission paragraph 3

³ GPI submission paragraph 1

⁴ GPI submission paragraph 2

- Visy has suffered significant and material economic harm as a direct consequence of dumping in the form of lost sales, loss of market share, reduced profitability and price depression. The Commission has correctly identified these and other factors in its Consideration Report.
- The nature of the beverage packaging industry is such that the supply arrangements involve long term single customer contracts (often at least five years) for the supply of very large quantities of packaging (across multiple sizes). These supply arrangements frequently involve heavy capital investment that is specific to the customer's requirements. Further, the industry for the supply of the goods under consideration involves a small number of suppliers and customers. Hence, it is very much the case that the loss of one major contract can result in material injury to Visy Glama. Contrary to the assertions of GPI, Visy Glama is not basing its application on emotive or "knee-jerk" considerations and Visy Glama treats the taking of anti-dumping action extremely seriously and does not take these decisions lightly.⁵
- GPI further asserts that there were non-price reasons why Visy Glama lost a major customer contract.⁶ Visy Glama completely rejects this contention. This is not correct based on the evidence. Prior to the loss of a major supply contract, Visy Glama had been supplying that same customer with the same product for approximately [REDACTED] **[confidential – period of contract]**, so it was clearly fit for purpose. Further, the only material issue raised by the customer to Visy Glama in its initial feedback on Visy's contract offer was that of price. Visy subsequently put [REDACTED]
[REDACTED]
[REDACTED]
[confidential – description of commercial negotiations] It is also noted in any event for completeness that dumping (eg by virtue of price undercutting) does not have to be the sole cause of material injury and that where price undercutting is a contributing factor to entice a customer to switch from sourcing from an Australian industry to an imported substitute, this will be sufficient to establish material injury.⁷
- Visy Glama is concerned not merely with the current injury it has suffered but it is also concerned with the injurious effects of losing future supply opportunities. There is a very significant risk that dumped kraft paperboard products will lead to continued price undercutting with the result being that Visy Glama may be unable to legitimately compete 'on a level playing field' for new long term supply contracts, and Visy Glama may also lose existing contracts (and potentially be forced to shut down its microflute production facilities and business) due to the dumping of goods. Visy is aware of [REDACTED]
[REDACTED]

⁵ GPI submission paragraph 3

⁶ GPI submission paragraph 41

⁷ This is specifically noted in the Ministerial Direction 2012. See also Final Report 219 Power Transformers Section 8.3 pages 85-86. It must be established that dumping has contributed to the injury suffered by the Australian Industry and that this injury is material.

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [confidential – commercial dealings information].

- Visy Glama acknowledges that it is not and does not expect to be successful in each and every contract negotiation or tender bid. However, in this case Visy Glama asserts, based on positive evidence, that kraft paperboard products are being imported at dumped prices, thereby giving major exporters such as GPI an unfair competitive advantage in the supply of the relevant products.

2. GPI CONTENTION: THAT VISY GLAMA’S MICROFLUTE PRODUCT IS NOT A LIKE GOOD TO CERTAIN KRAFT PAPERBOARD COMPRISING THE GOODS UNDER CONSIDERATION.

GPI’s contention that microflute is not a like good to kraft paperboard is based upon a false premise. GPI identifies microflute as a grade E,F,G and N flute of “corrugated cardboard”.⁸ This erroneous definition of microflute completely distorts the like goods analysis in that it incorrectly seeks to draw into the definition products (in particular, “E” flute products) that have quite different physical properties and which have very different commercial applications and markets.

Microflute is a class of fluted products generally known as “N flute”.⁹ It is a narrow caliper product with a thickness of 0.9 mm or less (typically 0.5-0.8mm).¹⁰ It is utilised in the packaging industry for high-quality printed packaging for shelf-ready retail applications and is overwhelmingly used for large format multi-pack beverage packaging ([REDACTED] [confidential – percentage] of Visy Glama’s microflute is used for this purpose). By contrast the other grades of fluted products (including “E Flute”) have a significantly greater flute thickness and so width, a different overall physical appearance and have a much more disparate range of commercial applications. Please find **attached** and marked “**VG-1**” a summary of Visy Glama’s different fluting profiles. It is noted that these fluting profiles (and flute names) are not merely germane to Visy Glama, but are adopted internationally by the packaging industry. To illustrate, we **attach** as marked “**VG-2**” the categorisation of fluted packaging products by various other companies.

Visy Glama notes that GPI is defining microflute as encompassing a much wider range of fluted products than simply “N” flute.¹¹ GPI references *The Handbook for Pulp and Paper Technologies (3rd Ed)*. GPI appears to be intimating in its submission that this

⁸ GPI submission paragraph 9

⁹ In some overseas jurisdictions it is sometimes referred to as F or G Flute

¹⁰ The measurement refers to the height of the fluting layer

¹¹ GPI submission paragraph 32

handbook includes a definition of ‘microflute’, and further that the definition includes “E flute” as microflute [paragraph 9 / footnote 11]. That is plainly wrong. The handbook doesn’t even use the term “microflute”. The handbook does refer to standard flute sizes of A, B, C and E, which have a thickness of ranging from 4.8mm down to 1.6mm (whereas Visy Glama’s microflute (or N flute) product has a thickness of approximately 0.7mm). In any event, any difference of view as to the industry definition of ‘microflute’ is quite simply a moot point if the term ‘microflute’ in the application is read as N flute, and characterised as having a thickness of 0.9 mm or less.

A case in point is GPI’s multiple references to McDonalds and Hungry Jack’s food trays.¹² These trays are manufactured using E flute and not microflute.¹³ The differences between E flute and microflute are quite pronounced. This is visually obvious from attachment VG-1 and also from comparing, for instance, a McDonald’s tray with a microflute product used for multi-pack beverage packaging. E flute is a very common and high volume product (eg approx. [REDACTED] **[confidential – quantity and product information]** [REDACTED] trays are produced annually, and that’s just one small segment of its use). E flute is a much thicker and less flexible product compared with microflute / N flute. E flute is seen as a less premium product, is often not printed on (eg the McDonald’s trays) and is commonly used in food and industrial packaging (but not multi-pack beverage packaging).

Based upon this misidentification of what constitutes microflute by GPI, the overall analysis and conclusion of GPI that microflute is not a like good to the GUC is patently incorrect. A proper comparison of likeness together with other specific observations are set out in the remainder of the submission.

Microflute and certain kraft paperboard are like goods

Visy Glama strongly contends that its Australian made microflute product is a like good to the goods under consideration. It is self-evident that microflute is a like good given that it is fully substitutable with imported kraft paperboard fitting the GUC. Visy Glama’s microflute product was immediately replaced with GPI’s kraft paperboard product [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[confidential – customer contract information]. Visy Glama is of the view that the Commission has overall correctly assessed the position in section 2.4.3 of the Consideration Report. Visy Glama wishes to emphasize the following characteristics of likeness between microflute and the GUC (in accordance with the Dumping and Subsidy Manual) as set out in the table below.¹⁴

¹² See GPI submission paragraph 33, page 3, footnote 8

¹³ [REDACTED] **[CONFIDENTIAL – COMMERCIAL INFORMATION RE PRODUCTS SOLD]**

¹⁴ The comparison is of the GUC imported and microflute at a similar stage of production

Likeness Characteristic	GUC and microflute comparison
Physical Likeness	<p><i>Visual appearance</i></p> <p>To the non-technical eye the products look almost identical. The difference can only really be seen if the product is cut and so has a cut edge exposed, and in such circumstance the difference is microscopic (kraft paperboard is generally slightly narrower, and doesn't have the microscopic middle fluting).</p> <p><i>Shape</i> – same</p> <p><i>Strength</i> – either can be strengthened or weakened (lightened) depending on its constituent paper elements</p> <p><i>Weight</i> – often similar grams per square metre, and again either can be made heavier or lighter depending on its constituent paper elements</p> <p><i>Composition</i> - both products are made from layers / ply of paper derived from wood fibre</p>
Production Likeness	Both manufactured by bringing together several ply / layers of paper and otherwise similar manufacturing process – see attached diagram marked VG-3
Commercial Likeness	<p>Both sold as substitutes to the same markets – between [REDACTED] [confidential - percentage] of Visy Glama's microflute is used for beverage packaging, and paperboard within the GUC has the same end use and is very easily substitutable.</p> <p>Both easily run through the can packing machines of drinks manufacturers.</p>

In summarising the issue of likeness, Visy Glama notes that the GUC has been specifically formulated to only identify imported goods that directly compete with Visy's microflute products (and not other out of scope products).

By way of illustration, we note a similar like goods comparison between kraft paperboard and "E" flute as set out in the table below.

Likeness Characteristic	GUC	“E” Flute
Physical Likeness	Visual appearance - with approx. 0.55mm	From 1.2 – 1.8 mm thick (normally in Australia 1.5 – 1.7 mm) Can occasionally produce the washboard affect described in GPI's submission
Production Likeness	Similar production process.	Similar production process.
Commercial Likeness	More bespoke product commonly sold for large format beverage multi-packs.	Generally a sub-premium and mass produced product, heavier in weight and with a wide variety of commercial packaging applications - including food and industrial food. In the experience of Visy Glama, not used for beverage multi-pack packaging. E Flute does not run through the can packing machinery used by beverage manufacturers due to its greater thickness and lesser flexibility.

3. ADDITIONAL SPECIFIC RESPONSES TO GPI'S SUBMISSION

There are a number of instances in GPI's submission where it has misrepresented the likeness between Visy Glama's microflute product and certain kraft paperboard as defined by the GUC. In this regard, the ADC should be aware of the following matters:

1. The photograph on Figure 1 of GPI's submission¹⁵ purports to depict kraft paperboard and microflute. However, the product pictured on the right is in fact of E flute, it is not microflute. Contrary to what GPI says, it is not the product used for beverage can

¹⁵ GPI submission paragraph 16

multi-packs. It is evident from the writing on that product that it is manufactured by Visy Board (which is a separate company, and has entirely separate manufacturing facilities and target markets to Visy Glama). Visy Board does not manufacture microflute. Further, we note that the perimeter of the E flute product has been cut away and the internal fluting is very visible to the naked eye. Fluting in E flute is visible to the naked eye, but for microflute (N flute) it is microscopic and much harder to see. We **attach “VG-4”** being a photograph providing an accurate visual comparison between kraft paperboard and microflute.

2. GPI asserts that the surface of microflute has distinctive parallel “washboard” undulations because of the underlying corrugate inner layers.¹⁶ This is incorrect. Microflute has no “washboard” undulations that are visible on the surface of the product.
3. GPI states that kraft paperboard has a flat surface, which is good for printing and tends to be more visually appealing on supermarket shelves. This implies that kraft paperboard enables superior printing finishes on the packaging. This is incorrect. Microflute and kraft paperboard are both fit for the purpose for high quality printing. The printing quality in either instance is dependent upon considerations such as the type of coatings, the quality of the printing machine, and the inks used. Microflute products can and often do have better print finishes than kraft paperboard.
4. Contrary to what GPI contends¹⁷ both microflute and kraft paperboard derive strength from virgin wood fibre layers. For instance, microflute that is used for larger format beverage multi-packs (eg 30 and 36 packs) [REDACTED]
[REDACTED]
[REDACTED] **[confidential – proprietary product information]**
5. Both microflute and kraft paperboard (within the GUC) have a similar GSM (grams per square metre) measurement of usually between 400-420, which is suitable for a customer’s product specifications.¹⁸ It is not correct to say, as contended by GPI, that GSM is not an applicable specification for microflute.¹⁹
6. Microflute retains its strength and integrity in chilled environments (eg refrigerated areas) and does not become soggy or delaminated in damp conditions, contrary to what is asserted by GPI.²⁰ Microflute has been specifically designed for the beverage container market and is very much fit for purpose in refrigerated environments. It has been used by Visy Glama in the chilled beverage market for over [REDACTED] **[confidential – period]**, with a multitude of customers.
7. Visy Glama has answered question A3-9 in the dumping application correctly. It is based upon a proper analysis of likeness between the imported GUC and Visy Glama’s

¹⁶ GPI submission paragraph 17c

¹⁷ GPI submission paragraph 19a

¹⁸ GPI Submission paragraph 9

¹⁹ GPI submission paragraph 9

²⁰ GPI submission paragraph 19d

production of Australian made microflute. Visy has specifically and carefully defined the GUC to capture only paperboard products that are converted into final products used for finished beverage can multi-packs. There are no Australian producers of kraft paperboard within the GUC, and [REDACTED] [confidential – percentage] of microflute products are used in beverage can multi-packs. It would appear that GPI is seeking to obfuscate these issues and bring other paperboard products into a like goods comparison that are not relevant in this case.²¹

8. GPI falsely states that Visy is not the only producer of microflute in Australia.²² Orora (now Opal packaging) does not in fact produce microflute (it does produce E flute products that are then converted into different final products such as wine cartons and nappy boxes). Orora / Opal does not manufacture can multi-packs for sale to the beverage industry. A search of the Orora / Opal website shows that it doesn't use the word 'microflute', as it doesn't manufacture N flute and recognises that E flute is not microflute. Further GPI states that "kraft paperboard that is wet strength treated is specifically designed for use in beverage packaging and so does not compete with microflute in these other applications".²³ Visy agrees that products produced by Orora / Opal do not compete with the GUC, but Orora's products are not microflute.

4. VISY'S RESPONSE TO GPI'S FURTHER SUBMISSION ON LIKE GOODS

We refer to the document entitled 'A Report by Charles P Klass' made available on the public case file on 4 June 2020. Visy Glama strenuously disagrees with the overall conclusion that GPI's products and Visy Glama's microflute products are not like goods.

We note that this submission, which is in the form of a report responding to specific questions posed by GPI's legal representatives, merely reiterates many of the same points raised by GPI in its earlier submission of 13 May 2020. The submission is however noteworthy in its omission of a number of key points of comparison between GPI's imported products and Visy Glama's microflute products, which are referenced below. As a general comment, the submission places undue emphasis on internal production differences and de-emphasises the commercial and functional similarities. Further, as for the physical comparison, the submission's author repeats the same category error of aggregating E flute with N flute and calling both microflute, which is not the correct comparison in this case. It is apparent from the submission that the author is basing many aspects of his opinion on general US industry knowledge rather than direct knowledge and familiarity with Visy Glama's microflute product or the Australian market.

Visy Glama's specific comments in response to GPI's further submission are set out in the table below:

²¹ GPI submission paragraphs 29-3, 37,36

²² GPI submission paragraph 35

²³ GPI submission paragraph 36

Submission reference	Visy Glama Response
Pg 2 under heading 'Overall Conclusion'	We note that GPI acknowledges that both kraft paperboard and microflute are both paper based products. However contrary to what GPI says, the 3 layers of paper in microflute are not individually known as 'paperboard' but simply paper layers or liners.
Pg 4, 3 rd para	There is a reference to GPIs product as being 'formed as a solid sheet' but there is no mention of the fact that the 'solid sheet' is in fact the fusion of several plies or layers of material (and likewise microflute has 3 layers, with the middle layer being a corrugated medium). We note there is no diagram supplied by GPI showing these composite layers. Please refer to our diagram at "VG-3".
Pg 5, 5 th para	The list of packaging and display applications cited for 'microflute' is misleading in that the list of applications would include all fluted corrugated products, and not merely microflute (as narrowly defined for the purposes of this dumping application). It appears the US based expert doesn't understand that it is only Visy Glama that makes microflute in Australia, and that [REDACTED] [confidential – percentage] of this microflute is used in Australia for beverage can multi-packs.
Pg 9, diagrams	Visy Glama notes the listing of 4 standard flute sizes and 3 non-standard sizes and that 'microflute (F Flute)' with a height of 0.75mm is one of these flute sizes. Visy Glama's microflute product has a flute size of approximately 0.7mm and therefore the other sizes listed in this diagram are not relevant to this dumping application. This demonstrates that inaccuracy of the like goods analysis in this submission.
Pg 9, final para	Visy Glama's microflute product has a thickness of 0.7mm and not 0.85mm as is asserted.
Pg 10, 1st para	The statement concerning microflute that 'It does not form as readily into beverage carrier packaging – often resulting in ragged edged or unsightly cracking at the folds' is not correct. This sort of finish can sometimes appear for any fibre based product that is cut to size (converted) using a process called rotary die cutting. However, the converting process used by Visy Glama is what is known as flat bed die cutting (and not rotary die cutting). This is exactly the same cutting process used in converting GPI's kraft cartonboard. Visy Glama's microflute product is not inferior in its finishing and is fully fit for purpose.
Pg 10	For reasons stated earlier in this submission, Visy Glama does not agree with the statements contending that its microflute product has less optimal printing outcomes or that the surface of microflute has a 'washboard appearance'.

Pg 12, bottom	It is not factually correct that Visy Glama's microflute product has a reinforcing strip inside the packaging but that GPI's kraft paperboard product does not require such a strip (due to its asserted superior strength). In fact, both Visy Glama's microflute product and GPI's imported kraft paperboard have the same strip. Please see photo attached and marked as ' VG-5 '.
Page 13, final para	It is implied in the submission that the use a different type of pine species (Southern Pine in the US versus Radiata Pine in Australia) would render the products as being not like goods. These raw material differences in the composition of the goods are clearly not of themselves significant. Such differences are not obvious without a technical understanding of the goods and it is necessary to look at the overall physical characteristics of the goods (as well as factors such as commercial and functional likeness).
Pg 14	The submission provides: 'Visy microflute and GPI coated solids unbleached kraft carrierboard are competing for some of the same business with beverage packagers. However, this does not prove that they are like goods. Microflute is sold for a wide variety of applications other than beverage carriers including packaging food and non-food items.' This is false and misleading in that GPI is referring to all fluted corrugated products and not Visy Glama's microflute, which as noted above is almost exclusively manufactured for use as beverage multi-pack packaging. It is however correct that GPI's product and Visy Glama's microflute are both used in the sale of beverage multi-pack packaging and importantly it is beyond doubt that they directly compete for the same customers in the same market.
Pg 15, 3 rd para	The submission asserts that there are differences in the packaging of the two products with the suggestion that the conversion of microflute may be done 'in line' (ie on the corrugation machine). This is not correct. The conversion of microflute is undertaken 'off line', which is the same as for GPI's product.
Pg 16	Visy Glama does not agree with a number of statements such as the assertion that GPI's product and Visy Glama's microflute are made from significantly different materials, that GPI's product has superior strength and appearance under wet conditions and better print outcomes. These statements have already been addressed in section 3 of this submission in reply.

CONCLUSION

Visy Glama strenuously takes issue with the matters raised by GPI in its submissions. Visy's position is that this case is about much more than the "ebb and flow" of business and it

disagrees with the irrelevant and obfuscatory propositions GPI makes concerning like goods. GPI fails to focus its attention on the relevant Goods Under Consideration and it seeks to identify a much wider genus of products as "microflute" when in fact there should be a direct comparison of the relevant products in what is a niche and narrowly defined market.

Visy Glama is strongly of the view that this is a straightforward case of price discrimination via the dumping of imported goods. This dumping is causing material injury to an Australian industry in the manufacturing sector that has and continues to invest large sums of capital, and which is a significant employer (directly and indirectly) especially in rural and regional areas of Australia.

Do not hesitate to contact the writer should the Commission require any further information or wish to discuss the matter generally.

Yours faithfully

GROSS & BECROFT

A handwritten signature in black ink, appearing to be 'R. Becroft', with a horizontal line extending to the right.

Dr. Ross Becroft

Principal

Encl.