

Dr. Ross S. Becroft B.A., LL.B., M.Comm.Law. PhD

Suite 2, Level 3
182-184 Victoria Parade
East Melbourne, Victoria, 3002
Australia
Telephone: (61 3) 9866 5666
info@grossbecroft.com.au

Our Ref: RB:KB 3603

Your Ref:

PUBLIC FILE VERSION

19 February 2021

The Director, Investigations 3
GPO Box 2013
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 Visy Glama Pty Ltd (“Visy”) – Response to GPI submissions (public file document nos. 32 and 33)

We refer to the following documents that have recently been made available on the public file for this investigation:

- The exporter verification reports for GPI and Westrock.
- The submission of GPI dated 2 February 2021 in response to the ADC’s expert report by Dr Vanderhoek; and
- Additional comments of Charles Klass on behalf of GPI dated February 2021 in response to the ADC’s expert report of Dr Vanderhoek.

Visy wishes to raise the following issues in reply:

1. Visy notes and welcomes the preliminary findings of a 49.2 percent dumping margin in respect of GPI's exports of the GUC from the United States in the investigation period.
2. Visy does not agree with the matters raised by GPI in its further submissions and submits that GPI's ongoing assertions regarding the identification of like goods diverts attention away from the key issues in this dumping investigation: namely, whether dumping is occurring and whether Visy has and continues to suffer material injury. It is clear from GPI's exporter verification report that the level of dumping is egregious, and Visy contends that GPI's position regarding like goods is intended to obfuscate and distract from these fundamental issues upon which the ADC will make findings and recommendations to the Minister.
3. Visy is extremely bemused by GPI's latest submissions indicating an unwillingness to accept the 'like goods' conclusions of Dr Vanderhoek, the ADC's own appointed expert and singularly independent of the interested parties (except in very selective instances where GPI gleans that the reasoning or conclusions of Dr Vanderhoek support GPI's position regarding like goods). In responding to the ADC's expert GPI has, on multiple occasions, attempted to characterise the opinion of Dr Vanderhoek as radical, which it is not. Rather the ADC's expert's conclusions are completely congruous with a practical and market-based approach that Visy has been advocating when comparing the GUC with like goods manufactured in Australia. Further, Dr Vanderhoek's conclusions are entirely consistent with the industry views in the statement given by the former Schweppes Supply Chain Director (and we note that Dr Vanderhoek did not seem to have access to this statement prior to forming his own separate opinion). In addition, Visy's consistent position on this issue is much more in line with the overall scope and intention of the anti-dumping system (as opposed to the overtly esoteric and technical approach adopted by GPI).¹ This point is particularly significant in light of GPI's high dumping margin assessed by the ADC in GPI's exporter verification report.
4. This esoteric approach is laid bare in GPI's reference to a 1986 GATT Panel case (adopted in 1992) regarding whether the definition of the applicable United States industry (complaining about unlawful subsidies on EU wine) should include not just wine producers but also grape growers whose grapes are used in wine produced in the United States.² This case is hardly relevant or analogous and does not aid the ADC in this investigation. The comparison between grapes to wine is hardly an apt comparison to microflute and kraft paperboard.³ Further, this GATT panel case predates the WTO Agreements and it concerns the legality of a specific provision in

¹ Refer Visy's submission dated 4 September 2020 being public file document number 18.

² Refer GPI submission dated 2 February 2021 at paragraphs 14-15.

³ It is also not clear what comparison of products is being made by GPI in section 2 of its submission dated 2 February 2021. GPI refers to imports as they 'come across the Australian docks and not on some subsequent end use of those goods'. However, the relevant comparison is between imported kraft paperboard (within the GUC) and Australian-manufactured microflute.

the US Tariff Act of 1930 that expressly included grape producers in the definition of industry.

5. By contrast, Visy notes that the ADC's approach, rather than being in any way radical, is completely consistent with its approach in previous dumping cases, some of which have involved the ADC publishing an Issues Paper to deal with the questions of identifying goods that fall within the scope of the GUC and defining like goods produced in Australia. For example, in the case of *Steel Pallet Racking from China and Malaysia (investigation 441)*, the ADC examined the various claims of interested parties concerning like goods and was satisfied that the relevant steel pallet racking fell within the scope of the GUC. The ADC noted on page 6 of the Issues Paper that:

One of the mandatory requirements of a notice initiating an investigation is setting out the particulars of the goods the subject of the application. In *GM Holden Limited v Commissioner of the Anti-Dumping Commission* [2014] FCA 708 the Court stated that the use of the term 'particulars' implies physical features of the goods. The Commissioner is of the view that 'particulars' relate to considerations of material composition, appearance and **uses in a commercial and practical sense.**⁴ **(bold added)**

6. Visy submits that it is disingenuous for GPI to claim that the definition of the GUC in this case would lead to difficulties in enforcement should anti-dumping measures be imposed. In paragraph 11(c) of its submission of 2 February 2021, GPI queries how measures may be imposed if they were restricted to goods intended for use in 12+ beverage can multipacks. Visy has made its position clear on this point. The GUC have been specifically formulated to include only certain kraft paperboard that is causing material injury to Visy, namely:

Kraft paperboard, coated on one side with clay or other inorganic substances, grammage 360-430 grams per square metre (GSM), wet strength treated

The end use is not part of the GUC and, consistent with many other dumping cases, is only illustrative in nature. It is helpful in terms of identifying the nature of the goods and the commercial market for the goods. For avoidance of doubt Visy stated in section A-3.1 of its Application:

The bolded italicised wording above is the Goods Description for the purposes of this Application and further information is provided below to explain the nature and end use of the imported goods. The further information is NOT part of the Goods Description.

⁴ Case 441 public file document number 103. The ADC also found in section 5.3 that steel pallet racking produced locally by the Australian industry members is like to the imported goods, and possess the same essential characteristics as the imported steel pallet racking.

Visy has never suggested that the importers would have to declare an end use for the GUC nor would the ABF be required to enforce measures based upon a subsequent end use. Visy submits that enforcement in this case would be no more burdensome nor complex than usual. Further, the fact that there may theoretically be some imported goods falling within the GUC that do compete with the Australian Industry is not a valid objection and, as is customary, such goods (if they exist) may be eligible for an exemption under the Dumping Duties Act.

7. Visy does not accept GPI's bald assertions in paragraph 17 of its submission of 2 February 2021 that 'most kraft paperboard imported to Australia is used for end uses other than 12+ beverage can multipacks'. We also note that in this statement GPI refers to 'kraft paperboard' and not kraft paperboard narrowly defined by the GUC. Visy also disputes the assertion by GPI that 'a substantial amount of microflute produced in Australia is used for end uses other than 12+ beverage can multipacks'.⁵ Further, Visy takes umbrage with and dismisses as fanciful GPI's claim in paragraph 31 of its submission that 'GPI has estimated that, with Opal's microflute production and Visy's non-beverage microflute production, around three-quarters of Australian microflute is used in end uses other than beverage packages'. GPI does not manufacture microflute in Australia and therefore has no direct knowledge of or ability to quantify microflute production in Australia. It is also likely that GPI is including in its speculative statement products that are not microflute.⁶ In fact, Visy has provided the ADC with considerable information regarding local production of microflute for verification purposes that supports its claims regarding the composition of the Australian industry producing like goods.
8. It is also noted that in paragraph 19 of its submission of 2 February 2021, GPI tenders a table to purportedly illustrate a comparison of goods produced using kraft paperboard and microflute 'at the final stage'. This table is removed from the public file version of the submission. It would appear from GPI's description of the information contained in the table that the information is of a *general and industry-level nature (and not of a nature that is confidential to GPI)*, and in which case, the table should not be redacted but included in the public file version of the submission so that Visy and other interested parties may review and respond (where appropriate) to any claims made.
9. The differences in characteristics of kraft paperboard and microflute that are asserted by GPI in its submission (eg refer references to weight at paragraph 42 and production at paragraph 47) again are overly technical observations that do not detract from the overall likeness of these goods, which are incontrovertibly substitutable and unquestionably compete in the same commercial markets.
10. Finally, we note that the comments of Charles Klass in his report dated February 2021 do not raise any additional matters and, in taking issue with the approach and

⁵ See paragraph 17 of GPI's submission dated 2 February 2021.

⁶ See pp1-2 of Visy's submission dated 18 June 2020 accessible as document no 9 on the public file.

conclusions of ADC's expert, Mr Klass merely restates the position in support of GPI. In addition, Visy queries whether Mr Klass, as a United States-based consultant is qualified to make statements regarding the existence of products produced in Australia that closely resemble kraft paperboard.⁷ His observations regarding multiply paperboard produced in Mexico are obscure and of no relevance.⁸

Visy looks forward to the ADC concluding its verification of the Australian Industry in this investigation. Visy continues to suffer significant material injury due to dumping of certain kraft paperboard (as defined by the GUC) exported from the United States to Australia. Visy therefore urges the ADC to complete this investigation as a matter of urgency so that Visy is afforded the necessary trade protection to assist with the rescue of its business, and the Australian jobs it supports, from the insidious effects of this dumping.

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 read 'Ross Becroft', with a long horizontal flourish extending to the right.

Dr. Ross Becroft

Principal

⁷ Refer pages 3-4 of public file document no 33.

⁸ Refer page 4 of public file document no 33.