

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 April 2021

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 GPI Submission of 8 April 2021**

We refer to submission of GPI dated 8 April 2021 which responds to Visy’s submission dated 25 March 2021.

Visy responds as follows:

1. GPI falsely asserts that ‘microflute does not exist except transiently in Visy’s converting machinery.’<sup>1</sup> GPI are misleadingly attempting to portray microflute as something less than a real product that is produced at manufacturing facilities in Australia and that it is therefore not worthy of being compared to imported kraft paperboard and it is somehow diminished as a product that can be compared to kraft paperboard. Visy reconfirms that microflute is produced in sheet format and that the final stages of conversion (or

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<sup>1</sup> Paragraph 3.1 GPI Submission of 8 April 2021.

finishing) of the sheets into box format are separate production steps completed later in time either at the same location or (if required) at a different location. Visy has provided evidence to the ADC as part of its verification that microflute sheets, once produced, are cut into large rectangular sheets which are placed on pallets. The palletised sheets are then cut to shape through the die cutting process, separated, and stacked. The flat carton packs are then glued, packed into shipping boxes, placed on pallets and shrink wrapped ready for delivery to the customer.

2. Visy has addressed this issue regarding microflute production in previous submissions.<sup>2</sup> Visy has confirmed in June 2020 that microflute is converted **offline** in a separate manufacturing process. In its submission dated 18 June 2020 it noted:

The submission [of GPI] asserts that there are differences in the packaging of the two products with the suggestion that the conversion of microflute may be done 'in line' (ie on the corrugation machine). This is not correct. The conversion of microflute is undertaken 'off line', which is the same as for GPI's product.<sup>3</sup>

Visy could not be clearer on this issue.

3. Mr Klass, in his report stated as follows in relation to the manufacture of microflute:

It may be die cut and converted into box blanks in line at the end of the corrugator, or this converting to package form may be done from sheets at another location.<sup>4</sup> Microflute is often preprinted and supplied as microflute corrugated to be converted by die cutting. If it is done in line on the corrugator, microflute exists only for a short time in the corrugating line.<sup>5</sup>

Therefore, Mr Klass, contrary to GPI's assertion, does not confirm that microflute is converted in-line but he rather simply states that it can be done on or off-line. Further, Visy notes that neither GPI, nor Mr Klass have inspected microflute being produced at Visy's manufacturing facilities.

4. The ADC expert, Dr. Vanderhoek, does not deal expressly with this issue in his Report.<sup>6</sup> Without any foundation, GPI simply states that the ADC expert described the production process in a manner that is consistent with inline production and then

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<sup>2</sup> See paragraph 4 Visy submission dated 4 March 2021 (public file document no 36) wherein Visy states: *Visy does not accept GPI's contention in paragraph 14 of GPI's submission that microflute that is comparable with imported kraft paperboard exists only transiently. Microflute is a product manufactured in Australia at various production facilities and how Visy in fact organises its production processes based upon its own operational requirements (eg whether conversion into a final product occurs promptly or at the same facility) is not a relevant consideration in this case.*

<sup>3</sup> Visy submission dated 18 June 2020 at page 11 (public file document no 9).

<sup>4</sup> Submission of C Klass June 2020 at page 8.

<sup>5</sup> Ibid page 15.

<sup>6</sup> Report of Dr Nafty Vanderhoek dated 22 December 2020 (Public file document no 28). In its submission of 2 February 2021 at paragraph 44, GPI refers to paragraph 5.89 of the Vanderhoek report but there are no express or implied references to inline production by Dr Vanderhoek in this paragraph.

GPI references its own earlier submission of 2 February 2020 where this contention is re-advocated.<sup>7</sup>

5. In addition, the SEF does not confirm that microflute is produced in-line. Rather, the SEF states ‘Microflute, if not consumed in the production of the end-use product inline, is stored flat in rectangular sheets which are consumed in the production of end-use product at a later stage.’<sup>8</sup>
6. Accordingly, it is clear from the matters cited in paragraphs 1 to 5 above that GPI takes mere speculation that microflute may be produced in-line to be known facts.<sup>9</sup> As Visy has previously stated, GPI persists in repeating certain assertions presumably so that they are treated by the ADC as facts on the public record. GPI is therefore engaging in exactly what it accuses Visy of: namely substituting assertion for evidence.<sup>10</sup>
7. Visy notes that GPI does not directly refute the evidence provided by Visy to the ADC that small format beverage packaging sold in Australia falls outside the GUC because it has a lower GSM than the imported kraft paperboard that is the subject of this investigation.<sup>11</sup>
8. The approach contended for by Visy in this case is not ‘highly unconventional’ or ‘novel’<sup>12</sup> as alleged by GPI and nor has Visy suggested that the ADC should adopt an ‘amalgam of selected approaches’ from other anti-dumping authorities.<sup>13</sup> Visy is rather seeking for the ADC to apply its usual criteria cited in the Dumping Manual to the facts of this case and the reference to overseas jurisdictions was indicative of the level of analysis that is required in dealing with the particular circumstances of both kraft paperboard and microflute being intermediate goods that are converted into final products for sale to customers.
9. Contrary to GPI’s assertions, Visy is not somehow ‘abandoning the statutory like goods requirement in the service of some “purposes” of Visy’s making’.<sup>14</sup> Visy is not contending that the words ‘like goods’ do not appear in the legislation but rather (self-evidently given the number of submissions on this issue) Visy says that imported kraft paperboard (within the GUC) and microflute are like goods. However, Visy has legitimately continued to assert that the overarching purpose of the dumping legislation is to protect Australian Industry from the nefarious effects of dumping.<sup>15</sup>

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<sup>7</sup> GPI submission dated 8 April 2021 paragraph 3.

<sup>8</sup> SEF page 25.

<sup>9</sup> See GPI’s statements to this effect: refer paragraphs 12 and 14 of GPI submission dated 24 February 2021 (public file document 35) and paragraph 4 of GPI submission 8 April 2021 (public file document 40).

<sup>10</sup> GPI submission dated 8 April 2021 paragraph 18.

<sup>11</sup> GPI submission dated 8 April 2021 paragraph 23.

<sup>12</sup> GPI submission dated 8 April 2021 at Section 2.

<sup>13</sup> GPI submission dated 8 April 2021 at paragraphs 9-10.

<sup>14</sup> GPI submission dated 8 April 2021 paragraphs 12 and 13.

<sup>15</sup> Refer Visy submission dated 4 September 2020 (public file document 18).

Visy is not seeking to somehow replace the wording in the legislation but to have reference to the purpose of the dumping legislation when applying what is demonstrably an inadequate and unprescriptive definition of like goods within section 269T of the Customs Act.<sup>16</sup> GPI's suggestion that the text of the legislation is the surest guide to its purpose of intention is trite and circular in that it is precisely because the legislation is unclear that recourse is required to other parts of the legislation or extrinsic materials as an aid to interpretation.

10. In paragraph 14 of its submission GPI again provides a fallacious argument that by Visy referring to the end use of kraft paperboard and microflute that somehow it is contending for a like goods analysis of the end products rather than the GUC. That is a complete misrepresentation of Visy's dumping application and subsequent submissions and it is totally appropriate for the ADC to comprehend and refer to the end use of imported kraft paperboard (within the GUC) and microflute.
11. Visy objects to GPI's contention in paragraph 19 of its submission<sup>17</sup> that information provided in table form in Visy's submission of 18 June 2020 was 'a list of generalised assertions' and not evidence, and the implication, that information provided by Visy is not accurate or reliable. This information was carefully compiled with input from Visy representatives who are employed within the relevant business unit and at the facilities and the ADC is quite capable of verifying this against information and documents provided to the ADC.
12. Visy further objects to GPI's claim in paragraph 24 of its submission that 'Visy's wrong statements about other production of microflute have been discredited'.<sup>18</sup> It is clear that GPI has no direct knowledge about whether Opal produces microflute and its reference to 'common industry knowledge that Opal has two high capacity Asitrade machines that are capable of producing microflute'<sup>19</sup> does not equate to proven evidence of Opal's position in the market, in respect of which Visy has provided information to the ADC for its verification.
13. Another example of GPI's approach to this case is in paragraph 30 of GPI's submission in which GPI asserts that a reference in the Goods Description to wet strength treated must mean that wet strength treatment is a critical factor in the like goods analysis.<sup>20</sup> The descriptor wet strength treated was included in the GUC in order to exclude non-wet strength treated kraft paperboard that is used for other end uses such as food packaging. GPI is confusing a comparison between imported goods that are within or outside the scope of the GUC with a like goods comparison of imported kraft paperboard (within the GUC) and microflute. Visy has consistently

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<sup>16</sup> It is noted that the Dumping Manual like goods criteria are practical working criteria and are not prescribed legislatively under the Customs Act.

<sup>17</sup> GPI submission dated 8 April 2021 paragraph 19.

<sup>18</sup> GPI submission dated 8 April 2021 paragraph 24.

<sup>19</sup> Ibid.

<sup>20</sup> GPI submission dated 8 April 2021 paragraph 30.

contended and has provided copious evidence that microflute has wet strength properties without it being required to be wet strength treated.<sup>21</sup>

14. We also take this opportunity to respond to GPIs submission dated 25 March 2021 in response to the SEF.<sup>22</sup> Visy rejects any suggestion that the evidence adduced in this case somehow leaves the ADC with termination as ‘the only decision open’ and that termination is the ‘correct decision’.<sup>23</sup> We note in particular the unconvincing attempts by GPI to persuade the ADC to overturn its proposed finding that imported kraft paperboard (within the GUC) and microflute are not commercially alike.<sup>24</sup>

In this regard, we refer the ADC to the following specific matters:

- GPI’s depiction of a comparison between large rolls of unprinted, unconverted paperboard with converted printed sheets of microflute is using artistic licence.<sup>25</sup> Both kraft paperboard (within the GUC) and microflute are unconverted paperboard-based goods that are then converted for the same end use. The fact that one good is imported in rolls and the other is manufactured in sheets is hardly a material distinction, and many goods, even those within the same tariff classification, are manufactured and sold in different formats.
- The outer surface of Microflute objectively does not have a visible washboard effect that is discernible to the naked eye.<sup>26</sup>
- GPI’s claim that that the ADC’s views on tariff classification of imported kraft paperboard and microflute is further evidence that they are not like goods<sup>27</sup> is without merit as many goods that are currently the subject of dumping measures (and automatically by implication like domestic goods) fall into different tariff classifications. It is unequivocally the case that both kraft paperboard (within the GUC) and microflute are both manufactured paperboard goods and we note that the tariff classifications within chapter 48 are broad and include a wide variety of goods.
- GPI’s statements that kraft paperboard and microflute ‘do not directly compete at all’<sup>28</sup> and that they ‘do not compete in the same market’<sup>29</sup> is disingenuous and

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<sup>21</sup> This is very evident from the fact that microflute packaging is almost exclusively sold to beverage manufacturers in Australia for the 12 plus can multipack formats which must be able to provide strength in wet or damp conditions eg bottle shops or other cold storage facilities.

<sup>22</sup> GPI submission dated 25 March 2021 (public file document no 39).

<sup>23</sup> GPI submission 25 March 2021 at paragraphs 1 and 6.

<sup>24</sup> GPI submission dated 25 March 2021 at paragraphs 16 to 35.

<sup>25</sup> GPI Submission dated 25 March 2021 paragraph 1a.

<sup>26</sup> GPI submission dated 25 March 2021 paragraph 1b. Refer also Visy submissions 18 June 2020 (paragraph 2 on page 8) and 25 March 2021 on page 5.

<sup>27</sup> GPI submission dated 25 March paragraph 2.

<sup>28</sup> GPI submission dated 25 March 2021 paragraph 21.

<sup>29</sup> GPI submission dated 25 March 2021 paragraph 22.

replete with artifice. It ignores the obvious commercial reality that both goods are manufactured as the raw material for final conversion (via cutting, gluing, folding etc) into goods that directly compete. The ADC's findings on this issue are correct. There are many imported goods (eg aluminium, steel products) that are imported into Australia for further processing or working into final goods in circumstances where the imported products are not sold within Australia prior to conversion. For the same reasons, GPI's claim that there is a lack of price competition between the imported and like goods in this case<sup>30</sup> is not a relevant consideration in this matter.

- The GPI contention that the fungibility of the imported kraft paperboard must be assessed by questioning whether an importer of kraft paperboard would swap this product for microflute prior to conversion<sup>31</sup> demonstrates the absurdity of GPI's position and ignores the commercial reality of specialised manufacturing conversion machinery required to convert kraft paperboard and microflute as well as the niche nature of the customer market for the sale and purchase of these goods.
- Visy has provided evidence<sup>32</sup> to refute GPI's claim that 'the significant majority of kraft paperboard imported to Australia is used for small format packaging'<sup>33</sup> It may be the case that quantities of imported kraft paperboard are used to manufacture small format beverage packaging, but such imports would not be within the GUC.
- In a further attempt to distinguish the goods, GPI has erroneously referred to imported kraft paperboard rolls as a 'form of packaging'<sup>34</sup> and then claimed that microflute has no packaging.<sup>35</sup> There was no finding in the SEF that imported kraft paperboard rolls were packaged.<sup>36</sup>
- Visy fails to see the relevance of section 2 of GPI's submission<sup>37</sup> in seeking to correct the ADC for referring to Mr Klass's report as a submission. As has been previously advised by Visy, the ADC is not a Court and if a party chooses to provide technical information via a third party on its behalf, such information is not afforded any special status.<sup>38</sup>

15. GPI's ongoing use of fatuous language and repetitive assertions in this case, some of which are highlighted in this submission, is not only irritating and unhelpful, but

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<sup>30</sup> GPI submission dated 25 March 2021 paragraphs 29 and 31.

<sup>31</sup> GPI submission dated 25 March 2021 paragraph 26.

<sup>32</sup> See Visy submission dated 25 March 2021.

<sup>33</sup> GPI submission dated 25 March 2021 paragraph 32.

<sup>34</sup> GPI submission dated 25 March 2021 paragraph 34.

<sup>35</sup> Ibid.

<sup>36</sup> SEF page 25.

<sup>37</sup> GPI submission dated 25 March 2021, Section 2.

<sup>38</sup> Visy submission dated 20 November 2020 at paragraph 2.

importantly has the potential to obfuscate the issues and make it more difficult for the ADC to reach the correct findings in this investigation, consistent with the purpose and intent of the legislation. We trust that the ADC recognises this, and does not let GPI's communication style impact on the outcome.

16. In conclusion, Visy notes that the ADC has already found that kraft paperboard within the GUC and microflute are commercially like products.<sup>39</sup> Visy takes this opportunity to convey once again that, with small format packaging being outside the GUC and so removed from the analysis (as highlighted in Visy's submission of 25 March 2021), kraft paperboard within the GUC and microflute must be considered functionally alike. This functional likeness conclusion is significant as it then must shift the Commission's like goods analysis to the inescapable conclusion that the imported kraft paperboard (within the GUC) and microflute are, on an overall basis, like goods for the purposes of this dumping investigation. Such a conclusion is entirely consistent with how, in practice, participants in the Australian paper and packaging markets (including the ADC's own appointed expert) view these products.<sup>40</sup>
17. In light of the above, the ADC must not terminate this investigation but rather Visy urges it to continue to complete its investigation in the usual timeframes to determine that GPI's dumping is causing material injury to an Australian Industry producing like goods. The ADC's finding that GPI has been dumping goods into Australia at the substantial rate of 49.2 percent appears to have been unchallenged by GPI. It is now time, for the benefit of Australian manufacturing and jobs, that this conduct be addressed and a more level playing field reinstated.

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**

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<sup>39</sup> SEF page 35.

<sup>40</sup> See Statement of Mr A Mitropoulos (public file document no 24) and Report of Dr Nafty Vanderhoek (public file document no 28) noting Dr Vanderhoek's extensive paper industry experience referenced in his resume at pages 24-28 of his Report.