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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)

Dear Matthew

GPI refers to the statement of essential facts published in the investigation on 5 March 2021 (SEF) and Visy's submission dated 25 March 2021 in response to the SEF (Visy's submission).

GPI also refers to the expert evidence provided to the ADC in the report by Charles P Klass on 4 June 2020, in the supplementary report by Mr Klass on 26 July 2020 and in the response by Mr Klass to a report by Dr Vanderhoek on 3 February 2021.¹

GPI makes the following submissions:

1. Visy now ignores the "elephant in the room", that microflute does not exist except transiently in Visy's converting machinery (see section 1 below).
2. Visy urges the ADC to embark on a highly unconventional and novel investigation following the SEF (see section 2 below).
3. There are other significant problems with Visy's submission (see section 3 below).

¹ The expert evidence provided to the ADC was prepared in accordance with the Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT). This submission refers to these reports respectively as the Klass Report, the Supplementary Klass Report and the Responding Klass Report and together as the Klass Reports.



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1. Visy now ignores the elephant in the room, that microflute does not exist except transiently in Visy's converting machinery
 1. GPI submits that Visy now ignores the elephant in the room, namely that microflute does not exist except transiently in Visy's converting machinery.
 2. Even if the ADC acquiesced to every one of the arguments in Visy's submission,² Visy has not addressed the intractable problem that would face the ADC in formulating a decision involving like goods, and an industry that produces such like goods, that do not exist other than transiently inside machinery. GPI submits that it would be unprecedented for the ADC (or any other trade remedies authority) to find that there is an Australian industry producing a product that does not exist as a distinct and identifiably separate product.
 3. The possibility that microflute does not exist other than transiently within converting machinery was first raised in expert evidence provided to the ADC in the Klass Report.³ That possibility was firstly denied outright by Visy.⁴ Following Visy's denial, the ADC's expert's described Visy's microflute / packaging production in a manner consistent with microflute and beverage packaging being produced in line.⁵ In the face of two sets of expert evidence now pointing to Visy's in line production, Visy then appeared to accept and admit that its microflute was produced in line.⁶ As GPI then observed:⁷

... if there is no distinct or separately identifiable microflute product (other than something that exists transiently inside machinery), then Visy's already problematic like goods argument falls away in its entirety. In that case, there is arguably not even an Australian [industry] producing microflute (or at least not one that includes Visy).
 4. The SEF now appears to confirm that at least some of Visy's microflute / packaging is produced in line.⁸
 5. Visy's most recent approach, in its submission following the SEF, has been to simply ignore this highly problematic issue. If Visy somehow convinced the ADC to reverse its findings in the SEF,⁹ the ADC would then find itself in a blind alley of Visy's making,

² Which GPI submits it should not do for the reasons set out in this submission and in its previous submissions.

³ See the Klass Report at pages 8 and 15.

⁴ See Visy submission of 18 June 2020 at page 11.

⁵ See GPI submission of 2 February 2021 at section 5.

⁶ See GPI submission of 24 February 2021 at section 3.

⁷ See GPI submission of 24 February 2021 at paragraph 16.

⁸ SEF at page 25.

⁹ There would be no sound basis for the ADC to reverse its findings in the SEF for the reasons set out in this submission and in GPI's submission on the SEF of 25 March 2021.

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namely how to deal with the fact that much of the microflute produced by Visy is likely to hardly exist except in the internals of high speed converting machinery.

6. Visy now argues that one of the end uses of kraft and microflute is “a helpful and concrete illustrative comparison between the GUC and microflute”.¹⁰ However, that is an *incorrect* comparison and is not helpful in a proper statutory assessment; it illustrates nothing except perhaps similarities and differences between some *other* goods (ie not the goods under consideration). Again, as GPI has consistently said, the statute requires the ADC to compare the goods *as they cross the Australian docks*, ie to compare large unprinted, unconverted rolls of kraft paperboard with printed sheets of microflute. As the case now appears, it may be difficult to even catch a glimpse those sheets of microflute as they flash by inside Visy’s converting machinery.

¹⁰ Visy submission at page 11.

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2. Visy urges the ADC to embark on a highly unconventional and novel investigation following the SEF
7. GPI submits that Visy is urging the ADC to embark on a highly unconventional and controversial investigation following the SEF. In particular Visy is urging the ADC to:
 - a. Adopt some amalgam of selected approaches from other anti-dumping agencies;¹¹
 - b. Abandon the statutory like goods requirement in the service of some “purposes” of Visy’s own making;¹²
 - c. Abandon the ADC’s own guidance as contained in the Dumping and Subsidy Manual (Manual);¹³
 - d. Substitute assertion for evidence.¹⁴
8. GPI submits that it is not open to the ADC to follow Visy’s urgings for the following reasons.

The ADC may not adopt some amalgam of selected approaches from other anti-dumping agencies
9. Visy would have the ADC adopt some ill-defined amalgam of approaches from anti-dumping agencies in the United States and Canada.¹⁵ According to Visy, the ADC “must investigate these additional matters” that Visy claims are looked at elsewhere.¹⁶
10. GPI submits that it would be highly unusual for the ADC to take up some new approaches from other selected countries and, at this stage of an investigation, it would be highly unfair to parties who have proceeded on the entirely reasonable basis that the ADC would not adopt novel and exotic approaches from elsewhere.
11. Of course, the ADC may and regularly does review its approaches and policies. Those reviews are properly undertaken more broadly and in consultation with stakeholders, policy analysts and the Department and may usefully look at the practice in other

¹¹ Visy submission at pages 6 to 7.

¹² Visy submission at section 8.

¹³ Visy submission at sections 2 to 6.

¹⁴ Visy submission at section 2.

¹⁵ Visy submission at sections 6 and 10.

¹⁶ Visy submission at page 7.

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jurisdictions. However, it would be inappropriate (and susceptible to legal challenge) to, as Visy urges, introduce novel approaches during a live investigation.

The ADC may not abandon the statutory like goods requirement in the service of some “purposes” of Visy’s making

12. Visy claims (without referring to any basis for its claim) that the purpose of the anti-dumping legislation is to protect “Australian industry”. It is telling that Visy uses the term “Australian industry” or “domestic industry” six times in its submission¹⁷ but not once does Visy provide the important statutory qualifications that it must rather be “an Australian industry producing like goods” that claims to have suffered injury (emphasis added, refer s 269TG(1)(b)).
13. The High Court has said that the “language which has actually been employed in the text of legislation” is the surest guide to legislative intention.¹⁸ On that basis, the surest guide to the purpose or intention of Australia’s anti-dumping legislation is to look at the language that has been employed in the legislative provisions. The language that is employed in s 269TG indicates an intention or purpose to protect “an Australian industry producing like goods”, not as Visy would have it to provide some protection to Australian industry generally regardless of whether or not they produce like goods.
14. According to Visy, its preferred purpose allows an assessment of the end use of goods and of the relationship between intermediate and final goods.¹⁹ However, if it is an Australian industry producing the *final goods*, ie beverage packaging, that Visy claims has been injured then GPI would refer to the text of the legislation regarding Australian industry in s 269T(2), (3) and (4). On that basis GPI (and WestRock) would be a part of that Australian industry because they “partly manufacture” (s 269T(2)) beverage packaging by carrying out a “substantial process in the manufacture” (s 269T(3)) of beverage packaging, namely by printing and converting kraft into beverage packaging.

The ADC may not abandon its own guidance as contained in the Dumping and Subsidy Manual

15. GPI submits that Visy would have the ADC abandon its own guidance as contained in the Manual.

¹⁷ Other than when it is quoting other sources.

¹⁸ *Alcan (NT) Alumina Pty Ltd v Commissioner of Territory Revenue* (2009) 239 CLR 27 at [47] (Hayne, Heydon, Crennan and Kiefel JJ).

¹⁹ Visy submission at sections 8 and 9.

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16. Among other things, Visy urges the ADC to: place substantial weight on end use of the goods (ie on products that *are not the goods*);²⁰ investigate injury to Australian producers that don't produce like goods;²¹ give greatest weight to commercial likeness.²²
17. In so urging, Visy is asking the ADC to abandon its own guidance in the Manual and embark on some sort of freeform investigation. However, as GPI has previously contended, and Visy has not contested, the ADC should follow its publicly stated policy in the Manual. As case law states, a decision maker who does not follow its own publicly stated policies may be subject to review on the basis of unreasonableness or even irrationality.²³

The ADC may not substitute assertion for evidence

18. Visy has made a great many assertions during the course of the investigation; many of these assertions have been shown to be contradictory²⁴ or demonstrably incorrect.²⁵ Visy continues in the wake of the SEF to make assertions that are unconstrained by the facts and, in so doing, urges the ADC to substitute assertion for evidence.
19. For example, Visy's submission claims it has provided evidence to the ADC, in particular in the comparison table provided at page 6 of Visy's 18 June 2020 submission.²⁶ GPI would urge the ADC to look at the table Visy refers to. The table is in fact not evidence at all, rather it is a list of generalised assertions that Visy makes. In light of Visy's track record in the investigation (see paragraph 18 above), the ADC would be well advised to treat such assertions by Visy with great caution.
20. In a similar manner, Visy would have the ADC adopt Dr Vanderhoek's report as evidence that microflute is like to kraft paperboard²⁷ despite the fact that Dr

²⁰ Visy submission at section 9.

²¹ Visy submission at section 7.

²² Visy submission at section 2.

²³ See *Taveli v Minister for Immigration* [1989] FCA 175; 86 ALR 435 at paragraph 62 and section [5.200] of *Judicial Review of Administrative Action and Government Liability*, 6ed, Aronson, Groves, Weeks.

²⁴ See for example GPI submission of 21 September 2020 at sections 6.a, 6.b, 6.c, 6.d, 6.e explaining Visy's contradictory statements on what is the claimed like good.

²⁵ See for example GPI's submission of 21 September 2020 at sections 6.f, 6.g, 6.h, 6.i explaining Visy's demonstrably wrong statements on important matters in the investigation and Visy's false statement that it is the only Australian producer of microflute (see GPI's submission of 21 September 2020 at section 3).

²⁶ There appears to be a typographical error at Visy's footnote reference to a 16 June 2020 submission; that reference is incorrect.

²⁷ Visy submission at section 10.

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Vanderhoek did not even address or answer that question.²⁸ Instead, Dr Vanderhoek stated his conclusions only in terms of a particular end use for those products.²⁹ By choosing the only common end use in which to make a comparison Dr Vanderhoek presupposed the outcome in favour of finding likeness.³⁰ That would not be a sound evidential basis on which the ADC might proceed and so the ADC was right to place no weight on key conclusions in that material in the SEF.³¹

²⁸ See GPI submission of 2 February 2021 at section 1, entitled *The Vanderhoek report does not assist the ADC to form a view that microflute is a like good to kraft paperboard*.

²⁹ GPI submission of 2 February 2021 at section 1.

³⁰ GPI submission of 2 February 2021 at section 3.

³¹ SEF at section 3.6.3.

3. There are other significant problems with Visy's submission
 21. GPI submits that there are other significant problems with Visy's submission. An explanation of these problems follows.
 22. **Visy wrongly seeks for the investigation to continue:** Visy claims that there are multiple "certain matters" and "assumptions" in the SEF "that must now be investigated" in regard to like goods.³² Visy apparently fails to recognise that it has failed to convince the ADC of its like goods argument after a year of investigation and that the WTO Anti-Dumping Agreement relevantly provides that anti-dumping investigations cannot continue indefinitely (Article 5.10).
 23. **Visy wrongly contests the ADC's conclusions on small format packaging:** Visy makes this claim on the basis of 3 samples that were tested in its own laboratory.³³ Visy has failed to understand that GPI provided exhaustive evidence of and data supporting the facts regarding small format packaging to the ADC early in the investigation.³⁴ That information was sufficiently exhaustive to be capable of verification by the ADC.
 24. **Visy's wrong statements about other production of microflute have been discredited:** Visy now claims that it "provided evidence" that volumes of microflute produced by other manufacturers "are immaterial".³⁵ That's quite different to what Visy told the ADC in its application, that it was the *only* producer of microflute³⁶ and what it told the ADC in a submission about other producers of microflute in Australia (ie that there were *no* others).³⁷ GPI subsequently found and supplied photographic evidence and a sample of Opal microflute used in packaging for Australia's largest chocolate manufacturer.³⁸ In any event it is common industry knowledge that Opal has two high capacity Asitrade machines that are capable of producing microflute.³⁹ As GPI has observed, Visy's formal declaration in its application that the information there was complete and correct was wrongly made and Visy has substantially broken faith with the ADC.⁴⁰ In short, Visy's statements about other production of microflute have been discredited.

³² Visy submission at page 1 to 2.

³³ Visy submission at page 2 to 3.

³⁴ See confidential material in and attached to GPI submission of 13 May 2020.

³⁵ Visy submission at page 3.

³⁶ Consideration Report 548 at page 5.

³⁷ See the extract of Visy submission at page 2 of the Addendum to GPI's submission of 26 July 2020.

³⁸ See generally the Addendum to GPI's submission of 26 July 2020.

³⁹ See the Addendum to GPI's submission of 26 July 2020 at paragraph 4.

⁴⁰ GPI submission of 21 September 2020 at paragraph 114.

25. **Visy wrongly claims there is no evidence of differences in performance:** Visy claims there is no evidence of differences in performance of kraft paperboard and microflute in wet environments.⁴¹ However, there is evidence of differences in performance between kraft paperboard and microflute in wet environments. That evidence includes the Klass Report, which provides substantial detail around the differences in performance in wet environments.⁴²
26. **Visy wrongly claims that there is no evidence that kraft has a greater ability to switch from one product to another:** Visy claims that there is no evidence that kraft has a greater ability to switch from one product to another or that kraft paperboard is more adaptable. GPI submits that it is *self-evident* that kraft has a greater ability to switch from one product to another. Microflute is *already printed* when it is formed on Visy's corrugating machinery⁴³ and so microflute cannot be switched for use with a different product other than that which is *already printed* on the microflute – that is self-evident. In contrast, kraft paperboard is *unprinted* and so can be easily adapted for different uses.
27. **Visy can't change the law on like goods:** Visy argues that commercial likeness “must be given the greatest weight of all the likeness factors”.⁴⁴ Case law is clear that the focus in a like goods assessment is on “a comparison of the *physical* characteristics” (emphasis added) of the goods and claimed like goods.⁴⁵ That case law is reflected in the order of likeness factors in the Manual.⁴⁶ In any event, for the reasons stated in GPI's submission of 25 March 2021, GPI considers that kraft paperboard and microflute are not commercially alike.⁴⁷
28. **It is highly material that kraft paperboard crosses the Australian docks in large rolls:** Visy argues that the fact that kraft paperboard crosses the Australian docks in large rolls is not a “material consideration”.⁴⁸ The reason given by Visy is that “many products are manufactured and shipped in alternating sheet format or roll format”.⁴⁹ With respect, the investigation is not concerned with “many products” but with one product, kraft paperboard. Kraft paperboard is not shipped in alternating formats

⁴¹ Visy submission at page 3.

⁴² Klass Report at page 11 and following.

⁴³ Visy application at page 11.

⁴⁴ Visy submission at section 2.

⁴⁵ *GM Holden Ltd v Commr of the Anti-Dumping Commission* [2014] FCA 708 at paragraph 124.

⁴⁶ Manual at section 2.2.

⁴⁷ GPI submission of 25 March 2021 at section 3.

⁴⁸ Visy submission at page 5.

⁴⁹ Visy submission at page 5.

but in large rolls; that distinctive physical form of the goods, as the SEF confirmed,⁵⁰ is highly material to the like goods issue.⁵¹

29. **It is highly material that microflute is printed (whether on one layer or not):** Visy appears to argue that it's somehow not material that microflute is printed because it is "only one layer (top layer)" that is printed.⁵² The thrust of Visy's submission is unclear; no party has suggested that any other layer of microflute is or might be printed and, with respect, it would be strange if other (internal or corrugated) layers were printed. GPI would observe that one of the indicia of physical likeness stated in the Manual is appearance⁵³ and printing is a substantial difference in appearance between kraft paperboard and microflute.
30. **Wet strength treatment is a highly material difference:** Visy argues that wet strength treating is not a material difference between kraft paperboard and microflute.⁵⁴ However, GPI observes that it was Visy itself who made an application for dumping duties against kraft paperboard that is *wet strength treated*.⁵⁵ In addition, the Visy submission argues that it "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".⁵⁶ If wet strength treatment is not a material difference then it is unclear why Visy did not seek measures against *all* kraft paperboard. GPI submits that the better view is that wet strength treatment is, as the SEF has found,⁵⁷ a material difference between the goods and microflute.
31. **Visy disagrees against all evidence that washboard effect exists:** Visy disagrees that microflute has visible parallel indentations.⁵⁸ Visy claims the so called washboard effect is not "visible to the naked eye".⁵⁹ GPI submits that the evidence simply contradicts Visy's claim. GPI refers the ADC to photographic evidence,⁶⁰ samples

⁵⁰ SEF at page 25.

⁵¹ See GPI submission of 21 September 2020 at section 4 entitled *The goods are large rolls of unprinted kraft paperboard, not beverage can multipacks as Visy argues, neither are they printed sheets of corrugated cardboard*.

⁵² Visy submission at page 5.

⁵³ Manual at section 2.2.

⁵⁴ Visy submission at page 5.

⁵⁵ Application at page 9.

⁵⁶ Visy submission at pages 2 and 10.

⁵⁷ SEF at page 34.

⁵⁸ Visy submission at page 5.

⁵⁹ Visy submission at page 5; Visy's assertion relies on an earlier assertion by Visy.

⁶⁰ GPI submission of 21 September 2020 at section g entitled *Visy's wrong statement that flutes in its microflute are microscopic and there are no visible undulations* and figure 11.

provided to the ADC⁶¹ and the expert evidence of Mr Klass as evidence that the washboard effect exists and is visible.⁶²

32. Visy ignores recognised basic differences between kraft paperboard and microflute:

Visy claims in support of its position that kraft paperboard and microflute use “similar raw materials and [...] undergo very similar early production processes”.⁶³ That does not assist Visy because that same statement can be said about a great many products including E flute (and other) corrugated board, A4 copy paper and toilet roll inners. Visy has chosen to ignore the basic difference recognised in the paper and packaging industry that microflute is the result of *converting* paper and paperboard, kraft paperboard is not.⁶⁴

33. Visy accepts expert views on physical differences: Visy acknowledges that physical differences between kraft paperboard and microflute can be recognised by a trained expert.⁶⁵ That appears to be grudging acceptance of the expert evidence of physical differences in the Klass reports.⁶⁶ But Visy prefers to look at “the end use stage in the market” where a consumer at that stage may “neither recognise nor [...] care” whether a beverage pack is microflute or kraft paperboard.⁶⁷ Again, GPI would repeat its submission that beverage packs are not the goods and GPI does not export beverage packaging to Australia.⁶⁸

34. Substantial production differences lead to substantial physical differences: Visy claims that the ADC gave too much consideration to production likeness (without pointing to any passage in the SEF in support of its claim).⁶⁹ GPI disagrees, there is nothing on the face of the SEF to suggest or indicate that the ADC gave too much consideration to production likeness. GPI would however point to the uncontested expert evidence of Mr Klass that the “significant physical differences stem from the

⁶¹ Samples provided to the ADC under cover of letter dated 14 August 2020.

⁶² Klass Report at page 10.

⁶³ Visy submission at page 5.

⁶⁴ See *The Handbook for Pulp and Paper Technologists* 3ed (the Smook Book) at chapters 19 (paperboard) and 23 (paper end uses including converting) respectively.

⁶⁵ Visy submission at page 5.

⁶⁶ See for example the Klass Report at pages 5 and following; Dr Vanderhoek did not provide an opinion of the physical differences between microflute and kraft paperboard (see GPI submission of 2 February 2021 at section 1).

⁶⁷ Visy submission at page 5.

⁶⁸ See for example GPI’s submission of 21 September 2020 at section 4 entitled *The goods are large rolls of unprinted kraft paperboard, not beverage can multipacks as Visy argues, neither are they printed sheets of corrugated cardboard.*

⁶⁹ Visy submission at page 6.

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very different ways they are produced".⁷⁰ No part of Visy's submission has disturbed that aspect of Mr Klass's evidence.

35. The ADC correctly refused to verify or assess injury to Australian companies that don't produce like goods:

- a. Visy demands that the ADC investigate matters that Visy claims are relevant to a like goods assessment.⁷¹ The primary matter that Visy now demands the ADC investigate is other Australian producers of microflute, namely Opal.⁷²
- b. GPI would firstly observe that this is an extraordinary demand from a company who initially stated in its application that it was the only member of an Australian industry producing microflute⁷³ (and formally declared that the information provided was complete and correct)⁷⁴ and then continued to flatly deny there were other producers when challenged by GPI.⁷⁵ At all relevant times it has been common industry knowledge that Opal produces microflute and Opal's microflute packaging (used by major customers) has been openly sitting on the shelves of Australian supermarkets.⁷⁶
- c. In any event, GPI submits that the ADC quite correctly refused to verify or assess injury to companies that do not produce like goods.⁷⁷ Visy argues that an assessment of injury would inform an assessment of like goods⁷⁸ however GPI submits that that approach would put the analytical cart before the horse.⁷⁹ Rather, the ADC proceeded correctly on the logical basis that, if there is no Australian industry producing like goods then there cannot have been injury to an Australian industry producing like goods;⁸⁰ that reasoning discloses no error.

⁷⁰ Klass Report at page 5.

⁷¹ Visy submission at section 7.

⁷² Visy submission at section 7 generally.

⁷³ Consideration Report 548 at page 5.

⁷⁴ Application at page 2.

⁷⁵ See the extract of Visy submission at page 2 of the Addendum to GPI's submission of 26 July 2020.

⁷⁶ See generally the Addendum to GPI's submission of 26 July 2020.

⁷⁷ SEF at page 7 and section 4.2.2.

⁷⁸ Visy submission at page 8.

⁷⁹ See paragraph 37 of this submission.

⁸⁰ SEF at page 6.

36. **Visy continues to misrepresent the legal authority on like goods set out in *GM Holden v Commr***: Visy selectively quotes from the Federal Court in support of its position that a like goods assessment should be subject to some nebulous rubric of being “practical”.⁸¹ That is not correct. As GPI has previously observed, far from assisting Visy, the decision of the Court in *GM Holden* is legal authority for the proposition that the focus in a like goods assessment is on “a comparison of the *physical characteristics*” (emphasis added) of the goods and claimed like goods.⁸²
37. ***Korea – Pneumatic Valves* does not assist Visy and confirms the ADC’s approach:**
- a. Visy claims in support of its position a statement from the WTO disputes resolution panel in *Korea – Pneumatic Valves*.⁸³
 - b. GPI observes that *Korea – Pneumatic Valves* was not a dispute about article 2.6 (like goods) of the Anti-Dumping Agreement but about articles 3.1 (injury) and 4.1 (domestic industry).⁸⁴ Articles 3.1 and 4.1 logically follow analytically from, and take as an input, an assessment of like goods under article 2.6 (both injury in article 3.1 and domestic industry in article 4.1 are stated in terms of like goods). So, if goods claimed to be like goods were not like goods under article 2.6 then neither article 3.1 nor 4.1 would even be enlivened.
 - c. The analytical route in the Anti-Dumping Agreement is tolerably clear from the passage quoted by Visy. The dispute body in *Korea – Pneumatic Valves* was saying that where the definition of like goods in article 2.6 is satisfied then certain matters regarding injury and the domestic industry in articles 3.1 and 4.1 would likely logically follow.
 - d. It would also follow, in circumstances where the definition of like goods is *not* satisfied (such as the current investigation), that there can be no determination of injury under article 3.1 nor a domestic industry as that term is defined in article 4.1. On that basis, *Korea – Pneumatic Valves* serves to confirm that once the ADC was satisfied that the like goods test was not satisfied then it was correct in finding there was no Australian industry producing like goods and in not proceeding to assess injury.

⁸¹ Visy submission at page 9.

⁸² See *GM Holden Ltd v Commr of the Anti-Dumping Commission* [2014] FCA 708 at paragraph 124.

⁸³ Visy submission at page 9.

⁸⁴ *Korea – Anti-Dumping Duties on Pneumatic Valves from Japan*, WT/DS504/R at section 7.4.2.

38. The Vanderhoek report does not assist the ADC to form a view that microflute is a like good to kraft paperboard:

- a. Visy continues to argue that the like goods issue should be resolved by reference to end use products⁸⁵ rather than the goods as the cross the Australian docks and that Dr Vanderhoek's report arguing the same approach should be adopted.⁸⁶
- b. However as GPI has observed, the Vanderhoek report does not assist the ADC to form a view that microflute is a like good to kraft paperboard because the Vanderhoek report did not address or answer that question.⁸⁷ The Vanderhoek report and Visy proposed a radical change to the conventional like goods assessment and the ADC has properly declined to deploy such a change in a live investigation.⁸⁸
- c. GPI observes in any event that there remain substantial issues of transparency and factual errors in Dr Vanderhoek's report that would make the report an unreliable basis on which to base a recommendation to the Minister.⁸⁹

⁸⁵ Visy submission at section 9.

⁸⁶ Visy submission at section 10.

⁸⁷ GPI submission of 2 February 2021 at section 1.

⁸⁸ GPI submission of 2 February 2021 at section 2.

⁸⁹ GPI submission of 2 February 2021 at section 7.



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4. Other matters

39. GPI is grateful for the opportunity to make this further submission on the investigation. Please let me know if you need any further information or elaboration to the information provided in this or GPI's other submissions.

Sincerely

A handwritten signature in cursive script that reads "David H. Peters".

David Peters
Principal Lawyer
Kinsman Legal