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22 September 2020

The Director  
Investigations 3  
Anti-Dumping Commission  
GPO Box 2013  
Canberra  
Australian Capital Territory 2601

By email

Dear Director

## **WestRock Company Investigation 548 – comments on “like goods” issues paper**

We refer to the Issues Paper concerning “*Like goods with respect to the goods under consideration*” placed on the public record of this investigation by the Anti-Dumping Commission (“the Commission”) on 7 September 2020.

This is the interested party submission of WestRock Company, as invited by the Issues Paper to be submitted no later than 21 September 2020.

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### **A Microflute is not “like” wet-strength paperboard in the required sense**

Indubitably, the goods claimed by the applicant, Visy Glama Pty Ltd (“the applicant”) being “0.7mm N-flute” (“microflute”) are not “like goods” to the goods under consideration (“GUC”), being “Kraft

*paperboard, coated on one side with clay or other inorganic substances, 360-430 GSM, wet strength treated* (“Kraft paperboard”).

Under Section 269T(1) of the *Customs Act 1901* (“the Act”), like goods are defined as:

*goods that are identical in all respects to the goods under consideration or, although not alike in all respects to the goods under consideration have characteristics closely resembling those goods under consideration.*

The key determinants of likeness for the purposes of the definition are therefore the characteristics of the goods (in this case, microflute) and the closeness of the resemblance of those characteristics with the goods under consideration (in this case, wet strength Kraft paperboard).

Technical information and evidence establishing the substantial and critical differences between microflute and kraft paperboard have been presented in the Klass report of June 2020. Some of the many important differences identified include:

- Wet strength – WestRock’s CarrierKote adds a wet-strength resin to the pulp at the start of the manufacturing process. The resin causes the pulp fibres to bond chemically in a manner that strongly resists the effects of moisture. This wet-strength is one of the key identifying factors of the GUC – and it is particularly important in addressing condensate from cans in multipacks. Microflute is not wet-strength. Unlike microflute, CarrierKote multipacks can be stored in ice, finger-holds and hand-holds on the packaging are stronger, and the multipack is less subject to failure caused by the effects of condensation.
- Manufacture and physical difference – The GUC is produced in a single sheet in a single process that produces an unprinted roll – which is the form in which the challenged GUC is imported. Microflute, however, cannot be formed into rolls. Microflute is manufactured through the gluing together of linerboard and medium from three rolls, one of which must be pre-printed for can multipack applications, unlike the GUC. The pre-printed microflute is cut and stacked during manufacturing because, unlike the GUC, it is too rigid to be formed into a roll.
- Print quality – The GUC has clay coating and laminates that permit much higher definition printing on a very smooth surface. The microflute linerboard surface permits only a much lower definition print, and the corrugated medium can make the printed surface visibly lined and uneven.

These and the other features identified in the Klass report establish that the GUC and microflute are not “like goods”. Importantly, however, the market has also declared that wet strength kraft paperboard and microflute are unlike and not substitutable. Because of the differences in physical, functional and production performance Beverage customers have elected to use the GUC almost exclusively in the significant small format can multipack sector. Visy acknowledges this fact.

## **B Critical significance of market definition to this investigation**

Importantly, the applicant includes the following statement in its description of the goods under consideration:

*The goods have an end use for packaging 12 or more beverage can multipacks. The goods are an intermediate product that is converted into a final product in Australia. The conversion process will generally involve printing, cutting and gluing the imported products to create*

*individual packaging known as beverage can multipacks. The goods do not include finished ready for sale beverage can multipacks.*

This creates an exception with respect to WestRock's exports of the goods under consideration, because not a single sheet of CarrierKote of the designated GSM exported to Australia in the investigation period was used to package 12 or more beverage can multipacks for sale. The applicant has restricted the goods description in this way because microflute is not substitutable for the GUC in small format can multipacks.

Microflute's different physical, functional and production features cause it to be rejected for use in producing small format can multipacks sold in the Australian market. Visy concedes this point, writing "...Visy Glama is seeking protection against dumped imports for its niche microflute business, being a 0.7mm thick premium quality paper based product...that is almost exclusively used to manufacture large format beverage multi-packs" [emphasis added]. The small format can multipack market segment is WestRock's key commercial focus, with a very high proportion of its sales of can multipacks into that segment.<sup>1</sup>

The applicant argues:

*...the most important factor in comparing the imported Goods Under Consideration with Like Goods manufactured by an Australian Industry is whether the market identifies, in a practical sense, these products as being substitutable for one another.<sup>2</sup>*

WestRock's observation is that microflute cannot replace and is not a substitute for wet strength treated Kraft paperboard in the small format multipack segment of the Australian can multipack market. This is the "practicality" that the applicant refers to, and admits, by stating that "*the goods have an end use for packaging 12 or more beverage can multipacks*".

At the risk of overproving our point, we list here the specific attributes of microflute that explain why its different physical, functional and performance characteristics limit its use to large format multipacks.

## 1 Run speed

Microflute runs significantly slower than the GUC on high-speed packaging machines at smaller box sizes. This is because the smaller the box to be packed with cans, the more sensitive the packing machine is to inconsistencies in the packing material. Beverage can packing machines at customer locations typically load boxes at a consistent rate of 90,000 cans per hour. When packing 30 packs, the packing rate is relatively slow at 1,500 cans per minute or 50 packages per minute. This operation is the least complex and exacting of the can multipack sizes.

Small format can multipacks require a particularly high degree of precision engineering to be successful at 90,000 cans per hour speeds, however. The rates for 10 packs are 150 packages per minute, and for six packs 250 packages per minute (4.1 packages per second).

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<sup>1</sup> This very high proportion was [CONFIDENTIAL TEXT DELETED – number]% of WestRock's sales of can multipacks into that segment in 2018-19.

<sup>2</sup> See EPR Doc No 18, *Australian Industry - Visy Glama - second submission on like goods* at page 3.

The incredibly high packaging speeds required for large productions of small format packages require an exceptionally high degree of consistency in the board that is being manipulated to box the cans. Microflute lacks this consistency when compared to Kraft paperboard. This is because:

- (a) microflute, like most corrugated product, is subject to wider relative swings in thickness and weight as a result of compression or humidity than the GUC;
- (b) microflute components of linerboard and medium material are subject to variations in density that can alter the thickness of the board being run on machines from one load to the next, to a much greater degree than the GUC; and
- (c) microflute is subject to the effects of high humidity, which is a common condition when packing beverage cans, unlike wet-strength GUC;

These variables also act to slow microflute setup speeds as machine operations are frequently interrupted so that settings can be adjusted – potentially for each new load - to accommodate board variations. The variations include “score bend ratio” (the ratio of the force required to bend a scored board) and “opening force” (the force required to fully “open” a flat folded carton until the carton corners are 90°).

## 2 Conversion limitations

Microflute is less suitable for small format can multipacks because it has functional limitations in small format can multipacks that result from corrugation. For example, the 10 can multipack produced by WestRock has a corner opening and dispensing feature that allows consumers to access the cans while the package sits in the refrigerator. It is particularly difficult to engineer a feature like this using microflute in a small format multipack that will avoid package failures in shipping and upon opening.

## 3 Expense

Microflute has additional attributes that make it unsuitable for smaller format can multipacks:

- (a) Microflute gets more expensive in smaller formats because one size of microflute has to fit all packages. This is unlike Kraft paperboard, which is produced in a wide range of calipers suitable for multipack products.
- (b) The cost of the microflute fiber content per can increases significantly with each step down in size. Kraft paperboard grades allow the use of lighter-weight paperboard as the box size needed decreases, thereby reducing fibre consumption and cost.

## C No use of CarrierKote GUC for 12 or more can multipacks

### 1 Visy Glama’s complaint relates to particular goods for a particular purpose

Visy Glama’s application is clear and unambiguous:

*The GUC is formulated to describe by physical characteristics a category of imported goods that have an end use for packaging 12 or more beverage can containers. It is specifically designed to identify a category of imported paperboard and to distinguish it from other*

*paperboard products. This is necessary given the very significant size and diversity of the paperboard market in Australia.<sup>3</sup>*

The applicant's complaint targets a category of imported goods that have an end use for packaging 12 or more beverage can containers. There can be no clearer statement of the imported goods the applicant *said* were to be the goods under consideration, if the application were to be accepted, and *intended* to be those goods. In the investigation period WestRock sold no CarrierKote, being WestRock's wet strength treated paperboard, of the calipers concerned, to Australia for that end use, and none of that CarrierKote was used in Australia for that end use.

*Ipsa facto*, WestRock did not export the goods under consideration to Australia.

## 2 WestRock did not compete in the identified category in the period concerned

The applicant's focus on paperboard used for 12 or more can multipacks is even more critically evident in its injury complaint. In response to the question in the application relating to the effect of the *volume* of the dumped imports, which asks:

*Identify from the data at appendix A2 (Australian market) the influence of the volume of dumped and/or subsidised imports on your quarterly sales volume and market share.*

the applicant sets out that impact, and then states, baldly and simply:

*This is directly as a result of the loss of a major long term supply contract with a large beverage customer that supplies canned beverages throughout Australia and in the Asia Pacific region.*

Next, when asked to explain the impact of the price of dumped imports, in response to the question in the application which asks:

*Use the data at appendix A2 (Australian market) to show the influence of the price of dumped and/or subsidised imports on your quarterly prices, profits and profitability provided at appendix A6.1 (costs to make and sell). If appropriate, refer to any price undercutting and price depression evident in the market.*

the applicant again refers to the specific event of injury that is the focus of the application, namely:

*Visy refers to the circumstances concerning the loss of a major supply contract referred to in the response to A-9.1 above. The very low prices of dumped imports has resulted in injury being suffered by Visy in the form of price undercutting and the loss of a major long-term supply contract. Visy asserts that a major competitor has imported its competing product at dumped prices, which has enabled it to undercut Visy in its attempt to negotiate a new contract supply term. The competitor has done this to secure the long term business of the beverage customer.*

One alleged injurious event. One competitor, which is not WestRock.

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<sup>3</sup> See EPR Doc No 1, *Australian Industry - Visy Glama Pty Ltd* at page 9.

Plainly, the event – the contract which Visy Glama lost to what it claims to be dumped goods and was caused injury - was a Coca-Cola Amatil contract. WestRock was not invited to participate in the tender process, or whatever process, as was adopted for the awarding of that contract.

## D Conclusion and resolution

- 1 Microflute is not “like goods” in comparison with the goods under consideration. Microflute does not have characteristics closely resembling wet-strength treated Kraft paperboard. The multiple physical, functional, performance and commercial differences between the products highlighted in this memo and in the Klass report<sup>4</sup> are most dramatically demonstrated by the fact that these divergent characteristics render microflute unsuitable for a major portion of the Australian can multipack market.

*Resolution – Commission to recommend, in the Commission's report to the Minister, that the Minister cannot reach the state of satisfaction that would be needed to declare, under Sections 269TG(1) and (2) of the Act, that Section 8 of the Customs Tariff (Anti-Dumping) Act 1975 applies to the goods under consideration because material injury to an Australian industry producing like goods would or might have been, or has been or is being caused material injury, because there is no such industry.*

- 2 In the alternative, if the Commission concludes that microflute is like goods to the goods under consideration, the Commission should also find that WestRock did not export the goods under consideration. WestRock did not export the goods under consideration because the goods under consideration are clearly and undeniably referred to as being for use in 12 or more can multipacks. WestRock did not export any of paperboard matching the other parameters of the description of the goods under consideration - Kraft paperboard, coated on one side with clay or other inorganic substances, 360-430 GSM, wet strength treated – for use in 12 or more can multipacks, and none of its Kraft paperboard matching those other aspects of the description was used for 12 or more can multipacks.

*Resolution – Commission to advise WestRock that it is not subject to the investigation. The Commission to ensure that the end use condition of 12 or more can beverage multipacks is replicated in the description of the goods when published in the Dumping Commodity Register, should measures be imposed.*

- 3 In the alternative, if the end use of 12 or more can multipacks is not part of the goods description (a proposition that is not accepted by WestRock) the Commission should find that WestRock's exports of “Kraft paperboard, coated on one side with clay or other inorganic substances, 360-430 GSM, wet strength treated” in the investigation period did not cause injury to the Australian industry, and indeed were incapable of having any effect on the Australian industry, because those goods as exported by WestRock were not offered or sold to, or converted for, customers for an end use of 12 or more can multipacks.

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<sup>4</sup> See EPR Doc 009, Charles P. Klass report, dated June 2020.

*Resolution – Commission to recommend, in the Commission's report to the Minister, that the Commission considers it appropriate to establish a "non-injurious price" with respect to WestRock's exports of the goods under consideration using WestRock's actual export prices found during the investigation period.*

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Please do not hesitate to contact the writer for clarification of any points made or for any further information you might require.

Yours sincerely



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