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Anti-Dumping Commission
Level 6, 215 Spring Street
MELBOURNE VIC 3000

By email: Leisa.Baynham@adcommission.gov.au, Investigations3@adcommission.gov.au

PUBLIC RECORD

Investigation 548 (the investigation) – Certain kraft paperboard exported from the United States of America (US)

Submission on behalf of Graphic Packaging International LLC and Graphic Packaging International Australia Converting Ltd (GPI) to the Anti-Dumping Commission (ADC)

Application for publication of dumping duty notice (the application) by Visy Glama Pty Ltd (Visy)

Concerning the ADC's *Issues paper: like goods with respect to the goods under consideration* (the issues paper)

Dear Leisa

Visy has abandoned its position on the like goods issue

1. GPI submits that Visy has now, in substance, abandoned its position on the like goods issue.
2. As you know, GPI's consistent position throughout the investigation has been that microflute is not a like good to kraft paperboard exported to Australia by GPI. GPI has provided the ADC with photographic evidence of its position in its submissions,¹ relevant references to and extracts from packaging industry literature,² expert

¹ Submissions of GPI dated 13 May 2020, 26 July 2020 (including the addendum dated 28 July 2020), 21 September 2020.

² See generally submissions of GPI dated 13 May 2020, 26 July 2020, 21 September 2020.

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evidence by leading paper and packaging expert Charles Klass,³ and physical evidence in the form of samples of microflute and kraft paperboard.⁴

3. It seems that the ADC rightly considered that Visy had a case to answer on the like goods issue and accordingly the ADC published its issues paper on 7 September 2020. The due date for submissions on the issues paper was 21 September 2020.
4. Interested parties (other than Visy) sought to assist the ADC, making submissions on the issues raised in the issues paper.⁵ However, more than a month after submissions were due, Visy has made no response to the critical issues raised in the issues paper. It seems that Visy has, in substance, abandoned its position on the issue of like goods.
5. GPI submits that the weight of evidence, together with Visy's apparent inability or disinterest to respond to the issues raised in the issues paper, seems now to have put the like goods issue beyond doubt.
6. GPI has been at pains to cooperate with the Commission's investigation, although under protest because of the unresolved like goods issue. However, GPI is justifiably frustrated that this fundamental problem with Visy's application remains unresolved at this late stage of the investigation and that the applicant now appears to have abandoned its position on the issue. It would be unfair to GPI and other parties if an investigation of allegations without substance remained on foot for any longer than is necessary.
7. As you know, if the Commissioner is satisfied that injury caused to an Australian industry is negligible, as he must be if there is no Australian industry producing like goods, then the Commissioner must terminate the investigation under s 269TDA(13). There is no requirement in the legislation for the Commissioner to delay a termination until after the SEF and it would be reasonable for the Commissioner to terminate sooner if the facts informing the Commissioner's satisfaction are not materially in doubt. I note that unreasonably delaying a termination may amount to a breach of the duty to decide or act (ADJR Act at s 7, *Judicial Review of Administrative Action and Government Liability*, Aronson et al at [6.320]).

³ Report by Charles P Klass, June 2020 and Supplementary Report by Charles P Klass, July 2020.

⁴ GPI provided physical samples to the ADC on 14 August 2020 after Visy made a number of wrong statements regarding the evidence provided by GPI (see section 6 of GPI's submission dated 21 September 2020 for a summary of the wrong statements made by Visy on the like goods issue).

⁵ GPI's submission dated 21 September 2020 and WestRock's submission dated 22 September 2020.

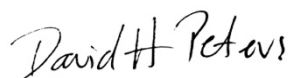
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8. No doubt it serves Visy's commercial interests for the investigation to continue but the ADC should not be a party to what now appears to have been an abuse of process and a misuse of the anti-dumping system.

Now substantial unfairness through key (like goods) issue being unresolved

9. GPI submits that there is now substantial unfairness arising through the key like goods issue being unresolved.⁶
10. The key and foundational question of like goods remains unresolved more than six months after the investigation was initiated and almost 6 months since GPI first identified this issue.⁷ Clearly, much of the blame for this is attributable to Visy, who has taken a number of different and conflicting positions and made a number of demonstrably wrong claims regarding like goods (see section 6 of GPI's 21 September 2020 submission). However, it would do the ADC no credit to continue to indulge Visy's flawed application or its subsequent vacillations on this key issue.
11. Another key foundational question depends crucially on the identification of like goods; that is the question of *material injury and causation*. The question of injury materiality and causation can only be assessed against like goods and any Australian industry producing like goods. As it stands, GPI has been substantially deprived of any meaningful opportunity to make submissions on injury because the question of like goods remains unresolved.
12. GPI again submits⁸ that the only approach in the investigation that accords with due and substantive fairness is to find that the foundational allegations of like goods and injury made in Visy's application regarding like goods have not been made out. On that basis the investigation should properly be terminated.

Sincerely



David Peters
Principal Lawyer
Kinsman Legal

⁶ GPI's submission that the like goods issue requires a resolution does not derogate from GPI's view that microflute is not a like good to kraft. Rather from an investigatory standpoint, there is now a body of evidence on the record regarding like goods that disproves a key and required element of actionable dumping – resolution either must include showing that evidence to be wrong or finding that actionable dumping is not made out because the key and required element is absent.

⁷ GPI's first submission dated 13 May 2020.

⁸ See GPI's submission of 21 September 2020 at section 7.a.