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The Director, Investigations 3
Anti-Dumping Commission
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 Statement of Essential Facts

We refer to the Statement of Essential Facts (‘SEF’) dated 5 March 2021 published in relation to this investigation.

Visy strenuously opposes the proposed finding of the ADC that its Australian manufactured microflute and imported kraft paperboard within the GUC are not like goods. Visy submits that these goods are in fact like goods and that this investigation should not be terminated. Visy urges the ADC to reconsider and reverse its proposed findings and complete its dumping investigation, noting also the egregious levels of dumping and the evidence of material injury.

It is Visy’s submission that, based upon the matters raised in the record of investigation, the ADC has erred in not concluding that the GUC and Australian produced goods are like goods. In this submission, Visy will set forth the factual and legal grounds on which the ADC must find that the GUC and locally produced microflute are like goods. In addition, Visy asserts that

the ADC has failed to investigate certain matters (and has made assumptions) that now must be investigated and which, in Visy's submission, would further support the conclusion that the GUC and microflute are indeed like goods.

Visy wishes to raise the following matters for consideration by the ADC prior to making any further formal decisions in relation to this investigation:

It is Visy's position that, on multiple occasions throughout this investigation, it has meaningfully addressed the issue of likeness between the GUC and microflute. Visy has lodged a number of submissions that have dealt with this issue¹ and it has provided evidence to the ADC and has responded to the ADC's queries during the course of its verification. For instance, we draw the ADC's attention to the comparison table provided by Visy in its submission to the ADC dated 18 June 2020 which sets out the likeness using physical, production and commercial criteria.² Visy therefore submits that the ADC, in reaching its preliminary findings, has not given sufficient consideration to the matters raised by Visy in its submissions and information it has provided to the ADC during this investigation regarding (or which would inform) the issue of like goods. Further, Visy submits that the ADC has wrongly disregarded the findings of its own independent expert whose findings in relation to the issue of like goods are entirely consistent with Visy's submissions. In addition, Visy wishes to address some specific factual findings in the SEF that are relevant to the ADC's overall preliminary finding to recommend that this investigation be terminated.

1. **THE ADC HAS ERRED IN FINDING THAT THE GUC AND MICROFLUTE ARE NOT FUNCTIONALLY ALIKE**

The ADC has found that the GUC and microflute are not functionally alike (refer SEF 29-30, 35). The ADC has based this on the following specific findings:

- *'For use in small format beverage packaging microflute does not perform the same functions as kraft paperboard'.³ Visy says this finding is manifestly wrong because imported kraft paperboard for small format beverage packaging does not fall within the GUC. The GSM for small format beverage packaging is lower than the minimum GSM of the GUC. This was a specific factor Visy had in mind when formulating the GUC i.e. Visy intentionally kept the GSM at a range such that these imports were not captured. To further illustrate this point, and demonstrate that it remains current, Visy randomly selected 3 high volume small format packs of varying sizes for testing on 19 March 2021. We **attach** Paper and Board Testing Laboratory Reports No. T2100442(a)-(c) that confirm*

¹ See Visy submissions to the ADC of 16 June 2020 (public record document no. 9), 4 September 2020 (public record document no. 18), 27 October 2020 (public record document no. 23), 20 November 2020 (public record document no. 27), 15 January 2021 (public record document no. 31), 19 February 2021 (public record document no. 34), 4 March 2021 (public record document no. 36).

² Visy submission to the ADC dated 16 June 2020 Public file document no 9) at page 6.

³ SEF 35.

that all 3 products tested - Kombucha 4 x 250mL can packs (a WestRock product), Pepsi Max 6 x 200mL cans (a GPI product) and Diet Coke 8 x 200mL cans (a GPI product) all have a GSM of less than 360 g/m².⁴

- *'Microflute is used in a wider range of applications than kraft paperboard'*.⁵ Visy has provided evidence to the ADC as part of its verification that approximately 95 percent of its Australian microflute production is used for 12+ beverage packaging⁶, and that any volumes of microflute that Opal produces (being the only other Australian manufacturer with possible microflute capability) are immaterial.⁷ The ADC has not provided any positive evidence that contradicts Visy's evidence.
- *'There also appear to be differences in the performance of the end products in wet environments'*.⁸ There is no evidence of this. Both microflute and imported kraft paperboard within the GUC are equally suitable for wet environments. This point was made by the industry representative Arthur Mitropoulos in his statement where he noted 'our business was comfortable that the microflute product would perform as needed in wet environments that our can packs may experience.'⁹ Mr Mitropoulos also concluded that both the GUC and microflute both 'performed appropriately in wet or dry environments that they were routinely subjected to.'¹⁰ Microflute does not require wet strength treatment because of its fluting structure but it nonetheless has wet strength properties.
- *'Microflute is pre-printed, where kraft paperboard is blank. The ability to switch from one product to another has been described as more efficient for kraft paperboard in relation to the production of packaging.'*¹¹ The ADC asserts that this supports claims that imported kraft paperboard is more adaptable to customers' orders as they are received.¹² There is no evidence to support this finding. Microflute and the GUC are equally adaptable to the customer's needs. In this regard, the industry representative, Mr Mitropoulos in his

⁴ Visy also draws the ADC's attention to the statement on page 4 of Westrock's submission dated 4 June 2020 (public file document no 8) that its wet strength product carriercote does not fall within 360-430 GSM (and Westrock refers in this regard to its 20-22 pt caliper carriercote products). Visy also notes that GPI has not in its submissions claimed that its kraft paperboard imports within the GUC are used for small format beverage packs.

⁵ SEF 35.

⁶ Refer Upwards Sales verification spreadsheets provided to the ADC in June 2020 to be read in conjunction with sales revenue information provided to the ADC in A6.1 of Appendix B108 to its Application. See also Visy submission to the ADC dated 16 June 2020 (Public file document no 9).

⁷ See Visy submission dated 4 September 2020 (public file document no. 18) at page 6.

⁸ SEF 35.

⁹ Statement of Arthur Mitropoulos dated 20 October 2020 (public file document no. 24) at page 2 (1st bullet point).

¹⁰ Ibid at page 4.

¹¹ SEF 29.

¹² SEF 30.

statement noted 'I believed the products were interchangeable and contract renewals were based on financial considerations.'¹³ Visy also notes that Microflute is only pre-printed on the top layer.

- It is also noted that the ADC has found that the GUC is used almost exclusively for beverage packaging (and not other uses such as food packaging).¹⁴ This is the precise market for which Visy has brought this dumping case for Australian produced microflute.

Overall, Visy submits that the ADC has erroneously found that the GUC and microflute do not sufficiently align in functionality. Given the market evidence as to the ease with which one can be substituted for the other for large format beverage packaging, Visy submits they simply must align in functionality. Indeed the ADC acknowledged that in respect of large format beverage packaging the two were functionally similar.¹⁵ However, the ADC incorrectly concluded that there are other major end uses in Australia of the GUC and microflute outside of this direct comparison. These other end uses (in particular smaller beverage packs) concern goods manufactured from imported WST kraft paperboard that are not within the GUC. Once this factual error is addressed the only sensible conclusion remaining is that the GUC and microflute are like goods in a functional sense.

2. THE ADC HAS NOT SUFFICIENTLY EMPHASISED COMMERCIAL LIKENESS

The ADC has correctly determined that the GUC and microflute are commercially alike (SEF 27-29, 34).¹⁶ This is an extremely important factor and must be given the greatest weight of all 'likeness' indicators, given that the purpose of the Anti-Dumping regime is to provide a trade remedy for an Australian Industry that is suffering material injury resulting from dumped imports.¹⁷ In this regard Visy notes the ADC's findings that the end products compete in the same markets, they compete for the same contracts, there is price competition and the end products are driven by consumer preferences.

3. THE ADC HAS NOT SUFFICIENTLY EXAMINED THE TRUE PHYSICAL LIKENESS

The ADC has found that the GUC and microflute are not physically alike. (SEF 25-27 and 34). The ADC has based this on the following matters:

¹³ Statement of Arthur Mitropoulos dated 20 October 2020 (public file document no. 24) at page 4.

¹⁴ SEF 28. Visy also notes the ADC's comments on page 12 of the SEF that it is aware of multiple end uses of the GUC. This directly contradicts the finding of the ADC on page 28 of the SEF that kraft paperboard imported from the USA is almost exclusively for the production of beverage can packaging.

¹⁵ Refer SEF 35.

¹⁶ See also Visy submission dated 18 June 2020 at pp 6-7 and the Statement of Arthur Mitropoulos dated 20 October 2020 (public file document no. 24).

¹⁷ Refer Visy Submission dated 4 September 2020 being public file document no 18.

- Microflute is stored in flat rectangular sheets whereas the GUC is stored as large jumbo rolls.¹⁸ Visy says that this is not a material consideration and is simply a question of storage and shipping convenience - many products are manufactured and shipped in alternating sheet format or roll format.
- Microflute is pre-printed whereas the GUC is not. As Visy has stated above, only one layer (top layer) of microflute is pre-printed. This does not change the physical nature of the goods and the pre-printing is undertaken in readiness for the conversion into end use beverage packs. Kraft paperboard also has a latex (white) coating on one side in its imported state.¹⁹
- The ADC notes that microflute and the GUC have a similar GSM and a similar thickness. These are very important factors for packaging products and should be given more emphasis in the ADC assessing these packaging materials.
- The GUC is wet strength treated (WST) and microflute is not.²⁰ This is not a material difference. WST is an additive to GUC that is not visible (not part of appearance). Both microflute and GUC have very similar wet strength properties but the GUC requires this additive during manufacture.
- The ADC refers to microflute having a visual appearance of parallel indentations.²¹ Visy has disagreed with these findings. No such indentations are obviously visible to the naked eye.²²
- Regarding the physical composition, the ADC notes the differences in the layers. However, both the GUC and microflute are paperboard products²³ made using similar raw materials and which undergo very similar early production processes. This was explained by the ADC's expert, Dr Vanderhoek, in his Expert Report.²⁴
- Ultimately, it takes a trained expert to recognise the physical differences between the GUC and microflute. At the end use stage in the market, the consumer can neither recognise nor does he or she care whether this beverage pack is formulated from microflute or the GUC. So Visy's position is that from a holistic perspective the GUC and microflute are like in physical appearance.
- In any event, Visy submits that given the overall purpose of the Anti-Dumping regime, minute physical differences (unrecognisable by end consumers in the

¹⁸ SEF 25.

¹⁹ Refer SEF 26.

²⁰ SEF 26.

²¹ SEF 25.

²² Refer Visy submission dated 18 June 2021 at page 8 (public file document no 9).

²³ Refer SEF 26.

²⁴ Refer Expert Report, Dr Nafty Vanderhoek (public file document no. 28), pp 2-12.

market) should be given far less weight than the integral factors of commercial and functional likeness.

4. THE ADC HAS GIVEN TOO MUCH CONSIDERATION TO PRODUCTION LIKENESS

We note that the process for making the GUC and microflute is the same up to a certain point, and notably both are constructed from layers of fibrous raw material, but that there are manufacturing differences. However, Visy submits that production likeness is far less important than the other 3 factors considered by the ADC, particularly the key issues of commercial and functional likeness. In the ADC Manual (refer pg 13) the Manual states: *Different production processes may produce identical goods. However, different production processes may be used to create different product characteristics. A comparison of production process will not of itself establish like goods, but may highlight differences or provide support to the assessment of other considerations.*

5. THE ADC SHOULD NOW FIND THAT ON BALANCE THE GUC AND MICROFLUTE ARE LIKE GOODS

We note in the ADC's conclusions regarding like goods in the SEF the ADC states that 'On balance when considering the key characteristics as a whole, the Commission is of the preliminary view that microflute does not closely resemble kraft paperboard.'²⁵ This is based upon the ADC's conclusion that there is commercial likeness but not functional, physical and production likeness. Visy contends in this submission that it is clear that the goods are functionally alike and the physical differences are not as pronounced as the ADC has concluded. Therefore, Visy strongly asserts that, based upon the criteria that the ADC assesses when examining likeness, the ADC must now reverse its preliminary findings regarding like goods.

6. THE ADC MUST EXAMINE OTHER FACTORS IN ITS ASSESSMENT OF LIKE GOODS

Visy further submits that the ADC's criteria for examining like goods is not exhaustive. The Australian dumping legislation does not provide prescriptive guidance on the factors that the ADC must consider is deciding the question of likeness.²⁶ The Dumping Manual makes reference to '**Other Considerations**' such as how the goods are marketed.²⁷ In United States dumping cases the authorities examine the following specific factors: 1/ physical characteristics and uses, 2/ interchangeability of the products, 3/ channels of distribution, 4/ common manufacturing facilities, production

²⁵ See SEF 35.

²⁶ See definition of 'like goods' in s269T of the Customs Act 1901 (Cth).

²⁷ Dumping and Subsidy Manual at page 13.

processes, 5/ customer and producer perceptions, 6/ price.²⁸ In Canada, the International Trade Tribunal examines a number of factors, including the physical characteristics of the goods (such as composition and appearance) their market characteristics (such as substitutability, pricing, distribution channels and end uses), and whether the domestic goods fulfil the same customer needs as the subject goods.²⁹ These approaches emphasise a market-based/commercial comparison between the imported and locally produced goods rather than one that narrowly focusses on small physical differences or methods of manufacture of the goods.³⁰ The ADC must investigate these additional matters, many of which demonstrate the commercial relationship between the imported and locally produced goods.

7. THE ADC HAS FAILED TO INVESTIGATE MATTERS THAT ARE DIRECTLY RELEVANT TO THE LIKE GOODS ASSESSMENT AND THESE MATTERS MUST NOW BE INVESTIGATED

The ADC has failed to investigate some fundamental matters that are relevant to the like goods determination and the overall consideration of the core criteria that the ADC must determine: that is, whether dumping of goods are causing material injury to an Australian Industry. The ADC Manual notes that 'Establishing the Australian Industry is critical to the examination and existence of Injury'.³¹

In this regard, the ADC has failed to:

- verify total Australian microflute production (production/sales volumes);
- identify Australian microflute producers and quantify their sales and market shares;
- verify the end uses of microflute manufactured and sold within Australia; and
- obtain information from commercial customers of the GUC and microflute to examine the claims regarding commercial, functional, physical likeness from the experience of these critical market participants.

*These matters are directly relevant to the proposed finding by the ADC in the like goods analysis that 'microflute is used in a wider range of applications than kraft paperboard.'*³² Visy contends and has provided evidence to the ADC that almost its entire production of microflute is sold for use in beverage multipacks.³³ The ADC has advised that it contacted Opal and Opal confirmed it was a manufacturer of microflute³⁴

²⁸ Refer United States Dumping and Subsidy Handbook at page II-34 and decision of *Timken Co. v United States*, 913 F. Supp. 580, 584 (CIT 1996).

²⁹ See section 2(1) Special Import Measures Act 1985; see also paragraph 35 of Canada Border Services Agency Preliminary Determination WG 2020 IN at <https://www.cbsa-asfc.gc.ca/sima-lmsi/i-e/wg2020/wg2020-pd-eng.html#toc6>.

³⁰ Both the United States and Canadian dumping legislation is based upon Article 2.6 of the WTO Dumping Agreement (which the Australian definition of 'like goods' in s269T of the Customs Act mirrors).

³¹ Dumping and Subsidy Manual at page 11.

³² See SEF 35.

³³ Refer footnote 6 above.

³⁴ Refer SEF 7 and 37.

but no verification was conducted as to Opal's production levels, whether in fact its product was microflute or the end uses of any microflute that it produces. The ADC suggests in the SEF that there are a lot of independent uses of microflute and the GUC but no positive evidence has been relied upon and this issue would not appear to have been investigated.³⁵ The ADC has therefore not met its own evidentiary standards for verifying critical issues as set out in *Evidentiary Standards Attachment 1 to Guidelines for Examination of a Formally Lodged Application* which states:

During the consideration of anti-dumping and countervailing matters, we are required to satisfy ourselves about the accuracy of information supplied. *The probative value of information (whether principal, intermediate or assertion) is determined by how reliable it is, or the degree of confidence we can have in it. Due process can change intermediate evidence to principal evidence by establishing more confidence in its accuracy. Information from reliable sources, or which is corroborated or verified imparts higher confidence and reliability.*

The amount of evidence required depends on the seriousness of the consequences.³⁶ (emphasis added)

In addition, despite Visy having provided the ADC with sufficient information and responding to its various requests, the ADC has not undertaken its obligation to investigate and complete its verification of Visy's claims of material injury that it has suffered and the causal link to the imported dumped GUC. Visy submits that the matters that would normally be investigated in this regard would have a bearing on the like goods analysis in that it would assist the ADC to reach an informed decision regarding the relationship between the GUC and microflute within the Australian market.

For completeness, Visy also notes that the SEF does not take into account Visy's submissions to the ADC dated 19 February and 4 March 2021 (public file document nos. 34 and 36) which must also be examined and taken into consideration by the ADC.

8. THE ADC HAS ADOPTED A NARROW INTERPRETATION OF LIKE GOODS THAT IS INCONSISTENT WITH THE PURPOSES OF PART XVB OF THE CUSTOMS ACT

In its submission of 4 September 2020, Visy pointed out that it is imperative that the ADC interpret the definition of like goods in s269T of the Customs Act in a manner that is consistent with the purposes of the Anti-Dumping provisions contained in Part XVB of the Customs Act. Section 269SM provides that these provisions concern the taking of anti-dumping measures in respect of **goods whose importation into Australia involves a dumping or countervailable subsidisation of those goods that injures, or threatens to injure, Australian industry.** The clear policy objective of the Anti-

³⁵ See SEF 35 under the heading 'Commission's assessment of functional likeness'.

³⁶ Refer pages 16-19 (Section 6.3) of Evidentiary Standards Attachment 1 to Guidelines for Examination of a Formally Lodged Application.

Dumping regime is to give trade protection to a domestic industry suffering injury resulting from dumped imports. We also note the requirement in s15AA of the Acts Interpretation Act that 'In interpreting a provision of an Act, the interpretation that would best achieve the purpose or object of the Act (whether or not that purpose or object is expressly stated in the Act) is to be preferred to each other interpretation.'³⁷ This applies to the definition of 'like goods' in s269T of the Customs Act.

Visy reiterates as per its submission of 4 September 2020 that the Australian Courts have interpreted the expression 'like goods' for the purposes of s269T in a practical and commercial manner. In this regard, we note:

- Lockhart J, in the Federal Court decision of *Marine Power Australia*, wherein his Honour stated: *'The expression "like goods" defined in s.269T should not be interpreted in a narrow or restrictive manner. It means goods of the same general category.'*³⁸
- Mortimer J, in the Federal Court decision of *GM Holden* wherein Her Honour noted that the *'statutory question is a practical one'*.³⁹
- The ADRP in *Anti-Dumping Review Panel Report No. 103 – Steel Pallet Racking exported from the People's Republic of China and Malaysia*⁴⁰ stated that 'GM Holden suggests that a practical approach should be adopted when considering like goods and that the type of framework adopted..'

Further, the definition of like goods in s269T mirrors the definition of 'like product' in Article 2.6 of the WTO Anti-Dumping Agreement. The provision has been discussed in various WTO panel decisions such as in *Korea – Pneumatic Valves*⁴¹ where the panel, in interpreting Article 2.6 emphasised a practical and market-based approach in stating:

*Based on this definition, it would be expected that allegedly dumped imports compete with the domestic like product. Indeed, if they did not, it is difficult to imagine on what basis a domestic industry could properly allege that dumped imports were causing injury to the domestic industry producing the like product, so as to justify the initiation of an investigation.*⁴²

The fundamental issue for the ADC to satisfy itself of in any like good analysis is whether the goods under consideration are sold into the same market and are substitutable for the Australian-made products. There is no doubt in this case that the GUC and microflute are such like competing goods.

³⁷ See Acts Interpretation Act 1901 (Cth).

³⁸ *Marine Power Australia Pty Ltd and Another v Comptroller General of Customs and others* (1989) FCA, Lockhart, L., 9 June 1989, unreported, paragraph (v) page 562 and page 572.

³⁹ *GM Holden Limited v Commissioner of the Anti-Dumping Commission and others* [2014] FCA 708, Mortimer, J., 4 July 2014 VID 555 of 2013, paragraph 134.

⁴⁰ See *Anti-Dumping Review Panel Report No. 103 – Steel Pallet Racking exported from the People's Republic of China and Malaysia* (August 2019) at paragraph 65.

⁴¹ In *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan*, WT/DS504/R, adopted 30 September 2019, para. 7.275.

⁴² *Ibid.*

In the event that the ADC does not reverse the proposed findings in the SEF, it would be the first time that we are aware of that the ADC has made a decision to terminate on the basis of the imported and Australian made goods being found not to be like goods. This finding would leave Visy without the prospect of trade protection in circumstances where there has been a finding of egregious levels of dumping (49.2% for GPI and an all other exporters dumping margin of 66.6%). The consequence of this is likely to be the loss of jobs and the closure of plants in circumstances where the imported and locally produced goods are completely substitutable. We also note that Visy has carefully formulated the GUC to only deal with imported goods that directly compete with the Australian Industry and which are treated as like by market participants. Further, any measures that would be imposed would not have wider negative economic impacts upon imported kraft paperboard (outside the GUC) that is converted for different end uses.

9. THE ADC MUST PLACE GREATER WEIGHT ON THE END USE OF THE GOODS AND PROPERLY EXAMINE THE RELATIONSHIP BETWEEN THE INTERMEDIATE AND FINAL GOODS

The record of investigation in this case evidences that the GUC and microflute undergo a similar conversion process and the end products are directly substitutable. Further, commercial customer and consumer perceptions of the end products are the same for converted kraft paperboard and microflute.⁴³ Therefore, it is completely appropriate for the ADC to have reference to the end use of the GUC and microflute as part of its like goods analysis. End use is clearly relevant to the functional likeness of the goods and it is also pertinent to the overall understanding of likeness. This point was made by the ADC's appointed expert, Dr. Vanderhoek, is stating that 'function performance as described above is most sensibly compared at the final product stage; that is, the finished box.'⁴⁴ In this situation the ADC must place greater weight on the end use of the goods and to fully and properly examine the relationship between intermediate and final goods for both the GUC and microflute. It is clear from this investigation that the final (converted) goods are like goods and this is a relevant consideration in determining the likeness of the intermediate goods.

In the United States, the International Trade Commission has dealt with this issue in previous cases in examining the likeness of intermediate goods. The ITC conducts what is known as a semi-finished product analysis in which it examines the following factors: 1/ whether the upstream article is dedicated to the production of the downstream article or has independent uses 2/ whether there are perceived to be separate markets for the upstream and downstream articles 3/ differences in physical characteristics of the upstream and downstream articles 4/ differences in the cost or

⁴³ Statement of Arthur Mitropoulos dated 20 October 2020 (public file document no. 24).

⁴⁴ Expert Report, Dr Nafty Vanderhoek, para 6.7 (public file document no. 28).

value of the vertically differentiated articles and 5/ the significance and extent of the processes used to transform the upstream into downstream articles.⁴⁵

The ADC has failed to investigate and make findings on these key issues. The relationship between the intermediate goods and the end products cannot simply be determined as irrelevant by the ADC because the imported goods are not final goods, especially in circumstances where there is no market for the sale of the intermediate goods.

10. THE ADC HAS DISREGARDED AND NOT ADOPTED THE CONCLUSIONS OF ITS OWN APPOINTED INDEPENDENT EXPERT

Visy notes that the ADC was sufficiently uncertain as to the question of like goods such that it felt the need to engage an independent industry expert to review this point. That seemed a prudent step in deciding between two competing positions put forward by parties who have vested interests in the outcome. But having taken the step of engaging an independent expert with relevant industry experience to opine on whether the products are like goods, Visy finds it incomprehensible that the ADC has disregarded and not accepted the recommendations of its own appointed expert (refer SEF 14-15) who unequivocally determined that GUC and microflute are like goods. The Expert, Dr. Vanderhoek noted:

Microflute is a "like good" alternative for kraft paperboard for physical, functional, and production factors where these materials are used in 12+ beverage can multipack applications.⁴⁶

There is no other fibrous product closely resembling kraft paperboard, other than microflute, able to meet the 12+ beverage can multipack performance requirements in their entirety.⁴⁷

The ADC distinguished his expert opinion on the basis that it was only a conclusion that the goods are like goods 'for use in a particular application which is not the same as it being a like good for a dumping investigation'.⁴⁸ Visy is of the view that this distinction is not credible where, firstly, the goods being compared overwhelmingly have the same end use (ie it is not just an example of end use) and, secondly, the end use is a helpful and concrete illustrative comparison between the GUC and microflute.

As stated in Visy's submission to the ADC of 15 January 2021, Dr. Vanderhoek has a detailed knowledge and experience of the pulp, paper and packaging industries in Australia and his view of this fundamental issue should be adopted and not be

⁴⁵ Refer United States Antidumping and Countervailing Duty Handbook at page II-35.

⁴⁶ Paragraph 7.1(b) of the Expert Report, Dr Nafty Vanderhoek (public file document no. 28).

⁴⁷ Paragraph 7.1(c) of the Expert Report, Dr Nafty Vanderhoek (public file document no. 28).

⁴⁸ SEF 15.

distinguished on the basis that he has sensibly emphasised in his Report the intended purpose and the customer specifications of the final converted GUC and microflute.⁴⁹ For instance, the product grade specifications that are issued by the customer are the same whether the product is constructed of kraft paperboard or microflute and this is then reflected in the ability to meet these specifications through use of either the GUC or microflute. The Expert also noted that the omission of the technical specifications for the final products as a 'regrettable omission'.⁵⁰ Visy submits that the ADC has failed to investigate and place relevant evidence on the public record any information regarding the customer's specifications and the ability of the GUC and microflute to each meet such specifications.

For the reasons stated above, Visy submits that the ADC must not terminate this investigation. The ADC should proceed to fulfil its statutory obligation to properly investigate the facts and finalize this investigation. The ADC has already determined that the GUC have been imported into Australia at significantly dumped prices. In addition, Visy has demonstrated that such dumping has directly caused and is continuing to cause material injury to its local operations. Visy has provided evidence to the ADC and stated on multiple occasions that the dumping of kraft paperboard within the GUC has caused tens of millions of dollars of lost revenue since the beginning of the investigation period. This financial harm will continue to escalate as future beverage packaging supply contracts are renewed by commercial customers.

Visy submits that, consistent with the views of the ADC's own independent expert, the overwhelming commercial, functional and physical likeness between the GUC and microflute demonstrates that, in practical terms in the market, they are entirely substitutable and are like goods. Given the heinous level of dumping that has been exposed, and the impact on Visy's Australian business (and so an Australian industry), and with significant numbers of local jobs at stake, Visy's view is that any finding other than one that imposes commensurate duties to address the proven dumping would be one that falls well short of what is intended and expected under the Anti-Dumping regime.

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



Dr. Ross Becroft

Principal

Encl.

⁴⁹ Paragraphs 6.6 to 6.15 of the Expert Report Dr Nafty Vanderhoek (public file document no. 28).

⁵⁰ Paragraph 6.9 of the Expert Report Dr Nafty Vanderhoek (public file document no. 28).