



**Australian Government**  
**Department of Industry, Science,  
Energy and Resources**

**Anti-Dumping  
Commission**

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*CUSTOMS ACT 1901 (CTH) - PART XVB*

**TERMINATION REPORT  
NO. 548**

**ALLEGED DUMPING OF KRAFT PAPERBOARD  
EXPORTED TO AUSTRALIA  
FROM THE UNITED STATES OF AMERICA**

**15 July 2021**

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## ABBREVIATIONS

|                          |  |
|--------------------------|--|
| ABF                      | Australian Border Force  |
| ADN                      | Anti-Dumping Notice  |
| the Act                  | <i>Customs Act 1901 (Cth)</i>  |
| the applicant            | Visy Glama Pty Ltd   |
| the application          | application by the applicant for the publication of a dumping duty notice in respect of certain kraft paperboard       |
| the Commission           | the Anti-Dumping Commission  |
| the Commissioner         | the Commissioner of the Anti-Dumping Commission  |
| CON 548                  | <i>Consideration Report No. 548</i>  |
| EPR                      | electronic public record   |
| GM Holden                | <i>GM Holden Ltd v Commr of the Anti-Dumping Commission</i> [2014] FCA 708   |
| the goods                | certain kraft paperboard as described at section 3.3 of this report, also referred to as the goods under consideration |
| GPIAC                    | Graphic Packaging International Australia Converting Pty Ltd   |
| GPIL                     | Graphic Packaging International, LLC   |
| GSM                      | grams per square metre   |
| the investigation period | 1 January 2018 to 31 December 2019   |
| Klass Reports            | Three reports by Mr Klass, EPR item Nos. 7, 15 and 33  |
| large format             | 12 or more beverage can multipack  |
| the Manual               | <i>Dumping and Subsidy Manual</i>  |
| Microflute               | Corrugated board known as N flute  |
| the Minister             | the Minister for Industry, Science and Technology  |
| Opal                     | Paper Australia Pty Ltd, trading as Opal   |
| REQ                      | exporter questionnaire response  |
| SEF 548                  | <i>Statement of Essential Facts No. 548</i>  |
| small format             | less than 12 beverage can multipack  |
| TER 548                  | <i>Termination Report No. 548</i>  |
| the USA                  | the United States of America   |
| Vanderhoek Report        | Report by Dr Vanderhoek, providing expert opinion on like goods  |
| Visy                     | Visy Glama Pty Ltd   |
| WestRock                 | WestRock Company   |
| WestRock Australia       | WestRock Packaging Solutions Pty Ltd   |

# 1 SUMMARY AND CONCLUSIONS

## 1.1 Introduction

*Termination Report No. 548* (TER 548) was prepared by the Anti-Dumping Commission (the Commission):

- (a) in response to an application by Visy Glama Pty Ltd (Visy, the applicant) for the publication of a dumping duty notice (the application) in respect of certain kraft paperboard (the goods) exported to Australia from the United States of America (the USA); and
- (b) to support the Commissioner of the Anti-Dumping Commission (the Commissioner) in his consideration of the application, in accordance with the Commission's function specified in section 269SMD of the *Customs Act 1901* (Cth) (the Act);<sup>1</sup> and
- (c) by setting out the facts and findings on which the Commissioner based his decision to terminate the investigation.

Visy claims to represent the Australian industry producing goods that are like goods with respect to the goods under consideration.<sup>2</sup> Visy alleges the Australian industry producing like goods has experienced material injury caused by the goods exported to Australia from the USA at dumped prices.<sup>3</sup>

This report should be read in conjunction with the *Statement of Essential Facts No. 548* (SEF 548).

## 1.2 Authority to make decision

Division 2 of Part XVB sets out, in part:<sup>4</sup>

- (a) the procedures to be followed and, the matters to be considered, by the Commissioner in conducting investigations in relation to the goods covered by an application under section 269TB(1) for the purposes of making a report to the Minister [for Industry, Science and Technology (the Minister)]; and
- (b) the circumstances in which the Commissioner must terminate such investigations.

### 1.2.1 Application

On 5 March 2020, Visy lodged an application alleging that the Australian industry has suffered material injury caused by the goods exported to Australia from the USA at dumped prices.<sup>5</sup>

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<sup>1</sup> All legislative references in this report are to the *Customs Act 1901* (Cth), unless otherwise stated.

<sup>2</sup> Unless otherwise stated a reference to "like goods" throughout this report refers to "like goods with respect to the goods under consideration".

<sup>3</sup> The term, 'like goods' is defined at section 3.2 of this report.

<sup>4</sup> Refer to section 269TBA.

<sup>5</sup> Electronic public record (EPR) item No. 1.

Having considered the application, the Commissioner decided not to reject the application, initiating an investigation on 30 March 2020. Further details relating to the initiation of the investigation is contained in *Consideration Report No. 548* (CON 548) and Anti-Dumping Notice (ADN) No. 2020/032, available on the Commission's website at: [www.adcommission.gov.au](http://www.adcommission.gov.au).<sup>6</sup>

### **1.2.2 Statement of Essential Facts (SEF)**

On 5 March 2021, the Commissioner placed SEF 548 on the public record. Subject to submissions received in response to the SEF, the Commissioner proposed to terminate this investigation:

- insofar as it relates to WestRock Company (WestRock) because it was found not to be exporting the goods at dumped prices; and
- in its entirety on the basis that injury to an Australian industry producing like goods has not been caused by dumped exports;

Interested parties were provided 20 days from the date of publication to respond to the SEF.

### **1.2.3 Termination with respect to WestRock Company**

Where certain conditions are met, the Commissioner, in accordance with section 269TDA, must terminate the investigation so far as it relates to an exporter and/or country.

On 7 May 2021, the Commissioner published a notice that terminated the investigation insofar as it relates to WestRock.<sup>7</sup> The reasons are set out in SEF 548 but briefly, the investigation did not find evidence of dumping by this exporter of the goods during the investigation period.

### **1.2.4 The goods and like goods (Chapter 3)**

The goods under consideration are described in Chapter 3 of this report.

The Commission found that the applicant does not produce like goods and that no like goods are produced in Australia.

### **1.2.5 Australian industry (Chapter 4)**

The Commission found that the applicant, Visy, does not represent an Australian industry producing like goods. Additionally, there is no evidence of any Australian industry partly or wholly manufacturing like goods in Australia.

Accordingly, the Commission is satisfied that exports of the goods to Australia from the USA at dumped prices have not caused material injury to an Australian industry producing like goods.<sup>8</sup>

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<sup>6</sup> EPR item Nos. 2 and 3, respectively.

<sup>7</sup> Refer to ADN No. 2021/60, EPR item No. 42.

<sup>8</sup> As the Commission found that there is no Australian industry producing like goods, the conditions in the Australian market and the economic condition of the applicant have not been further analysed in this report.

### **1.3 Conclusion**

The Commissioner must terminate an investigation if exports of the goods at dumped prices are not causing material injury to an Australian industry producing like goods.

Based on the findings set out in TER 548, the Commissioner has terminated the investigation in its entirety, in accordance with section 269TDA(13). That is because he considers there has been no injury to an Australian industry producing like goods.

## **2 BACKGROUND**

### **2.1 Investigation period**

The investigation period relevant in this investigation is 1 January 2018 to 31 December 2019 (the investigation period).<sup>9</sup>

### **2.2 Contact with interested parties**

#### **2.2.1 Australian producers of microflute**

Visy claims in its application, and subsequent submissions, that it produces “microflute” and that microflute is a like good.

The Commission commenced a verification of the information provided by Visy, making enquiries throughout this process. The verification ceased because the Commission found no evidence that Visy, during the investigation period:

- (a) produced like goods (i.e. the Commission does not consider that microflute is a like good); and
- (b) represented an Australian industry producing like goods as outlined in Chapters 3 and 4 of this report.

Graphic Packaging International LLC (GPIL) made submissions that Paper Australia Pty Ltd, trading as Opal (Opal) is also an Australian producer of microflute.<sup>10</sup> The Commission contacted Opal who confirmed it does manufacture microflute in Australia. The Commission does not consider that microflute is a like good. Accordingly, as outlined further in Chapters 3 and 4 of this report the Commission did not verify information provided by Opal.

#### **2.2.2 Importers**

The Commission identified a number of importers from the Australian Border Force (ABF) import database that imported the goods during the investigation period. Importer questionnaires were sent to all importers identified and a copy placed on the Commission’s website.

The Commission received completed responses to its questionnaire from two importers, Graphic Packaging International Australia Converting Pty Ltd (GPIAC) and WestRock Packaging Solutions Pty Ltd (WestRock Australia).

The Commission did not complete verification activities of the information provided by GPIAC, nor commence activities to verify information provided by WestRock Australia. These decisions were made on the basis of the Commissioner’s findings in Chapters 3 and 4 of this report.

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<sup>9</sup> ‘Investigation period’ is defined in section 269T(1) as ‘in relation to an application for a dumping duty notice or a countervailing duty notice in respect of goods, means a period specified by the Commissioner in a notice under subsection 269TC(4) to be the investigation period in relation to the application.

<sup>10</sup> EPR item Nos. 5, 17 and 21.

### 2.2.3 Exporters

Major exporters identified from the ABF import database, either directly or through their Australian importer of the goods, were sent an exporter questionnaire to complete. A copy of the exporter questionnaire and associated spreadsheets were also placed on the Commission's website for completion by other exporters which were not contacted directly.

The Commission received a response to its exporter questionnaire (REQ) from GPIL and WestRock.<sup>11</sup> The Commissioner considers those exporters that did not provide a REQ to be uncooperative exporters.<sup>12</sup>

The Commission verified information provided by both GPIL and WestRock<sup>13</sup> with details of the dumping investigation outcome contained in SEF 548.

## 2.3 Submissions from interested parties

The Commission received submissions from interested parties throughout the course of the investigation, as summarised in **Non-Confidential Attachment 1**. Non-confidential versions of all submissions received are available on the EPR.

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<sup>11</sup> EPR item Nos. 29 and 30, respectively.

<sup>12</sup> Section 5.7 of this report refers.

<sup>13</sup> Verification reports are EPR item Nos. 29 and 30, respectively.

## 3 THE GOODS AND LIKE GOODS

### 3.1 Finding

The Commissioner considers:

- (a) the goods under consideration are not limited to kraft paperboard converted to “*packaging for 12 or more beverage can multipacks*”;
- (b) microflute, manufactured by the applicant, and by Opal, are not like goods; and
- (c) there is no Australian industry manufacturing like goods, wholly or partly, in Australia.<sup>14</sup>

### 3.2 Legislative framework

Relevantly, an application for a dumping duty notice under section 269TB(1) requires that there is, or may be established, an Australian industry producing like goods with respect to the goods under consideration.<sup>15</sup>

Section 269TC(1) requires that the Commissioner must reject an application for a dumping duty notice if, among other things, the Commissioner is not satisfied that there is, or is likely to be established, an Australian industry in respect of like goods.

Section 269T(1) defines like goods:

*“... in relation to goods under consideration, means goods that are identical in all respects to the goods under consideration or that, although not alike in all respects to the goods under consideration, have characteristics closely resembling those of the goods under consideration”.*

An Australian industry producing like goods can apply for relief from injury caused by dumped or subsidised imports even if the goods it produces are not identical to those imported. The industry must however, produce goods that are “like” to the imported goods.

Where the locally produced goods and the imported goods are not alike in all respects, the Commissioner assesses whether they have characteristics closely resembling each other against the following considerations:

- physical likeness;
- commercial likeness;
- functional likeness; and
- production likeness.

As assessment of these like characteristics, comparing microflute and kraft paperboard, is provided in detail at section 3.4 of this report.

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<sup>14</sup> Refer to Chapter 4 of this report.

<sup>15</sup> Section 269TB(1)(b).

### 3.3 The goods under consideration

The goods under consideration (the goods) are:

*Kraft paperboard, coated on one side with clay or other inorganic substances, grammage 360-430 grams per square metre (GSM),<sup>16</sup> wet strength treated.*

Visy provided further information in its application with respect to the goods, stating that the goods have an end use of 12 or more (large format) beverage can multipack packaging.<sup>17</sup> However, the Commission is aware of other end uses of the goods, including smaller beverage can multipack packaging of less than 12 (small format) cans.

The goods are an intermediate product that is converted into a final product in Australia. The conversion process will generally involve printing, cutting and gluing the imported products to create individual packaging.<sup>18</sup> The goods do not include finished ready for sale packaging.<sup>19</sup>

Kraft paperboard is usually imported in large rolls and is a solid paper-based product, consisting of one or more layers.<sup>20</sup> Kraft paperboard primarily uses virgin softwoods in the initial pulping process, rather than a substantive use of recycled material.<sup>21</sup>

Clay or other inorganic substances refers to the application of kaolin clay, calcium carbonate or other inorganic substance, to the top layer of the paperboard, allowing for high quality printing on the goods.<sup>22</sup>

The grammage range of 360-430 GSM distinguishes the goods from other imported goods that may have applications in food and beverage can multipacks.

Wet strength treatment distinguishes the goods from paperboard varieties used for other applications. As beverages are frequently stored in refrigerated environments additional moisture resistant properties are required for shape retention and to minimise the tear and collapse of packaging. These properties are achieved by the addition of certain chemicals.<sup>23</sup>

#### 3.3.1 Tariff classification

In its application, Visy indicated that the goods are being imported to Australia under the tariff code 4810.39.00 (statistical code 83).

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<sup>16</sup> Grammage refers to the mass per unit area of all types of paper and paperboard.

<sup>17</sup> EPR item No. 1, page 9.

<sup>18</sup> EPR item No. 1, page 14

<sup>19</sup> EPR item Nos. 1 and 16, pages 10 and 6, respectively.

<sup>20</sup> EPR item Nos. 16, 29 and 30, pages 4, 5 and 6, respectively.

<sup>21</sup> EPR item Nos. 5, 21 and 20, pages 7, 7 and 17, respectively.

<sup>22</sup> Visy states in its application at page 9, EPR item No. 1, that it formulated the goods description to describe only goods that can be converted to 12 or more beverage can packaging.

<sup>23</sup> Visy provided additional information to assist in describing the goods in its application, stating at page 9, EPR item No. 1, that it formulated the goods description to describe only goods that can be converted to 12 or more beverage can packaging.

The Commission has also considered if other tariff codes are applicable to the goods, and having verified data provided by GPIL and WestRock, identified the applicable tariff subheadings shown in Table 1.

| <b>Tariff classification (Schedule 3 of the Customs Tariff Act 1995)</b> |                         |             |   |
|--|-------------------------|-------------|---|
| <i>Tariff code</i>   | <i>Statistical code</i> | <i>Unit</i> | <i>Description</i>  |
| 4810.29.90   | 65                      | Tonnes      | Paper and paperboard of a kind used for writing, printing or other graphic purposes, or which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical or chemi0mechanical process: Other, containing 55% or more mechanical pulp |
| 4810.39.00   | 83                      | Tonnes      | Kraft paper and paperboard, other than that of a kind used for writing, printing or other   |

**Table 1 - Tariff classification of the goods**

### **3.3.2 Conclusion**

At the time of publishing CON 548, the information available to the Commission from Visy’s application indicated that the goods were predominately used in packaging for 12 or more beverage can multipacks.

However, during the conduct of the investigation, the Commission became aware of multiple end uses with respect to the goods, including packaging for small format beverage can multipacks, food packaging and other similar applications.<sup>24</sup> Therefore, the Commissioner considers that the goods are not limited to use for packaging of 12 or more beverage can multipacks.

### **3.4 Like goods**

#### **3.4.1 Background**

In its application, Visy claimed that its locally produced product, microflute, closely resembles the goods and is therefore a like good produced by an Australian industry.

Based on the information available at the time the investigation was initiated, the Commissioner was satisfied that Visy’s locally produced microflute closely resembled the goods and was therefore a like good.

Following initiation of the investigation, the Commission received a number of submissions from interested parties, including three reports from Mr Charles Klass (Klass Reports)<sup>25</sup> relevant to the assessment of like goods. Broadly speaking, GPIL and the Klass Reports submitted and gave opinion respectively that microflute are not like goods to the goods. Visy made submissions that disputed GPIL’s submissions and the Klass Reports.

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<sup>24</sup> EPR item Nos. 5, 8 and 17, pages 9 (confidential) 2 and 3, respectively.

<sup>25</sup> Mr Klass provided three separate reports. Mr Klass’s initial report is at EPR item No. 7. Mr Klass also provided supplementary reports at EPR item Nos. 15 and 33 to address submissions from Visy and expert opinion from Dr Nafty Vanderhoek. Collectively, Mr Klass’s three reports are referred to as the “Klass Reports” throughout this document.

### 3.4.2 Issues paper

To aid in its assessment of whether microflute is a like good to the goods, the Commission published an issues paper.<sup>26</sup> The issues paper invited further submissions from interested parties and advised of the Commission's intention to engage an independent industry expert to produce a report.

### 3.4.3 Industry expert report – Dr Nafty Vanderhoek

The Commission briefed Dr Vanderhoek to answer the following three questions:

1. Is microflute an identical product with kraft paperboard?
2. If you do not consider microflute to be an identical product with kraft paperboard, set out whether or not they have characteristics that closely resemble one another.

When answering this question, the Commission asked that Dr Vanderhoek give consideration to physical likeness, commercial likeness, functional likeness, production likeness and any other considerations which are set out in chapter 2.3 of the *Dumping and Subsidy Manual*<sup>27</sup> (the Manual).

3. In addition to microflute, do you consider there to be other products which closely resemble kraft paperboard? If yes, specify these products and to the best of your knowledge outline whether they are manufactured in Australia, and by whom.

Dr Vanderhoek was directed to the EPR for relevant documents pertaining to Investigation No. 548.

On 22 December 2020, Dr Vanderhoek provided his report (Vanderhoek Report) to the Commission which also sets out a background, based on his experience, to the production of pulp, paper and boxes.<sup>28</sup>

At paragraph 6.6 of the Vanderhoek Report, Dr Vanderhoek answered the first question posed by the Commission by stating that microflute is not an identical product to kraft paperboard. This opinion is consistent with the Klass Reports at pages 2 and 16 of EPR item No. 7.<sup>29</sup>

With respect to the second question asked by the Commission, at paragraphs 6.7 to 6.20 of the Vanderhoek Report, Dr Vanderhoek states that “...*technology allows [the end-use customer expectations] to be met in multiple ways through a combination of fibre selection, processing methods equipment choice, construction preferences, and print options.*” The Vanderhoek Report stated that function performance is ‘*most sensibly compared at the final product stage, that is the finished box.*’

The Vanderhoek Report further states that, “*12 or more beverage can multipacks assumes a fibreboard box (solid or corrugated) for weight bearing contents where containment, and not stacking, is the prime requirement*”. The Vanderhoek Report

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<sup>26</sup> EPR item No. 19.

<sup>27</sup> Available on the Commission's website: [www.adcommission.gov.au](http://www.adcommission.gov.au)

<sup>28</sup> EPR item No. 28.

<sup>29</sup> GPIL engaged Mr Klass to provide an expert opinion on whether microflute is a like good with respect to the goods under consideration.

concluded at paragraph 7.1(b) that microflute is a “*like good alternative*” for kraft paperboard when used in the application of 12 or more beverage can multipack packaging.

Finally, at paragraph 6.21 of the Vanderhoek Report, Dr Vanderhoek answers the third question asked by the Commission, stating that there are no other products that closely resemble kraft paperboard, other than microflute, that is able to meet the performance requirements for 12 or more beverage can multipack packaging.<sup>30</sup>

#### **3.4.4 The Commissioner’s assessment of the Vanderhoek Report**

The Commissioner accepts the background information, technical explanations and answers in relation to questions 1 and 3 as set out in the Vanderhoek Report, noting that Dr Vanderhoek answers question 3 making reference to “*12 + beverage can multipack performance requirements*”.

In relation to question 2, the Vanderhoek Report compares the goods under consideration and locally produced goods in one final end-use product, being packaging for 12 or more beverage can multipacks. It concludes kraft paperboard and microflute are “like good” alternatives, and therefore microflute is a like good to the goods under consideration. That is because both can be used to construct packaging for 12 or more beverage can multipacks. The Vanderhoek Report does not substantially compare the similarities and differences of the following characteristics between locally produced microflute and the goods under consideration:

- physical;
- commercial;
- functional; and
- production.

The Commissioner has considered the Vanderhoek Report response to question 2. The Commissioner accepts that Dr Vanderhoek may be correct from a technical and scientific standpoint, i.e. that microflute is an alternative to kraft paperboard in certain applications.

However, section 269T requires the Commission to conduct a broader comparison between kraft paperboard and microflute based on their characteristics as products, and does not limit this assessment to one particular market in which the products, in a further converted state, may compete. As outlined at section 3.3, the goods are not limited to particular applications. The Commissioner considers that Dr Vanderhoek’s opinion that microflute is a “like good alternative” for use in a particular application is not the same as it being a like good for a dumping investigation.

In addition, the Commission has compared locally produced microflute and the goods under consideration using the framework outlined in section 3.4.5 (a consideration of the physical, commercial, functional, production and other characteristics). In doing so, the Commission considers that it is appropriate to assess whether Visy manufactures a like good having regard to microflute and the goods at the point in which they are intermediate

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<sup>30</sup> The Klass Reports at page 6 of EPR item No. 33, makes reference to other fibrous products that are used in the construction of 12 or more beverage can multipack packaging, however agrees with Dr Vanderhoek, stating “*I agree that there is no known manufacturer of this paperboard grade in Australia*”.

products that exist prior to conversion to a final end-use product as expanded on in section 3.4.5.

The above considerations have led the Commission to make a different finding to the Vanderhoek Report in relation to question 2.

### 3.4.5 Assessment of like goods

Identical goods will be regarded as like goods should such goods exist. The Commissioner considers exporters of kraft paperboard sold identical like goods for local consumption in the USA.<sup>31</sup> The Commission has no evidence that goods, identical to the goods under consideration, are manufactured in Australia.

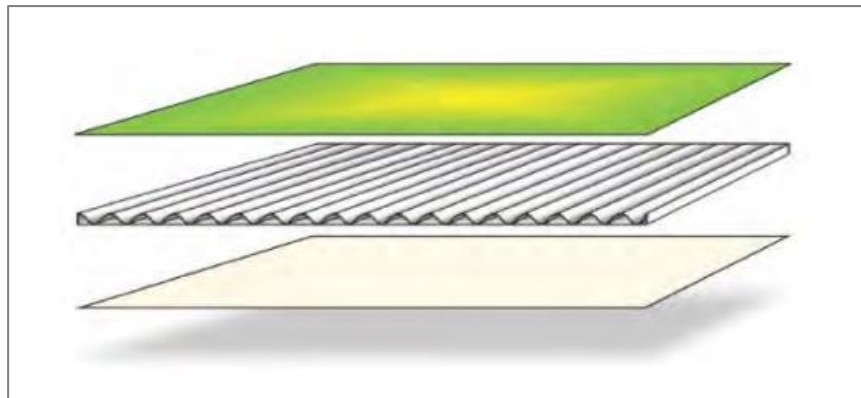
Where goods are not identical it is necessary to determine whether the goods would still fall within the ambit of goods having characteristics closely resembling those of the goods under consideration.

The goods are described in the Initiation Notice (ADN No. 2020/032)<sup>32</sup> as:

*Kraft paperboard, coated on one side with clay or other inorganic substances, grammage 360-430 GSM, wet strength treated.*

Visy states that it manufactures a form of fibre packaging, primarily used for beverage packaging, known as microflute (or N flute).<sup>33-34</sup> Visy, in its application, states that its microflute product has characteristics that closely resemble those of kraft paperboard and are, therefore, like goods with respect to the goods under consideration.

Microflute is comprised of three layers, being a clay coated top liner, a corrugated medium and a liner.<sup>35</sup>



**Figure 1 - Layers of microflute**

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<sup>31</sup> EPR item Nos. 29 and 30, page 6 and 7, respectively.

<sup>32</sup> EPR item No. 3.

<sup>33</sup> EPR item No. 9, page 2.

<sup>34</sup> Chapter 23 of the "Handbook for Pulp & Paper Technologists" by Gary Smook discusses the end use of paper and paperboard. Section 23.2, *Converting*, begins with the statement "It is roughly estimated that about 75% of North American paper and paperboard output is subject to some type of converting operation before reaching the final customer". This section discusses corrugated board and, at page 364, refers to "small flute, mini flute or fine flute" as describing F, G and N fluted corrugation board.

<sup>35</sup> EPR item Nos. 1, 7 and 23, pages 11, 4 and 17, respectively.

The Commission has undertaken verification of information provided by two cooperating exporters and assessed the information provided to the Commission in submissions and reports to determine if the characteristics of microflute closely resemble the characteristics of the goods. This assessment is outlined in tables 2 through 5 below.

The Commission’s framework for assessing whether locally produced goods are identical to, or closely resemble, the goods under consideration is outlined in Chapter 2 of the Manual. The Manual outlines that the Commission will give consideration to physical likeness, commercial likeness, functional likeness, production likeness and other factors.

| Characteristic |                                  | Goods under consideration   | Locally produced goods  |
|----------------|----------------------------------|---|---|
| Physical       | Size and shape                   | Kraft paperboard is produced as a continuous sheet. It is rolled and stored ready for export as large ‘jumbo’ rolls. <sup>36</sup>  | If not consumed inline during the production of the end use product, microflute is stored flat in rectangular sheets. <sup>37</sup><br>Microflute cannot be formed into a roll due to its rigidity. <sup>38</sup>   |
|                | Weight and thickness             | The goods, as defined by the goods description, are between 360 GSM to 430 GSM. <sup>39</sup><br>Kraft paperboard measures approx. 0.55mm in thickness. <sup>40</sup>   | Visy submitted that microflute was made in the range of 400 GSM to 420 GSM, <sup>41</sup> however, Visy also provided data that indicated the actual range to be much broader. <sup>42</sup><br>Microflute measures approx. 0.7mm in thickness. <sup>43</sup> |
|                | Appearance                       | Kraft paperboard is unprinted and natural brown in colour. <sup>44</sup> It is covered on one side with a latex coating to give a smooth white appearance. <sup>45</sup>  | Microflute is pre-printed according to a customer’s requirements. <sup>46</sup> Parallel indentations are visible on the surface. <sup>47</sup>   |
|                | Content and chemical composition | Kraft paperboard is comprised of a single layer. The basic raw material used in the manufacture of the goods is virgin pulp derived from the US Southern Pine. <sup>48</sup><br>Wet strength chemicals are added to kraft paperboard during production. <sup>49</sup> | Microflute is made up of three layers of paper or paperboard. The middle layer is corrugated recycled paperboard. The bottom and top layers are brought together with the middle layer using adhesives to form the microflute. <sup>50</sup>                  |

<sup>36</sup> EPR item No. 15, page 12.

<sup>37</sup> EPR item Nos. 7 and 9, pages 9 and 11 respectively and EPR item No. 28, paragraphs 5.88 to 5.101.

<sup>38</sup> EPR item No. 20, page 2.

<sup>39</sup> EPR item No. 3, ADN 2020/032.

<sup>40</sup> EPR item Nos. 7 and 15, pages 9 and 7-9, respectively.

<sup>41</sup> EPR item No. 9, page 8.

<sup>42</sup> Refer Confidential Appendix 12.

<sup>43</sup> EPR item No. 9, page 10.

<sup>44</sup> EPR item Nos. 5 and 15, pages 7 and 2, respectively.

<sup>45</sup> ERP item No. 29, page 5.

<sup>46</sup> EPR item No.5, page 5.

<sup>47</sup> EPR item Nos. 5, pages 7. GPIL provided the Commission with physical samples of the end use packaging products with one sample depicting the ‘washboard’ appearance of parallel indentations.

<sup>48</sup> EPR item No. 7, pages EPR item No. 7, pages 13, 14 and 16 and EPR item No. 28, page 8.

<sup>49</sup> EPR item Nos. 7 and 28, pages 16 and 8, respectively.

<sup>50</sup> EPR item Nos. 7 and 28, pages 16 and 12, respectively.

| Characteristic |                                      | Goods under consideration  | Locally produced goods  |
|----------------|--------------------------------------|--|---|
|                |                                      |  | The raw material used to produce the top and bottom layers is from the Radiata Pine. <sup>51</sup>  |
|                | Strength                             | Strength in wet environments is obtained through the use of chemicals. <sup>52</sup>   | Strength in wet environments is derived from the corrugations in its middle layer. <sup>53</sup>  |
|                | Tariff classifications <sup>54</sup> | <p>Kraft paperboard is imported under two tariff classifications:</p> <ul style="list-style-type: none"> <li>• 4810.29.90 – 64: <i>Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10% by weight of the total fibre content consists of fibres obtained by a mechanical or chemi-mechanical process:</i> <ul style="list-style-type: none"> <li>○ <i>other, containing less than 55% mechanical pulp; and</i></li> </ul> </li> <li>• 4810.39.00 – 83: <i>Kraft paper and paperboard, other than that of a kind used for writing, printing or other graphic purposes:</i> <ul style="list-style-type: none"> <li>○ <i>other.</i></li> </ul> </li> </ul> | <p>Microflute falls under the following tariff classification:</p> <ul style="list-style-type: none"> <li>• 4808.10.90 – 51: <i>Paper and paperboard, corrugated (with or without glued flat surface sheets), creped, crinkled, embossed or perforated, in rolls or sheets, other than paper of the kind described in 4803:</i> <ul style="list-style-type: none"> <li>○ <i>other.</i></li> </ul> </li> </ul> |

**Table 2 - Physical likeness**

| Characteristic |                            | Intermediary products   | Downstream products  |
|----------------|----------------------------|---|--|
| Commercial     | Compete in the same market | <p>The Australian importers of kraft paperboard are vertically integrated suppliers of beverage packaging. Both importers self-supply kraft paperboard as an intermediary product in the production of beverage packaging. Likewise, Visy is a vertically integrated supplier of beverage packaging, self-supplying microflute as an intermediary product in the production of its beverage packaging.<sup>55</sup> Neither Visy nor the Australian importers of kraft paperboard sell the intermediary goods and therefore, do</p> | <p>One importer of the goods, competes with Visy in the same market for a downstream product, converted from kraft paperboard or microflute.<sup>57</sup> Kraft paperboard imported from the USA is almost exclusively used in the production of beverage packaging for the Australian market. However, more than half of the kraft paperboard imported during the investigation period was converted to a downstream product that did not compete with Visy's</p> |

<sup>51</sup> EPR item No. 7, pages 13 and 14.

<sup>52</sup> EPR item No. 7, pages 6 and 11, and EPR item No. 28 page 9.

<sup>53</sup> EPR item No. 9, page 8.

<sup>54</sup> The Manual, at page 12 states: “Goods which are classed to the same tariff classification will often be physically like goods. However, in some instances the classification covers a very broad range of goods and other indicators of likeness are necessary to identify like goods. It may also be the case that like goods are classified by multiple tariff classifications”.

<sup>55</sup> EPR item No. 1, pages 14 and 16, and EPR item No. 16, page 6.

<sup>57</sup> GPIL and Visy both competed for a long term supply contract of large format beverage packaging, providing an indication that they compete in the same market for the end use product. WestRock has consistently stated that it does not convert the kraft paperboard it imports to Australia, to an end use product for 12 or more beverage can multipack packaging.

| Characteristic                    | Intermediary products  | Downstream products  |
|-----------------------------------|--|--|
|                                   |  | not compete in a market for the intermediary products. <sup>56</sup>   |
| Commercial interchangeability     | <p>As producers and consumers of imported kraft paperboard, it is not probable that the Australian importers of the goods would readily substitute microflute for kraft paperboard.</p> <p>It is equally not probable for Visy, who produces and consumes microflute, to substitute this for kraft paperboard.</p> <p>Visy also suggest it is absurd to consider “<i>whether an importer of kraft paperboard would swap this product for microflute prior to conversion</i>” stating that this “<i>ignores the commercial reality of specialised manufacturing conversion machinery required to convert kraft paperboard and microflute</i>”.<sup>59</sup></p> | <p>downstream product made using microflute.<sup>58</sup></p> <p>While the Commission considers that packaging converted using microflute cannot be substituted for packaging converted using kraft paperboard for small beverage packaging,<sup>60</sup> as both Visy and one Australian importer of kraft paperboard competed for a long term contract for the supply of packaging for 12 or more beverage can multipacks, a downstream product converted using either kraft paperboard or microflute, the Commission does consider, in this one application, the downstream products are commercially substitutable.<sup>61</sup></p> |
| Price competition and consumption | <p>Visy does not sell the microflute it produces. Similarly, importers of kraft paperboard, rather than sell the goods, consume them in the conversion to a final end product. Therefore, there is no price competition between the intermediary goods.<sup>62</sup></p>   | <p>More than half of the kraft paperboard imported during the investigation period is used in the production of small beverage packaging which does not compete in any market with packaging made from microflute, and therefore, does not compete on price.</p> <p>With regard to large format beverage can packaging, along with price, consumption of the end product may be driven by the beverage manufacturer’s requirements. Although, the Commission considers it a reasonable assertion that the overall consumption levels of beverage packaging are driven by the preferences of the beverage consumers.<sup>63</sup></p>     |
| Distribution channels             | <p>As both kraft paperboard and microflute are consumed by its producer the products are not distributed or sold and therefore, there are no common distribution channels for these intermediary goods.</p>  | <p>The downstream products made from both kraft paperboard and microflute are sold to manufacturers and wholesalers of products such as food and beverages, who then fill the packaging with their products to distribute to the retail market.<sup>64</sup></p>   |

<sup>56</sup> While undertaking verification activities, the Commission confirmed that Visy and GPIL do not sell microflute or kraft paperboard in Australia, in a state that is not converted to a final product.

<sup>58</sup> Visy primarily uses its microflute product in the production of large format beverage packaging. EPR item No. 9, page 2

<sup>59</sup> EPR item No. 41, page 6.

<sup>60</sup> EPR item Nos. 7 and 25, page 15 and 9 (footnote), respectively.

<sup>61</sup> EPR item No. 1, page 27.

<sup>62</sup> EPR item No. 1 page 15.

<sup>63</sup> EPR item No. 24, page 4.

<sup>64</sup> The Commission confirmed the end use customers of Visy and GPIL while undertaking verification activities.

| Characteristic |  | Intermediary products | Downstream products   |
|----------------|--|-----------------------|---|
|                |  |                       | There is no difference in the distribution channels for the end use products. <sup>65</sup> |

**Table 3 - Commercial likeness**

| Characteristic |             | Goods under consideration  | Locally produced goods  |
|----------------|-------------|--|---|
| Functional     | End use     | Kraft paperboard is almost exclusively used in the conversion to beverage packaging. More than half of the kraft paperboard imported during the investigation period was converted to packaging other than for 12 or more beverage can multipacks. <sup>66</sup>   | Visy has stated that the majority of its packaging, converted from microflute, is used for 12 or more beverage can multipacks.<br>Opal has confirmed it converts the microflute it produces to other forms of packaging.<br>The Commission estimates that approx. one third of packaging (by value), converted from microflute, is for applications other than for 12 or more beverage can multipack packaging. <sup>67</sup>                       |
|                | Flexibility | Kraft paperboard is more flexible than microflute, meaning that it can be rolled and used in much smaller applications. <sup>68</sup><br>Kraft paperboard is not pre-printed <sup>69</sup> and can be used in the production of both large and small format beverage packaging. This supports claims that kraft paperboard is more adaptable to customers' orders as they are received and more responsive to changing requirements between an end-use customer's product lines. <sup>70</sup> | Microflute is more rigid than kraft paperboard and renders itself unsuitable for use in small format beverage packaging. <sup>71</sup><br>The top layer of paperboard is pre-printed prior to the production of microflute. <sup>72</sup> The Commission considers that this would limit the ability to quickly adapt to customers' orders and changes between different product lines.   |
|                | Performance | Mr Klass, in his report, considers kraft paperboard, treated with wet strength resins, maintains its strength and shape when wet. <sup>73</sup><br>Dr Vanderhoek refers to kraft paperboard that has been treated with 'wet strength' additives, stating that wet strength additives " <i>improves product strength in the wet state</i> ". <sup>74</sup>  | Mr Klass considers microflute not to perform as well as kraft paperboard in wet conditions, stating that " <i>both liners and the medium can absorb moisture – reducing their strength. Wetting can adversely affect the adhesive bond between the medium and the liners resulting in loss of box integrity</i> ". <sup>75</sup><br>The Commission notes that Mr Klass does not discredit the performance of microflute in wet environments, rather |

<sup>65</sup> EPR item No. 1, page 15.

<sup>66</sup> EPR item Nos. 8 and 32, pages 2 and 1, respectively and Confidential Appendix 2.

<sup>67</sup> Refer to Confidential Appendix 1.

<sup>68</sup> Neither industry expert reports specifically discuss microflute's suitability for use as small format beverage can packaging, however Mr Klass does refer to the rigidity of microflute in EPR item No. 7, page 8.

<sup>69</sup> EPR item Nos. 5 and 15, pages 7 and 2, respectively.

<sup>70</sup> EPR item No. 7, pages 15-16.

<sup>71</sup> Refer to footnote 68.

<sup>72</sup> EPR item No. 5, page 5.

<sup>73</sup> EPR item No. 7, page 11.

<sup>74</sup> EPR item No. 28, page 9.

<sup>75</sup> EPR item No. 7, page 11.

| Characteristic |  | Goods under consideration | Locally produced goods   |
|----------------|--|---------------------------|--|
|                |  |                           | suggests microflute has a reduced ability to maintain its strength when exposed to wet environments. |

**Table 4 - Functional likeness**

| Characteristic        |  | Goods under consideration   | Locally produced goods  |
|-----------------------|--|---|---|
| Production            | Similar materials                          | The input material used in the production of kraft paperboard is kraft pulp derived from softwood. <sup>76</sup>  | The input materials used to produce microflute is a top and bottom layer of paperboard and a middle corrugated paperboard layer. The top and bottom layers are made from kraft pulp. The middle layer is made from recycled fibre. Once brought together, the three layers form microflute. <sup>77</sup>   |
| Manufacturing process | Pulp manufacturing process                 | Pulp is made from woody biomass that underdoes a chemical “kraft” process. <sup>78</sup> The kraft process “cooks” the wood biomass using a combination of caustic soda and sodium sulphide.<br><br>Once the pulp is separated and cleaned, chemicals are added to provide the wet strength characteristic. <sup>79</sup>   | <u>Liners</u> : Pulp is made from woody biomass that underdoes a chemical “kraft” process. The kraft process “cooks” the wood biomass using a combination of caustic soda and sodium sulphide. Wet strength chemicals are <u>not</u> added.<br><br><u>Medium</u> : Recovered waste paper is processed, commonly by slushing, cleaning, screening and, if required, deinking. Wet strength chemicals are <u>not</u> added. |
|                       | Paper and paperboard manufacturing process | Diluted fibre is passed over a continuous wire in three stages, forming; pressing; and drying. The machine typically used in the construction of these products is a Fourdrinier machine. The number of headboxes in this machine will define the ply. <sup>80</sup><br><br>The paperboard is then coated with latex on one side. <sup>81</sup><br><br>Paperboard is made continuously and collected into jumbo reels ready for export. <sup>82</sup> | Both the liners and medium layers undergo the same, or similar production process as the goods under consideration. However the bottom liner and medium layer are not coated, the top liner is coated with clay and printed with customer specified designs. <sup>83</sup>  |
|                       | Microflute manufacturing process           | The goods under consideration do not undergo further manufacturing prior to being converted to an end product.  | The medium layer of recycled paper is passed through a machine to form flutes. This it then laminated to the bottom liner using glue.   |

<sup>76</sup> EPR item No. 7, pages 13-14.

<sup>77</sup> EPR item Nos. 5, 9, 15, 21 and 28 pages 7, 10, 2, 7 and 17, respectively.

<sup>78</sup> The term “kraft” comes from the German word meaning strong.

<sup>79</sup> EPR item No. 28, paragraph 5.59.

<sup>80</sup> EPR item No. 28, paragraphs 5.51 to 5.55.

<sup>81</sup> EPR item No. 29, page 5.

<sup>82</sup> EPR item Nos. 15, 29 and 30, pages 12, 5 and 6, respectively.

<sup>83</sup> EPR item No. 1, page 11.

| Characteristic |  | Goods under consideration | Locally produced goods  |
|----------------|--|---------------------------|---|
|                |  |                           | <p>The top printed liner is then combined with the bottom and medium layers, compressed and heated.</p> <p>After drying, the combined board is creased, slotted and cut into blanks, or other shapes of the exact size required by the customer.<sup>84</sup></p> <p>The locally produced goods are either immediately converted to beverage packaging, or stored flat for later conversion.<sup>85</sup></p> |

**Table 5 - Production likeness**

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<sup>84</sup> EPR item No. 28, paragraph 5.89.

<sup>85</sup> EPR item Nos. 7 and 9, pages 9 and 11, respectively; and EPR item No. 29, paragraphs 5.88 to 5.101.

### 3.4.6 Submissions received in response to SEF 548 with regard to like goods and EPR item Nos. 34 to 36<sup>86</sup>

Three submissions received prior to publishing SEF 548 on the public record are summarised in the table below. The Commissioner considered that to have considered these submissions in making the SEF would have delayed its publication. Also summarised in the table below are four submissions received in response to the publication of SEF 548.

| EPR No.  | Date published on EPR | Submission by | Description   |
|--|-----------------------|---------------|---|
| The following three submissions were received prior to the publication of SEF 548, however to have had consideration to these submissions in making the SEF would have delayed its timely publication. |                       |               |   |
| 34   | 22 February 2021      | Visy          | <p>Visy raises the following points in reply to GPIL's submissions (EPR item Nos. 32 and 33):</p> <ul style="list-style-type: none"> <li>• Dr Vanderhoek's conclusions are in agreement with a practical and market based approach and consistent with the industry view submitted by Mr Mitropoulos;</li> <li>• GPIL's reference to a 1986 GATT Panel case is not relevant and predates the WTO Agreements;</li> <li>• The Commission's approach in this case has not been radical and is consistent with other Anti-dumping matters involving the publication of an Issues Paper, for example <i>Steel Pallet Racking from China and Malaysia (Investigation 441)</i>; and</li> <li>• that the differences asserted by GPIL are technical in nature.</li> </ul> <p>Visy also note that the comments by Mr Klass, in EPR item No. 33, do not raise any additional matters.</p>       |
| 35   | 25 February 2021      | GPIL          | <p>GPIL replies to Visy's submission (EPR item No. 34) with the following:</p> <ul style="list-style-type: none"> <li>• Visy has failed to recognise the relevance of WTO jurisprudence regarding like goods. The USA had sought to equate upstream and downstream products in a similar way to which Visy is seeking in this case. Further, GPIL does not agree with Visy's objection to the 'US wine and grape case' as it predates the current WTO agreements, stating that well decided cases remain relevant;</li> <li>• by pointing to an instance where GPIL observed that Dr Vanderhoek supported its position, Visy accepts, or admits, that microflute has a transient existence in an inline conversion from rolls of paper to beverage packaging;</li> <li>• Mr Klass observes that the Vanderhoek report did not answer the question posed by the Commission.</li> </ul> |

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<sup>86</sup> The Commission received three submissions prior to making SEF 548, however to have considered these submissions in making the SEF would have delayed its publication on the EPR. These submissions have, therefore, also been included in this section of this report.

| EPR No.   | Date published on EPR | Submission by | Description  |
|---|-----------------------|---------------|--|
| 36  | 5 March 2021          | Visy          | <p>Visy raises the following in reply to GPIL's submission (EPR item No. 35):</p> <ul style="list-style-type: none"> <li>• Visy rejects the matters raised by GPIL, stating that no new substantive issues have been raised;</li> <li>• that wine, as a downstream product of grapes, is not an accurate comparison of kraft paperboard and microflute. Visy states that both kraft paperboard and microflute are high manufactured products, as opposed to a primary and a processed product;</li> <li>• Visy states that whether the conversion of microflute into a final product occurs promptly or not is not a relevant consideration in this case; and</li> <li>• Visy restates its position of what comprises microflute, being N flute, a narrower calliper corrugated cardboard product of a thickness of approximately 0.7mm;</li> </ul> <p>Visy reiterates its support of the conclusions drawn by Dr Vanderhoek.</p>  |
| The following four submissions have been received by the Commission in response to SEF 548. |                       |               |  |
| 38  | 26 May 2021           | Visy          | <p>Visy strenuously opposes the proposed finding that kraft paperboard and microflute are not like goods, stating that the investigation should not be terminated.</p> <p>Visy submits that:</p> <ul style="list-style-type: none"> <li>• kraft paperboard and microflute are functionally alike. Visy outline the findings based on which it states the Commission incorrectly found the goods are not functionally alike: <ul style="list-style-type: none"> <li>○ <i>microflute does not perform as kraft paperboard for use in small format beverage packaging.</i> Visy claim that kraft paperboard used in small format packaging does not fall within the goods description and are not the goods under consideration. Visy points to a submission by WestRock (EPR item No. 8), stating "<i>the statement on page 4... that [WestRock's] 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)</i>". Visy provided testing results of three samples it selected that shows the GSM is outside the goods description range;</li> <li>○ <i>microflute is used in a wider range of applications than kraft paperboard.</i> Visy state that it provided the Commission with information to show that approx. 95 per cent of its microflute production is used in large format beverage can packaging and that any volumes manufactured by Opal are immaterial.</li> <li>○ <i>differences in the performance of the end products in wet environments.</i> Visy claim there is no evidence of this, stating that Mr Mitropoulos noted 'our business was comfortable that microflute product would perform as needed in wet environments';</li> <li>○ <i>kraft paperboard is able to switch more efficiently from one product to another as it is not pre-printed where microflute is.</i> Visy claims there is no evidence to support this finding, stating kraft paperboard and microflute are equally adaptable to customer needs.</li> </ul> </li> </ul> <p>Visy claim that once a comparison to other end uses (particularly small format beverage packaging) is removed, the only sensible conclusion is that kraft paperboard and microflute are like goods in a functional sense;</p> |

| EPR No. | Date published on EPR | Submission by | Description  |
|---------|-----------------------|---------------|--|
|         |                       |               | <ul style="list-style-type: none"> <li>• commercial likeness should be given the greatest weight of all 'likeness' indicators, given the purpose of the Commission is to provide a trade remedy for an Australian industry that is suffering material injury as a result of dumped imports;</li> <li>• the Commission has not sufficiently examined physical likeness, claiming that: <ul style="list-style-type: none"> <li>○ how kraft paperboard and microflute is stored is not a material consideration, rather a storage and shipping preference;</li> <li>○ one side of microflute being pre-printed does not change the physical nature of the goods;</li> <li>○ GSM is an important factor that should be provided more emphasis;</li> <li>○ the additive of wet strength treatment is not a material difference;</li> <li>○ microflute does not have the appearance of parallel lines visible to the naked eye;</li> <li>○ both kraft paperboard and microflute are paperboard products made using similar raw materials, undergoing a very similar early production process;</li> <li>○ only a trained expert could recognise the differences between kraft paperboard and microflute;</li> <li>○ the minute physical and unrecognisable differences should be given far less weight than the factors of commercial and functional likeness;</li> </ul> </li> <li>• the differences in manufacturing processes is far less important than the other three factors, particularly commercial and functional likeness. Visy quotes the Manual by stating: "<i>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 itself establish like goods, but may highlight differences or provide support to the assessment of other considerations</i>";</li> <li>• it is clear that kraft paperboard and microflute are functionally alike and that the physical differences are not as pronounced as concluded by the Commission. Therefore, Visy asserts that the Commission must now reverse its findings with respect to like goods;</li> <li>• the Commission must now examine other factors considered by jurisdictions such as the US and Canada;</li> <li>• the Commission failed to investigate critical matters such as: <ul style="list-style-type: none"> <li>○ almost all its production of microflute is used in the conversion of large format beverage can packaging;</li> <li>○ other uses of microflute, apart from large format beverage can packaging;</li> <li>○ verifying the end use of microflute sold in Australia;</li> <li>○ seek information from commercial customers of the goods under consideration and microflute;</li> </ul> </li> <li>• the Commission has adopted a narrow interpretation of like goods that is inconsistent with the purposes of Part XVB. Visy claims: <ul style="list-style-type: none"> <li>○ it is imperative that the Commission interpret the definition of like goods in section 269T in a manner consistent with the purposes of the Act, and that the dumping system is clearly to provide trade protection to a domestic industry suffering injury resulting from dumped imports and that the <i>Acts Interpretation Act 1901</i>, at section 15AA, states that the interpretation that best achieves the purpose of the Act is to be the preferred interpretation;</li> </ul> </li> </ul> |

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
|         |                       |               | <ul style="list-style-type: none"> <li>○ this would be the first time an investigation has been terminated on the basis that the imported goods and Australian made goods were found not to be like goods. Visy further claims that leaving it without protection, where egregious levels of dumping have been found, will result in loss of jobs and the closure of plants;</li> <li>○ the goods description was formulated to only deal with imported goods that directly compete with Visy and that any measures, if imposed, would not have wider negative economic impacts on imported kraft paperboard that is converted for end uses other than large format beverage can packaging;</li> <li>● greater weight must be placed on the end use product made from kraft paperboard and microflute, claiming that as both products are directly substitutable it is appropriate to have reference to the final stage; and</li> <li>● it finds it incomprehensible that the Commission has disregarded and not accepted the recommendations of Dr Vanderhoek.</li> </ul>  |
| 39      | 26 May 2021           | GPIL          | <p>GPIL submits that:</p> <ul style="list-style-type: none"> <li>● the termination decision is the correct and only decision open to the Commissioner, highlighting the legal test that must be satisfied before imposing dumping measures, namely that “material injury to an Australian industry producing like goods has been or is being caused”. GPIL refer to <i>GM Holden Ltd v Commr of the Anti-Dumping Commission</i> [2014] FCA 708 (GM Holden) at paragraph 120, stating that material injury to an Australian industry producing like goods is a “core aspect of the statutory task”;</li> <li>● Mr Klass did not provide any submissions to the Commission, rather Mr Klass provided an expert opinion. GPIL state that Mr Klass acted in accordance with the Federal Courts of Australia practice not on providing expert evidence;</li> <li>● the commercial likeness of kraft paperboard and microflute should be assessed at the stage at which the imported kraft paperboard crosses the Australian docks. GPIL submit the goods, at this point, do not directly compete and are therefore not commercially alike. GPIL claim: <ul style="list-style-type: none"> <li>○ kraft paperboard and microflute are not directly competitive in any market, acknowledging only some downstream products directly compete;</li> <li>○ as vertically integrated producers of packaging and the intermediate product, microflute or kraft paperboard, both GPIL and Visy participate in two stages of the supply chain, self-supplying the intermediate product to themselves. GPIL claim it is extremely unlikely that GPIL would switch to using microflute and it is equally unlikely that Visy would switch to using kraft paperboard. GPIL also maintains that, should a comparison be made of downstream products, microflute is not suitable for the significant majority of packaging as that packaging is for small format beverage packaging;</li> <li>○ because suppliers of kraft paperboard and microflute vertically integrated producers of downstream products, neither GPIL or Visy sell the goods prior to being converted. Therefore, GPIL submit that there is no price competition. Should a comparison be made of the downstream products, GPIL submit that when</li> </ul> </li> </ul> |

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
|         |                       |               | <p>considering the downstream products, as microflute is unsuitable for small format beverage packaging, there remains no price competition;</p> <ul style="list-style-type: none"> <li>○ kraft paperboard and microflute are not packaged similarly, stating that kraft paperboard is stored and transported in large ‘jumbo’ rolls where microflute is not. GPIL also claim that “<i>it appears that microflute uses no packaging at all as it is consumed inline or simply stored flat following production</i>”.</li> </ul>   |
| 40      | 9 April 2021          | GPIL          | <p>GPIL replied to Visy’s submission (EPR item No. 38), arguing that:</p> <ul style="list-style-type: none"> <li>• Visy ignores that fact that microflute exists only temporarily while being made in line to product packaging;</li> <li>• Visy is suggesting that the Commission undertake an unconventional investigation, stating that: <ul style="list-style-type: none"> <li>○ it would be unusual for the Commission to adopt new approaches of other countries midway through an investigation; and</li> <li>○ by urging the Commission to place greater weight on the end use product, assess injury caused to Australian producers that are not manufacturing like goods and give the greatest weight to commercial likeness, Visy is suggesting the Commission abandon its own guidance contained in the Manual; and</li> </ul> </li> <li>• there are other issues with Visy’s latest submission, such as: <ul style="list-style-type: none"> <li>○ Visy has failed to convince the Commission of its like goods argument, noting that investigations are not able to continue indefinitely;</li> <li>○ Visy wrongly contests the Commission’s conclusions regarding small format packaging;</li> <li>○ Visy incorrectly claims there is no evidence of differences in performance of kraft paperboard and microflute;</li> <li>○ Visy wrongly claims that there is no evidence that kraft has greater ability to switch from one product to another;</li> <li>○ Visy is not able to change the law on like goods. GPIL claim that case law is clear, referencing <i>GM Holden Ltd v Commr of the Anti-Dumping Commission</i>, in that “the focus in a like goods assessment should be a ‘comparison of physical characteristics’ of the goods and claimed like goods” and not commercial likeness as claimed by Visy. GPIL claim that the Manual reflects case law in the order by which the characteristics are listed;</li> <li>○ it is highly material that microflute is pre-printed, with GPIL observing that “one of the indicia of physical likeness stated...is appearance and printing is a substantial difference in appearance between kraft paperboard and microflute”;</li> <li>○ wet strength treatment is a highly material difference. GPIL refer to Visy’s comments that it “carefully formulated the GUC”, arguing that “if wet strength treatment is not a material difference then it is unclear why Visy did not seek measures against all kraft paperboard”;</li> <li>○ Visy’s claim that the washboard effect on the surface of microflute is not visible to the naked eye is contradicted by the evidence;</li> </ul> </li> </ul> |

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
|         |                       |               | <ul style="list-style-type: none"> <li>○ Visy ignores basic differences between kraft paperboard and microflute, arguing that, based on Visy's argument, other products, such as "E flute (and other) corrugated board, A4 copy paper and toilet paper roll inners" could also be considered to be alike. GPIL further submit that Visy failed to recognise that microflute is the result of converting paper and paperboard, unlike kraft paperboard that is not;</li> <li>○ Visy accepts expert views on physical differences, however GPIL disagrees with Visy's preference to compare the end use stage, stating that beverage packs are not the goods and that GPIL does not export beverage packaging to Australia;</li> <li>○ substantial production differences lead to substantial physical differences. GPIL disagree with Visy's claims that the Commission gave too much consideration to the production likeness;</li> <li>○ Visy misrepresents the legal authority on like goods, as set out in the GM Holden case and that the WTO dispute Visy refers to (Korea Pneumatic Valves) was not about a like goods assessment, rather about injury and the domestic industry. GPIL state that the if the claimed goods were not like goods under article 2.6, then 3.1 (injury) and 4.6 (domestic industry) would not be enlivened; and</li> <li>○ the Vanderhoek Report does not assist the Commission to form a view that microflute is a like good to kraft paperboard as Dr Vanderhoek did not answer that question.</li> </ul>   |
| 41      | 20 April 2021         | Visy          | <p>In response to GPIL's submission (EPR item No. 4), Visy states that:</p> <ul style="list-style-type: none"> <li>● microflute that is produced by Visy is stored on pallets for use at a later production stage;</li> <li>● GPIL does not directly refute the evidence Visy provided to the Commission that small format beverage packaging sold in Australia falls outside the goods description;</li> <li>● its proposed approach is not unconventional or novel as claimed by GPIL. Visy claims that it seeks the Commission to apply its criteria as per the Manual and references overseas jurisdictions to provide an indication of the level of analysis that is required when dealing with intermediate goods;</li> <li>● it refutes GPIL's claim that the words 'like goods' do not appear in the Anti-dumping legislation. However Visy continues to assert that the overarching purpose of the dumping legislation is to protect Australian industry from the nefarious effects of dumping;</li> <li>● GPIL's argument that Visy seeks a goods analysis of the end products rather than the goods under consideration is misleading and a misrepresentation of Visy's application and subsequent submissions;</li> <li>● it has not provided generalised assertions, rather has provided evidence; and</li> <li>● the descriptor wet strength treatment was included in the goods description to exclude non-wet strength treated kraft paperboard which is used in other applications. Visy claim that GPIL is confusing a comparison between imported goods that are in or out of the goods description with a like goods comparison between kraft paperboard and microflute.</li> </ul> <p>Visy also replies to GPIL's submission in response to the SEF (EPR item No. 39), stating that:</p> |

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
|         |                       |               | <ul style="list-style-type: none"> <li>• both kraft paperboard and microflute are unconverted paperboard-based goods that are then converted for the same end use;</li> <li>• there is no visible washboard effect, discernible to the naked eye, on packaging made from microflute;</li> <li>• tariff classifications that differ is not uncommon and many goods subject to measures fall into different tariff classifications;</li> <li>• the contention made by GPIL 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, demonstrates the absurdity of GPI’s position and ignores the commercial reality of specialised manufacturing conversion machinery required to convert kraft paperboard and microflute”;</li> <li>• GPIL’s reference to kraft paperboard as a ‘form of packaging’ and claims that microflute has no packaging is erroneous;</li> <li>• it fails to see the relevance of section 2 of GPIL’s submission with respect to Mr Klass’s reports, arguing that a party may provide technical information via a third party on its behalf and that such information is not afforded any special status.</li> </ul> |

**Table 6 - Submissions on like goods considered in SEF 548**

## PUBLIC RECORD

### 3.4.7 The Commissioner's response to submissions received – EPR item Nos. 34 to 36

The Commissioner considers it appropriate to assess whether Visy manufactures a like good having regard to microflute and the imported goods at the point in which they are intermediate products that exist prior to conversion to a final end use product. The Commissioner accepts that Dr Vanderhoek may be correct that microflute is an alternative to kraft paperboard in certain commercial applications, however section 269T requires the Commission to conduct a broader comparison.

The Commissioner considers that the Commission's approach in this case is consistent with its policy framework as set out in the Manual at Chapter 2, and that differences in characteristics, whether technical or not, remain differences.

### 3.4.8 The Commissioner's response to submissions received in response to SEF 548

The arguments submitted in response to SEF 548 by interested parties are reiterations of those contained in earlier submissions and, having been considered in the SEF, are addressed throughout this report. However, the Commission makes the following specific points:

- Functional likeness

In its submission, EPR item No. 38, Visy misstates WestRock. WestRock, in its submission EPR item No. 8, states<sup>87</sup>:

*“WestRock's wet strength treated paperboard is referred to as “CarrierKote”. This is to be distinguished from WestRock's “CustomKote”, which is not wet strength treated. As previously explained, the types of CarrierKote that have GSM range from 360 to 430 are internally listed as “20pt”, “21pt” and “22pt”, with refers to a caliper measurement reflecting thickness”;*

and

*“WestRock does not import wet-strength paperboard for 12+ multipacks. WestRock Packaging has no contracts in Australia for the sale of converted wet strength paperboard packaging for 12 or more beverage can multipacks. Thus, during the investigation period WestRock Company did not export any of the goods under consideration for conversion into 12 or more beverage can multipacks. Where WestRock Packaging provided these larger format multipacks to customers in the investigation period they were constructed of CustomKote, which is a non-wet strength board”.*

WestRock state that its CarrierKote product, within the caliper range 20 – 22 pt, is within the GSM range of 360 to 430. WestRock states that it did not export any goods under consideration during the investigation period on the basis that the CarrierKote

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<sup>87</sup> Refer to page 4, EPR item No. 8.

product it did import was solely used for smaller format packaging and not for beverage can multipacks of 12 or more.

Visy claims that once a comparison to other end uses (particularly small beverage packaging) is removed from the Commission's assessment of functional likeness, the only sensible conclusion is that kraft paperboard and microflute are like goods in a functional sense.

The Commission verified information provided by both WestRock and GPIL. The Commission does not consider that a comparison to other end uses, including small beverage packaging, should be removed from its assessment. The Commissioner is satisfied that more than half of the goods under consideration, exported to Australia during the investigation period, were converted to packaging that was not 12 or more beverage can multipack packaging and is therefore rightly included in the Commission's assessment for functional likeness.

- Commercial likeness

Visy submitted that greater weight should be given to assessing the commercial likeness of kraft paperboard and microflute, in particular more weight should be given to the end use product.

To determine whether goods have characteristics closely resembling the goods under consideration, the Commission has regard to the considerations outlined in the Manual. There is no hierarchy or predetermined weighting to any particular characteristic, with the Commission considering each factor on a case-by-case basis.

The Commissioner is satisfied that the Commission considered each factor, applying relevant weighting, in reaching the preliminary position in SEF 548. Interested parties have submitted alternative views which the Commissioner has now considered in preparing this report.

GPIL submitted that kraft paperboard and microflute are not commercially alike. To this point, the Commissioner is satisfied that kraft paperboard and microflute, as intermediate goods, do not compete directly in any market and has expanded on this comparison in the Commission's assessment in section 3.4.5. However, the Commissioner considers that microflute and kraft paperboard are similarly positioned in the market segment for the downstream product of large format beverage can packaging and therefore, considers that the Commission has rightly considered the end use of each product in its assessment of commercial likeness.

The Commissioner is satisfied that sufficient weight has been given to the assessment of commercial likeness and the final end use product.

- Physical likeness

The Commissioner considers, for reasons stated above, that physical differences are no less significant than other factors when conducting a like goods assessment. The Commissioner is satisfied that an appropriate weighting has been given to the assessment of physical likeness.

- Production likeness

The differences in production processes between kraft paperboard and microflute are not to obtain a result of different characteristics of the same product. On the contrary, kraft paperboard and microflute are two different products with two different manufacturing processes that are striving to achieve the same, or similar characteristics to enable each product to be used in a specific end use.

As stated above, the Commissioner is satisfied that the Commission has considered each factor and has applied the appropriate weighting for its assessment of production likeness between kraft paperboard and microflute.

- Legislative references

Commissioner notes both Visy's and GPIL's arguments regarding the statutory interpretation of the Act. The Commissioner considers that the Commission has undertaken its like goods assessment consistent with the views that are set out in Anti-Dumping Review Panel Report No. 84 – Steel Reinforcing Bar exported from the People's Republic of China.<sup>88</sup>

### **3.4.9 Conclusion on the like goods assessment**

Based on the findings reported in each relevant exporter verification report,<sup>89</sup> the Commissioner is satisfied that kraft paperboard sold by exporters of the goods on the domestic market in the USA are identical to the goods under consideration and are therefore like goods.

However, the Commissioner has no evidence available to it that indicates goods identical to the goods under consideration are manufactured, either in part or wholly in Australia, by any manufacturer.

Based on the assessment undertaken by the Commission, the Commissioner is not satisfied that microflute are like goods to the goods under consideration, as defined in section 269T, given that:

- the physical characteristics of locally produced microflute do not closely resemble the imported goods;
- the imported and locally produced goods are not commercially alike as they do not directly compete in any market, noting that some of the imported goods are converted into goods that compete directly with products converted from the locally produced goods;
- the imported and locally produced goods are not functionally alike as they are not substitutable. Noting that some end use products made from imported goods can be substituted with end use products made from locally produced goods, for more

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<sup>88</sup> ADRP Report No. 84 can be accessed on the ADRP's website at: <https://www.industry.gov.au/about-us/anti-dumping-review-panel>.

<sup>89</sup> EPR item Nos. 29 and 30.

than half of the products made from imported goods, the locally produced goods are unable to perform the same function; and

- although the locally produced goods and imported goods undergo similar early stages of production, the locally produced goods requires additional manufacturing processes than that of the imported goods prior to being used in the conversion to packaging products.

## 4 THE AUSTRALIAN INDUSTRY

### 4.1 Finding

The Commissioner considers that like goods are not produced in Australia by any manufacturer and therefore there is no Australian industry producing like goods that exists.

### 4.2 Legislative framework

The Commissioner must be satisfied that “like” goods are produced in Australia. Sections 269T(2) and 269T(3) specify that for goods to be regarded as being produced in Australia, they must be wholly or partly manufactured in Australia. In order for the goods to be considered as partly manufactured in Australia, at least one substantial process in the manufacture of the goods must be carried out in Australia.

### 4.3 Assessment

In its application and consistently throughout this investigation, Visy has claimed that its microflute product closely resembles imported kraft paperboard, and as such, Visy is representative of an Australian industry producing like goods with respect to the goods under consideration. With the information available to the Commission at the time this investigation was initiated, the Commissioner was satisfied that Visy did represent an Australian industry producing like goods.

Having analysed the information provided from all interested parties throughout the investigation and undertaking an assessment of the physical, commercial, functional, production and other characteristics of both microflute and kraft paperboard, the Commission found that microflute does not closely resemble kraft paperboard and are therefore not like goods with respect to the goods under consideration (refer to Chapter 3 of this report).

Dr Vanderhoek was asked if he considered there to be products, other than microflute, which closely resembles kraft paperboard, and if so, if those products were manufactured in Australia. Dr Vanderhoek states at paragraphs 6.21 and 7.1(c) of his report that there is no other fibrous product manufactured in Australia that closely resembles kraft paperboard that is “*able to meet the 12+ beverage can multipack performance requirements in their entirety*”. Mr Klass, in his report, identified other fibrous products that are converted to packaging for 12 or more beverage can multipacks in markets overseas, although confirms that there is no known manufacture of the paperboard he identified in Australia.<sup>90</sup>

### 4.4 Submissions received in response to the publication of SEF 548

Table 7 below summarises the relevant points raised by interested parties in response to SEF 548.

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<sup>90</sup> EPR item No. 33, page 6.

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
| 38      | 26 March 2021         | Visy          | <p>Visy submits that the Commission failed to investigate matters relevant to establishing the Australian industry. Quoting the Manual, Visy notes “Establishing the Australian industry is critical to the examination and existence of injury”. Visy submits that the Commission failed to verify information provided by Opal in respect to the production of microflute used in non-beverage applications.</p> <p>Visy also submits that the Commission did not fulfil its obligation to investigate and complete its verification of Visy’s claims of material injury it has suffered, and continues to suffer, as a result of dumped kraft paperboard.</p>  |
| 40      | 9 April 2021          | GPIL          | <p>GPIL reply to Visy’s submission (EPR item No. 38), submitting that Visy is claiming that the purpose of the Anti-dumping legislation is to protect “Australian industry” without any basis. GPIL highlight that Visy used the term “Australian industry” six times in its submission, without once using the term “Australian industry producing like goods”.<sup>91</sup> GPIL refer to the words of the High Court, “language which has actually been employed in the text of legislation” is the best guide to the intention of the legislation.</p> <p>GPIL submit that the “language that is employed in section 269TG indicates an intention or purpose to protect ‘an Australian industry <i>producing like goods</i>’, not as Visy would have it to provide some protection to Australian industry generally regardless of whether or not they produce like goods”.</p> <p>GPIL also submit that, by seeking the Commission to verify and assess injury caused to Australian producers who are not manufacturing like goods, Visy is asking the Commission to abandon its own guidance contained in the Manual. GPIL states that the Commission correctly refused to verify Australian companies that do not produce like goods.</p> |

**Table 7 - Submission regarding an Australian industry - received in response to SEF 548**

#### **4.4.1 The Commissioner’s response to submissions received in response to SEF 548**

For reasons set out in Chapter 3 and this chapter, the Commissioner does not consider that there is an Australian industry producing like goods. The Commission does not have an obligation to investigate matters outside the scope of the Act and therefore has not undertaken verification of Australian producers of microflute.

#### **4.5 Finding**

The Commissioner considers that the Australian industry producing microflute is not an Australian industry producing like goods with respect to the goods under consideration. Therefore the Commissioner is not satisfied that there is an Australian industry producing like goods with respect to imported kraft paperboard, the goods under consideration.

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<sup>91</sup> GPIL qualify this statement in a footnote: “Other than when it is quoting other sources”.

Therefore, notwithstanding any claims made by the applicant concerning injury incurred as a result of dumped imports of kraft paperboard, the Commissioner does not consider injury from dumped goods has been caused to an Australian industry producing like goods.

## **5 TERMINATION OF INVESTIGATION**

Under section 269TDA(13), where the Commissioner is satisfied that there has been no injury, or if any injury, it has been negligible, to an Australian industry producing like goods with respect to the goods the subject of the application, caused by exports of those goods from a particular country, the Commissioner must terminate the investigation insofar as it relates to exports from that country.

Based on the findings in Chapters 3 and 4 of this report, the Commissioner is not satisfied that there is injury to an Australian industry producing like goods with respect to the goods the subject of the application, caused by the export of those goods from the USA. Therefore, the Commissioner has terminated the investigation in its entirety in accordance with section 269TDA(13).

## 6 APPENDICES AND ATTACHMENTS

|                                      |   |
|--------------------------------------|---|
| <b>Non-confidential Attachment 1</b> | List of submissions received              |
| <b>Confidential Appendix 1</b>       | Visy – Production of N-Flute              |
| <b>Confidential Appendix 2</b>       | Kraft paperboard – small and large format |

**PUBLIC RECORD**

**NON-CONFIDENTIAL ATTACHMENT 1: SUMMARY OF SUBMISSIONS RECEIVED**

| EPR No.   | Date published on EPR | Submission by | Description  |
|---|-----------------------|---------------|--|
| <p>The Commission responded generally to the following fifteen submissions received with regard to like goods as part of its assessment of like goods as set out in section 3.6.5 of SEF 548.</p> |                       |               |  |
| 5   | 13 May 2020           | GPIL          | <p>In its submission of 13 May 2020, GPIL state that the similarities of microflute to kraft paperboard are superficial, however the differences are fundamental.</p> <p>GPIL state that microflute is not a type of paper or paperboard; rather it is a corrugated cardboard that is a result of converting paper products.</p> <p>GPIL highlights the physical, commercial, functional and production differences between kraft paperboard and microflute.</p>   |
| 7   | 4 June 2020           | GPIL          | <p>On 4 June 2020, GPIL provided the Commission with the Klass Reports. The Klass Reports was authored by an industry expert, Mr Charles Klass. Mr Klass was asked by GPIL to provide an expert opinion on the question: <i>Is microflute a "like good" to the goods under consideration?"</i></p> <p>Mr Klass states that, in providing his opinion and preparing his report, he agreed to:</p> <ul style="list-style-type: none"> <li>• do so at a high professional standard;</li> <li>• act impartially and not conduct himself as an advocate for the case of the client; and</li> <li>• be familiar with and, to the extent relevant to the matter, act in accordance with the Federal Court of Australia Expert Evidence Practice Note (GPN-EXPT).</li> </ul> <p>The Klass Reports provides an analysis on the physical, commercial, functional and production characteristics and concludes that kraft paperboard and microflute are not like goods.</p> |
| 8   | 9 June 2020           | WestRock      | <p>WestRock states that it does not consider it exported the goods under consideration during the investigation period on the basis that the goods it exported were not for the end use of large format beverage can packaging.</p> <p>In relation to the goods WestRock considers subject to the investigation, it states:</p> <p style="text-align: center;"><i>Thus the goods under consideration are certain forms of kraft paperboard, being that which is coated on one side with clay or other inorganic substances, of 360-430 GSM and wet strength treated, with an end use for 12 or more beverage can multipacks.</i></p> <p>WestRock states that it analysed the conversion records of its related importers and found that, during the investigation period, the goods it had exported had an end use of small format beverage can packaging.</p>   |
| 9   | 19 June 2020          | Visy          | <p>Visy provided a submission in response to GPIL's submission of 13 May 2020 and the Klass Reports.</p>   |

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
|         |                       |               | <p>Visy claim that the commercial background to the investigation is self-evident that kraft paperboard and microflute are completely substitutable. Visy states its microflute product is also generally known as “N” flute and provides further clarification of its thickness.<sup>92</sup></p> <p>Visy provides a physical comparison of the end use product, being large format beverage can multipack packing, made from either microflute or kraft paperboard, stating that the differences in visual appearance of the packaging made from both materials is microscopic and that the shape is identical.</p> <p>Visy addresses other physical, production and commercial characteristics, noting that it formulated the goods description in its application to capture only those goods that compete with Visy’s packaging made from microflute.</p> <p>With respect to the Klass Reports, Visy disagrees with the conclusion arrived at by Mr Klass and states that Mr Klass omitted key points of comparison between the two products and responds to the Klass Reports as follows:</p> <ul style="list-style-type: none"> <li>• the three layers of paper in microflute are not individually known as ‘paperboard’ but simply paper layers or liners;</li> <li>• kraft paperboard, a solid sheet, is a fusion of several plies, similar to the layers of microflute;</li> <li>• the list of packaging and display applications cited for ‘microflute’ is misleading and includes products made from all fluted corrugated products, not merely microflute;</li> <li>• Visy’s flute size for its microflute product is 0.7mm, the diagram on page 9 of the Klass Reports shows microflute (F flute) with a height of 0.75mm;</li> <li>• Visy’s microflute product has a thickness of 0.7mm and not 0.85mm as asserted;</li> <li>• ragged edges result from a process called rotary die cutting, whereas both kraft paperboard and microflute use a converting process known as flatbed die cutting;</li> <li>• Visy disagrees with the statements contending that microflute has less optimal printing outcomes;</li> <li>• large format beverage can multipack packaging made from both microflute or kraft paperboard requires a reinforcing strip inside the packaging;</li> <li>• the different pine species is not a significant difference;</li> <li>• it is false and misleading to state that microflute is sold for a variety of applications, other than beverage carriers, including packaging food and non-food items, Visy stating that this refers to all fluted corrugated products;</li> <li>• the conversion of microflute to an end product is done offline, not online as asserted; and</li> <li>• Visy does not agree with statements that kraft paperboard and microflute are made from different products, that they perform differently under wet conditions and that there is differences in print outcomes.</li> </ul> |

<sup>92</sup> EPR item No. 9, page 10.

| EPR No. | Date published on EPR | Submission by | Description  |
|---------|-----------------------|---------------|--|
| 15      | 26 July 2020          | GPIL          | <p>Mr Klass responds to Visy's submission, EPR Item No. 9 (summarised below), on 26 July 2020 with a Supplementary Report. Mr Klass states that he stands by his opinions in his earlier report.</p> <p>Mr Klass refutes Visy's statement that his initial report "aggregates E flute with N flute, calling them both microflute".</p> <p>Mr Klass response specifically as follows:</p> <ul style="list-style-type: none"> <li>• Whether the three layers of microflute are referred to as paper, paperboard or liner, Mr Klass' conclusion remains the same;</li> <li>• The diagram in attachment VG-3 of GPIL's submission illustrates "Folding Box Board" rather than GPIL's kraft paperboard. Mr Klass suggests this demonstrates a lack of understanding of the manufacturing process, where solid unbleached kraft paperboard is a solid fibre material formed into a solid sheet. The plies referred to only exist on the wet end of the paper machine and the fibres intermingle at the interface to form a solid sheet;</li> <li>• Visy's statement that Mr Klass was referring to the entirety of all fluted corrugated products was incorrect. Rather Mr Klass was referring only to microflute;</li> <li>• The inclusion of diagrams on page 9 or Mr Klass' initial report serve only to assist non-technically trained readers in the understanding of the definition of microflute;</li> <li>• Mr Klass was provided two samples to assist with the preparation of his initial report: <ul style="list-style-type: none"> <li>a. a sheet of GPIL's coated unbleached kraft paperboard, printed for use in a 24 pack of Coca Cola Classic cans; and</li> <li>b. a carton of Pepsi Max Taste No Sugar 30 pack of cans, made from Visy's microflute product.</li> </ul> </li> </ul> <p>Mr Klass agrees with Visy's statement that the flute height is 0.7mm, however the overall thickness, which includes the two outside liners, is 0.85mm;</p> <ul style="list-style-type: none"> <li>• Mr Klass did not mention rotary die cutting in his initial report. The cracking Mr Klass refers to is a result of the fundamental differences in the materials used in construction;</li> <li>• Mr Klass provides close up photos of the printing of each sample and compares the sharp edges of the work "ENERGY" on GPIL's product to the uneven definition of Visy's product. Mr Klass also notes the undulations of Visy's product, giving a washboard appearance;</li> <li>• Mr Klass based his statements on utilising a reinforcing strip in his initial report on the fact that in the USA 30 can pack beverage carriers made from GPIL's kraft paperboard do not have such a strip. Mr Klass states that the overlap of the manufacturer's joint (in relation to the GPIL product) provides adequate strength with no need for a separate reinforcing strip. He states that, if GPI Australia<sup>93</sup> has a reinforcing strip, it would be cautionary;</li> <li>• The difference in pine is technical, however are physically different;</li> </ul> |

<sup>93</sup> Graphic Packaging International Converting Australia Pty Ltd.

| EPR No. | Date published on EPR | Submission by | Description  |
|---------|-----------------------|---------------|--|
|         |                       |               | <ul style="list-style-type: none"> <li>• With regard to competing in the same market, Mr Klass repeats his earlier statement about the different markets in which microflute is used; and</li> <li>• Mr Klass is not aware if Visy converts its microflute in-line or not, but it is technically possible. GPIL's kraft paperboard undergoes sheeting and printing in Australia, before converting. The converting of printed sheets into beverage carrier cartons is the same process for both products.</li> </ul>   |
| 16      | 26 July 2020          | GPIL          | <p>GPIL submits generally with respect to the investigation:</p> <ul style="list-style-type: none"> <li>• Microflute is not a like good to kraft paperboard;</li> <li>• Visy must clarify what it regards as the like goods before the investigation proceeds further;</li> <li>• Visy makes demonstrably wrong statements about microflute and E flute corrugated board; and</li> <li>• Microflute is a paper based product, but that does not assist Visy.</li> </ul>  |
| 18      | 7 September 2020      | Visy          | <p>Visy states its views of the overarching purpose of the Anti-Dumping system and discusses the definition of like goods as defined in section 269T(1).</p> <p>Visy contends that the most important factor in comparing kraft paperboard to microflute is whether the market identifies, in a practical sense, these products as being substitutable for one another.</p> <p>Visy cites the following in support of its statements:</p> <ul style="list-style-type: none"> <li>• Marine Power Australia Pty Ltd and Another v Comptroller General of Customs and others (1989) FCA, Lockhart, L., 9 June 1989, unreported, paragraph (v) pages 562 and 572;</li> <li>• GM Holden Limited v Commissioner of the Anti-Dumping Commission and others [2014] FCA 708, Mortimer, J., 4 July 2014 VID 555 of 2013, paragraphs 117 and 123, 134;</li> <li>• Anti-Dumping Review Panel Report No. 103 – <i>Steel Pallet Racking exported from the People's Republic of China and Malaysia</i> (August 2019) at paragraph 65;</li> <li>• <i>European Communities – Anti-Dumping Measure on Farmed Salmon from Norway</i>, WT/DS337/R; and</li> <li>• <i>Korea – Anti-Dumping Duties on Pneumatic Valves from Japan</i>, WT/DS504/R.</li> </ul> <p>Visy does not agree with GPIL's contention that it is comparing a downstream (end) use of microflute as a point of comparison, it concurs that the point of comparison must be the rolls of kraft paperboard as imported, against its microflute continuous sheeting.</p> <p>Visy states that, other than the timing of printing, both kraft paperboard and microflute are subjected to a near identical conversion process to produce the final packaging product.</p> <p>Visy submits that it has not altered the description of the like goods in its dumping application.</p> <p>Visy responds specifically to GPIL's submissions, EPR Item Nos.15 and 16, as follows:</p> <ul style="list-style-type: none"> <li>• Hungry Jacks fluted products discussed by GPIL is an E flute product imported into Australia;</li> <li>• The beer slab packaging pictured in GPIL's submission is a Visy Board product, not Visy's (i.e. Visy Glama Pty Ltd), and is known as R flute;</li> <li>• Mr Klass confirms Visy's position that there is a difference between microflute and other fluted products;</li> </ul> |

| EPR No. | Date published on EPR | Submission by | Description   |
|---------|-----------------------|---------------|---|
|         |                       |               | <ul style="list-style-type: none"> <li>• Visy notes Mr Klass' use of Wikipedia rather than GPIL references. However, notes that the goods description of the goods under consideration does not distinguish between kraft paperboard with one solid layer or multiple layers; and</li> <li>• Visy states that, because it supplied the Australian market [for large format beverage can packaging] for in excess of 15 years, the asserted differences in visual appearance, printability, wet strength capability and cracking is immaterial.</li> </ul>   |
| 20      | 22 September 2020     | WestRock      | <p>WestRock submits that microflute is not “like” wet strength treated kraft paperboard in the required sense. WestRock refer to the Klass Reports, highlighting differences that include:</p> <ul style="list-style-type: none"> <li>• WestRock’s kraft paperboard product, CarrierKote, adds a wet strength resin which provides an ability for packaging made from its product to be stored on ice, have stronger holds, and being less subject to failure caused by the effects of condensation;</li> <li>• the goods under consideration is produced as an unprinted roll. Microflute cannot be formed into rolls as it is too rigid with one liner pre-printed prior to being formed. The pre-printed microflute is cut and stacked during the manufacturing process; and</li> <li>• the clay coating and laminates of kraft paperboard permit a higher definition than microflute.</li> </ul> <p>WestRock also states that a critical significance of market definition to this investigation highlights the different physical, functional and production features that cause microflute to be rejected for use in producing small format beverage can multipacks.</p> <p>WestRock states that Visy concedes this, referring to Visy’s earlier submission where it writes “<i>Visy Glama is seeking protection against dumped imports for its niche microflute business, being a 0.7mm thick premium quality paper based product...that is almost exclusively used to manufacture large format beverage multipacks</i>”.</p> <p>WestRock refers to the argument by the applicant, that the most important factor for comparison is whether the market identifies the products as substitutable. WestRock observes that microflute cannot replace, and is therefore not a substitute, kraft paperboard in the small format beverage can multipack packaging segment of the Australian market.</p> <p>WestRock highlights further differences, such as run speed, conversion limitations and expense.</p> <p>With respect to the goods under consideration, WestRock states that it does not consider it exported the goods under consideration during the investigation period on the basis that the goods it exported were not for the end use of large format beverage can packaging.</p> <p>In relation to the goods WestRock considers subject to the investigation, it states:</p> <p style="padding-left: 40px;"><i>Thus the goods under consideration are certain forms of kraft paperboard, being that which is coated on one side with clay or other inorganic substances, of 360-430 GSM and wet strength treated, with an end use for 12 or more beverage can multipacks.</i></p> <p>WestRock states that it analysed the conversion records of its related importers and found that, during the investigation period, the goods it had exported had an end use of small format beverage can packaging.</p> |

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| 21      | 22 September 2020     | GPIL          | <p>GPIL responds to the Commission’s Issues Paper by restating previous claims with respect to the question of ‘like goods’:</p> <ul style="list-style-type: none"> <li>• Microflute is not physically, commercially or functionally a like good to kraft paperboard;</li> <li>• Expert evidence confirms that kraft paperboard and microflute are not like goods;</li> <li>• The goods are large rolls of unprinted kraft paperboard, not beverage can multipacks. They are also not printed sheets of corrugated cardboard;</li> <li>• Microflute is the result of converting paper products; kraft paperboard imported to Australia has had no converting process; and</li> <li>• Visy has made demonstrably wrong statements.</li> </ul>  |
| 23      | 28 October 2020       | Visy          | <p>Visy notes that WestRock and GPIL, have lodged submissions; and that GPIL’s submission does not raise any new substantive issues.</p> <p>Visy submits that WestRock’s response to the Commission’s Issues Paper, does not raise any issues that would affect the proposition that kraft paperboard, as strictly defined by the goods description, and microflute are like goods.</p> <p>Visy states that GPIL does not address that Australian market dynamics, focusing rather on peripheral issues.</p> <p>Visy notes that there has been no submissions filed by Australian customers or end users of microflute and/or kraft paperboard, stating that these parties would be incentivised to support GPIL’s position. In light of the lack of industry input, Visy obtained a statement from a former senior beverage industry executive, Mr Arthur Mitropoulos.</p>   |
| 24      | 28 October 2020       | Visy          | <p>Mr Arthur Mitropoulos, a former Senior Executive with Cadbury Schweppes, Schweppes Australia and Asahi Beverages (collectively Schweppes), provided Visy with a statement on his opinion as to whether kraft paperboard and microflute are like goods when used in beverage can multipacks.</p> <p>Mr Mitropoulos describes the general process of selecting a beverage can pack supplier, stating that the primary driver was price, however also confirms that switching from using kraft paperboard to using microflute for Schweppes beverage packaging was also driven by ability for mainstream recyclability.</p> <p>Although the two products could not be interchanged instantly on the packaging machines, Mr Mitropoulos confirms that, once minor changes were made to the equipment, Schweppes could switch one paperboard supplier for another.</p> <p>In conclusion, Mr Mitropoulos believes that “<i>microflute and paperboard products are ‘like’ goods for beverage can multi packs (12 can packs and above)</i>”.</p> |
| 25      | 3 November 2020       | GPIL          | <p>GPIL states that Visy’s responses to the Commission’s issues paper (EPR item Nos. 23 and 24, do not address the questions posed by the Commission and were provided to the Commission after the date indicated in the paper.</p> <p>GPIL submits that the statement, provided by Visy, from Mr Arthur Mitropoulos, is not expert evidence and asks and answers the wrong question. GPIL highlight that Mr Mitropoulos asks whether kraft paperboard and microflute are like goods when used in beverage can multipacks, rather than at the stage when the goods cross the Australian docks.</p> <p>GPIL further highlights that Mr Mitropoulos’ statement supports its position on like goods as it took 12 months to change suppliers due to material differences between kraft paperboard to microflute.</p>   |

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| 27      | 20 November 2020      | Visy          | <p>In response to GPIL’s submission, EPR item No. 25, rejects the proposition that it did not address the questions raised in the Commission’s Issues Paper.</p> <p>In reference to Mr Mitropoulos’ statement, Visy states that:</p> <ul style="list-style-type: none"> <li>• it never claimed that Mr Mitropoulos’ statement constitutes expert evidence; rather that Mr Mitropoulos’ statement speaks to his practical experience working in procurement for a global beverage company;</li> <li>• the opinion provided is not outdated, despite the fact that the original Schweppes contract was entered into 16 years ago, as Mr Mitropoulos was involved in at least three contract renewals prior to his retirement in 2017;</li> <li>• despite the goods under consideration being kraft paperboard prior to conversion in Australia, the observations [on 12 or more beverage can multi packs] are nonetheless valid; and</li> <li>• the time taken to switch suppliers does not support GPIL’s position, arguing due diligence is standard practice of large beverage companies.</li> </ul>   |
| 31      | 15 January 2021       | Visy          | <p>Visy state that Dr Vanderhoek’s conclusions support Visy’s application for dumping measures.</p> <p>Visy notes Dr Vanderhoek’s statement at paragraph 6.7 of his report and agrees that technology allows customer’s expectations to be met in a variety of ways and that the products are most sensibility compared at the final product stage, being the finished box.</p> <p>Visy claims that, together with Mr Mitropoulos’ statement, Dr Vanderhoek’s report resolves the question raised in relation to like goods. Visy also notes that the documents provided to Dr Vanderhoek did not include the statement by Mr Mitropoulos.</p> <p>Visy urges the Commission to finalise the investigation as soon as possible, suggesting urgent consideration of issuing a preliminary affirmative determination..</p>   |
| 32      | 5 February 2021       | GPIL          | <p>GPIL made the following submissions:</p> <ul style="list-style-type: none"> <li>• Dr Vanderhoek’s report fails to address the question as to whether microflute is a like good to kraft paperboard;</li> <li>• Dr Vanderhoek makes a comparison of the end use product in relation to “12+ beverage can multipacks” and that this does not account for the fact that: <ul style="list-style-type: none"> <li>○ more than half of the kraft paperboard imported to Australia is not used for packaging of 12 or more beverage can multipacks; and</li> <li>○ a proportion of microflute produced in Australia is not used for such packaging;</li> </ul> </li> <li>• The like goods assessment suggested by Visy, and Dr Vanderhoek’s report, propose a radical change to the conventional way like goods is assessed by the Commission;</li> <li>• The expert evidence provided by Mr Klass is substantially uncontested;</li> <li>• Dr Vanderhoek’s report confirms aspects of information provided in Mr Klass’ report, in particular that fact that microflute may not exist other than transiently in an inline converting process; and</li> </ul> |

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|   |                       |               | <ul style="list-style-type: none"> <li>the Commission cannot delegate its fact finding functions and powers to Dr Vanderhoek, nor does his report have special status by virtue of being engaged by the Commission;</li> </ul> <p>GPIL also raises questions that, if dumping duties were imposed on kraft paperboard that was intended for use in 12+ beverage can multipacks, importers would have to declare the intended end use of the imported kraft paperboard.</p> <p>GPIL claims that most of the kraft paperboard imported to Australia is used in applications other than 12+ beverage can multipacks.</p>   |
| 33  | 5 February 2021       | GPIL          | <p>Mr Klass responds to Dr Vanderhoek’s report as follows:</p> <ul style="list-style-type: none"> <li>Mr Klass agrees with Dr Vanderhoek’s conclusion at paragraph 6.6 that “<i>Microflute is not an identical product with kraft paperboard</i>”, however the remainder of the paragraph does not answer the question of whether microflute is identical to kraft paperboard, and is irrelevant;</li> <li>Dr Vanderhoek does not answer the question of whether he considers microflute to have characteristics closely resembling those of kraft paperboard;</li> <li>Dr Vanderhoek does not answer the question of whether he considers there to be other products which closely resemble kraft paperboard. Mr Klass describes a product of Mexico that he states is used successfully for 12+ beverage can multipacks. Mr Klass also suggests that kraft paperboard that is not wet strength treated would more closely resemble wet strength treated kraft paperboard.</li> </ul> <p>Mr Klass stands by his previous opinion that kraft paperboard and microflute are not like goods.</p> <p>Mr Klass provides a review of Dr Vanderhoek’s report where he considers the bulk of the report to be technically correct, this does not point to a conclusion that microflute is a like good to kraft paperboard.</p> |
| <p>The following three submissions were received prior to the publication of SEF 548, however to have had consideration to these submissions in making the SEF would have delayed its timely publication.</p> |                       |               |   |

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| 34      | 22 February 2021      | Visy          | <p>Visy raises the following points in reply to GPIL's submissions (EPR item Nos. 32 and 33):</p> <ul style="list-style-type: none"> <li>• Dr Vanderhoek's conclusions are in agreement with a practical and market based approach and consistent with the industry view submitted by Mr Mitropoulos;</li> <li>• GPIL's reference to a 1986 GATT Panel case is not relevant and predates the WTO Agreements;</li> <li>• The Commission's approach in this case has not been radical and is consistent with other anti-dumping matters involving the publication of an Issues Paper, for example <i>Steel Pallet Racking from China and Malaysia (Investigation 441)</i>; and</li> <li>• that the differences asserted by GPIL are technical in nature.</li> </ul> <p>Visy also note that the comments by Mr Klass, in EPR item No. 33, do not raise any additional matters.</p> <p>In addition, Visy responds to GPIL's question raised in EPR item No. 32 by stating that it is insincere to claim that the goods definition would lead to difficulties in enforcing anti-dumping measures, should they be imposed. Visy restates that the goods description has been constructed to only target imports of kraft paperboard that is causing material injury to Visy. Visy states that the end use of the goods under consideration do not form part of the goods description and is for illustrative purposes only.</p> <p>Visy further states that, should some goods falling within the goods description and not competing with the Australian industry, it would be open for an application for an exemption under the Dumping Duties Act.</p> <p>Visy rejects GPIL's claims that most kraft paperboard imported to Australia is used for end uses other than 12+ beverage can multipacks.</p> |
| 35      | 25 February 2021      | GPIL          | <p>GPIL replies to Visy's submission (EPR item No. 34) with the following:</p> <ul style="list-style-type: none"> <li>• Visy has failed to recognise the relevance of WTO jurisprudence regarding like goods. The USA had sought to equate upstream and downstream products in a similar way to which Visy is seeking in this case. Further, GPIL does not agree with Visy's objection to the 'US wine and grape case' as it predates the current WTO agreements, stating that well decided cases remain relevant;</li> <li>• by pointing to an instance where GPIL observed that Dr Vanderhoek supported its position, Visy accepts, or admits, that microflute has a transient existence in an inline conversion from rolls of paper to beverage packaging;</li> <li>• Mr Klass observes that the Vanderhoek report did not answer the question posed by the Commission.</li> </ul>  |

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| 36   | 5 March 2021          | Visy          | <p>Visy raises the following in reply to GPIL’s submission (EPR item No. 35):</p> <ul style="list-style-type: none"> <li>• Visy rejects the matters raised by GPIL, stating that no new substantive issues have been raised;</li> <li>• that wine as a downstream product of grapes is not an accurate comparison of kraft paperboard and microflute. Visy states that both kraft paperboard and microflute are high manufactured products, as opposed to a primary and a processed product;</li> <li>• Visy states that whether the conversion of microflute into a final product occurs promptly or not is not a relevant consideration in this case; and</li> <li>• Visy restates its position of what comprises microflute, being N flute, a narrower calliper corrugated cardboard product of a thickness of approximately 0.7mm;</li> </ul> <p>Visy reiterates its support of the conclusions drawn by Dr Vanderhoek.</p>  |
| This following four submissions have been received by the Commission in response to SEF 548. |                       |               |  |
| 38   | 26 May 2021           | Visy          | <p>In response to SEF 548, Visy submits that:</p> <ul style="list-style-type: none"> <li>• it strenuously opposes the proposed finding that kraft paperboard and microflute are not like goods, stating that the investigation should not be terminated;</li> <li>• kraft paperboard and microflute are functionally alike. Visy outline the findings based on which it states the Commission incorrectly found the goods are not functionally alike: <ul style="list-style-type: none"> <li>○ <i>microflute does not perform as kraft paperboard for use in small format beverage packaging.</i> Visy claim that kraft paperboard used in small format packaging does not fall within the goods description and are not the goods under consideration. Visy points to a submission by WestRock (EPR item No. 8), stating “<i>the statement on page 4... that [WestRock’s] 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)</i>”. Visy provided testing results of three samples it selected that shows the GSM is outside the goods description range;</li> <li>○ <i>microflute is used in a wider range of applications than kraft paperboard.</i> Visy state that it provided the Commission with information to show that approx. 95 per cent of its microflute production is used in large format beverage can packaging and that any volumes manufactured by Opal are immaterial.</li> <li>○ <i>differences in the performance of the end products in wet environments.</i> Visy claim there is no evidence of this, stating that Mr Mitropoulos noted ‘our business was comfortable that microflute product would perform as needed in wet environments’;</li> <li>○ <i>kraft paperboard is able to switch more efficiently from one product to another as it is not pre-printed where microflute is.</i> Visy claims there is no evidence to support this finding, stating kraft paperboard and microflute are equally adaptable to customer needs.</li> </ul> </li> </ul> <p>Visy claim that once a comparison to other end uses (particularly small format beverage packaging) is removed, the only sensible conclusion is that kraft paperboard and microflute are like goods in a functional sense;</p> |

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|         |                       |               | <ul style="list-style-type: none"> <li>• commercial likeness should be given the greatest weight of all 'likeness' indicators, given the purpose of the Commission is to provide a trade remedy for an Australian industry that is suffering material injury as a result of dumped imports;</li> <li>• the Commission has not sufficiently examined physical likeness, claiming that: <ul style="list-style-type: none"> <li>○ how kraft paperboard and microflute is stored is not a material consideration, rather a storage and shipping preference;</li> <li>○ one side of microflute being pre-printed does not change the physical nature of the goods;</li> <li>○ GSM is an important factor that should be provided more emphasis;</li> <li>○ the additive of wet strength treatment is not a material difference;</li> <li>○ microflute does not have the appearance of parallel lines visible to the naked eye;</li> <li>○ both kraft paperboard and microflute are paperboard products made using similar raw materials, undergoing a very similar early production process;</li> <li>○ only a trained expert could recognise the differences between kraft paperboard and microflute;</li> <li>○ the minute physical and unrecognisable differences should be given far less weight than the factors of commercial and functional likeness;</li> </ul> </li> <li>• the differences in manufacturing processes is far less important than the other three factors, particularly commercial and functional likeness. Visy quotes the Manual by stating: "<i>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 itself establish like goods, but may highlight differences or provide support to the assessment of other considerations</i>";</li> <li>• it is clear that kraft paperboard and microflute are functionally alike and that the physical differences are not as pronounced as concluded by the Commission. Therefore, Visy asserts that the Commission must now reverse its findings with respect to like goods;</li> <li>• the Commission must now examine other factors considered by jurisdictions such as the US and Canada;</li> <li>• the Commission failed to investigate critical matters such as: <ul style="list-style-type: none"> <li>○ almost all its production of microflute is used in the conversion of large format beverage can packaging;</li> <li>○ other uses of microflute, apart from large format beverage can packaging;</li> <li>○ verifying the end use of microflute sold in Australia;</li> <li>○ seek information from commercial customers of the goods under consideration and microflute;</li> </ul> </li> <li>• the Commission has adopted a narrow interpretation of like goods that is inconsistent with the purposes of Part XVB of the <i>Customs Act</i>. Visy claims: <ul style="list-style-type: none"> <li>○ it is imperative that the Commission interpret the definition of like goods in section 269T in a manner consistent with the purposes of the Act, and that the dumping system is clearly to provide trade protection to a domestic industry suffering injury resulting from dumped imports and that the <i>Acts Interpretation Act 1901</i>, at section 15AA, states that the interpretation that best achieves the purpose of the Act is to be the preferred interpretation;</li> </ul> </li> </ul> |

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|         |                       |               | <ul style="list-style-type: none"> <li>○ this would be the first time an investigation has been terminated on the basis that the imported goods and Australian made goods were found not to be like goods. Visy further claims that leaving it without protection, where egregious levels of dumping have been found, will result in loss of jobs and the closure of plants;</li> <li>○ the goods description was formulated to only deal with imported goods that directly compete with Visy and that any measures, if imposed, would not have wider negative economic impacts on imported kraft paperboard that is converted for end uses other than large format beverage can packaging;</li> <li>● greater weight must be placed on the end use product made from kraft paperboard and microflute, claiming that as both products are directly substitutable it is appropriate to have reference to the final stage; and</li> <li>● it finds it incomprehensible that the Commission has disregarded and not accepted the recommendations of Dr Vanderhoek.</li> </ul>   |
| 39      | 26 May 2021           | GPIL          | <p>In response to SEF 548, GPIL submits that:</p> <ul style="list-style-type: none"> <li>● the termination decision is the correct and only decision open to the Commissioner, highlighting the legal test that must be satisfied before imposing dumping measures, namely that “material injury to an Australian industry producing like goods has been or is being caused”. GPIL refer to <i>GM Holden Ltd v Commr of the Anti-Dumping Commission</i> [2014] FCA 708 at paragraph 120, stating that material injury to an Australian industry producing like goods is a “core aspect of the statutory task”;</li> <li>● Mr Klass did not provide any submissions to the Commission, rather Mr Klass provided an expert opinion. GPIL state that Mr Klass acted in accordance with the Federal Courts of Australia practice not on providing expert evidence;</li> <li>● the commercial likeness of kraft paperboard and microflute should be assessed at the stage at which the imported kraft paperboard crosses the Australian docks. GPIL submit the goods, at this point, do not directly compete and are therefore not commercially alike. GPIL claim: <ul style="list-style-type: none"> <li>○ kraft paperboard and microflute are not directly competitive in any market, acknowledging only some downstream products directly compete;</li> <li>○ as vertically integrated producers of packaging and the intermediate product, microflute or kraft paperboard, both GPIL and Visy participate in two stages of the supply chain, self-supplying the intermediate product to themselves. GPIL claim it is extremely unlikely that GPIL would switch to using microflute and it is equally unlikely that Visy would switch to using kraft paperboard. GPIL also maintains that, should a comparison be made of downstream products, microflute is not suitable for the significant majority of packaging as that packaging is for small format beverage packaging;</li> <li>○ because suppliers of kraft paperboard and microflute vertically integrated producers of downstream products, neither GPIL or Visy sell the goods prior to being converted. Therefore, GPIL states that there is no price competition. Should a comparison be made of the downstream products, GPIL state that when</li> </ul> </li> </ul> |

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|         |                       |               | <p>considering the downstream products, as microflute is unsuitable for small format beverage packaging, there remains no price competition;</p> <ul style="list-style-type: none"> <li>○ kraft paperboard and microflute are not packaged similarly, stating that kraft paperboard is stored and transported in large ‘jumbo’ rolls where microflute is not. GPIL also claim that “it appears that microflute uses not packaging at all as it is consumed inline or simply stored flat following production”.</li> </ul>   |
| 40      | 9 April 2021          | GPIL          | <p>GPIL replied to Visy’s submission (EPR item No. 38), arguing that:</p> <ul style="list-style-type: none"> <li>• Visy ignores that fact that microflute exists only temporarily while being made in line to product packaging;</li> <li>• Visy is suggesting that the Commission undertake an unconventional investigation, stating that: <ul style="list-style-type: none"> <li>○ it would be unusual for the Commission to adopt new approaches of other countries midway through an investigation; and</li> <li>○ by urging the Commission to place greater weight on the end use product, assess injury caused to Australian producers that are not manufacturing like goods and give the greatest with to commercial likeness, Visy is suggesting the Commission abandon its own guidance contained in the Manual; and</li> </ul> </li> <li>• there are other issues with Visy’s latest submission, such as: <ul style="list-style-type: none"> <li>○ Visy has failed to convince the Commission of its like goods argument, noting that investigations are not able to continue indefinitely;</li> <li>○ Visy wrongly contests the Commission’s conclusions regarding small format packaging;</li> <li>○ Visy incorrectly claims there is no evidence of differences in performance of kraft paperboard and microflute;</li> <li>○ Visy wrongly claims that there is no evidence that kraft has greater ability to switch from one product to another;</li> <li>○ Visy is not able to change the law on like goods. GPIL claim that case law is clear, referencing <i>GM Holden Ltd v Commr of the Anti-Dumping Commission</i>, in that “the focus in a like goods assessment should be a ‘comparison of physical characteristics’ of the goods and claimed like goods” and not commercial likeness as claimed by Visy. GPIL claim that the Manual reflects case law in the order by which the characteristics are listed;</li> <li>○ it is highly material that microflute is pre-printed, with GPIL observing that “one of the indicia of physical likeness stated...is appearance and printing is a substantial difference in appearance between kraft paperboard and microflute”;</li> <li>○ wet strength treatment is a highly material difference. GPIL refer to Visy’s comments that it “carefully formulated the GUC”, arguing that “if wet strength treatment is not a material difference then it is unclear why Visy did not seek measures against all kraft paperboard”;</li> <li>○ Visy’s claim that the washboard effect on the surface of microflute is not visible to the naked eye is contradicted by the evidence;</li> </ul> </li> </ul> |

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|         |                       |               | <ul style="list-style-type: none"> <li>○ Visy ignores basic differences between kraft paperboard and microflute, arguing that, based on Visy's argument, other products, such as "E flute (and other) corrugated board, A4 copy paper and toilet paper roll inners" could also be considered to be alike. GPIL further state that Visy failed to recognise that microflute is the result of converting paper and paperboard, unlike kraft paperboard that is not;</li> <li>○ Visy accepts expert views on physical differences, however GPIL disagrees with Visy's preference to compare the end use stage, stating that beverage packs are not the goods and that GPIL does not export beverage packaging to Australia;</li> <li>○ substantial production differences lead to substantial physical differences. GPIL disagree with Visy's claims that the Commission gave too much consideration to the production likeness;</li> <li>○ Visy misrepresents the legal authority on like goods, as set out in the GM Holden case and that the WTO dispute Visy refers to (Korea Pneumatic Valves) was not about a like goods assessment, rather about injury and the domestic industry. GPIL submit that the if the claimed goods were not like goods under article 2.6, then 3.1 (injury) and 4.6 (domestic industry) would not be enlivened; and</li> <li>○ the Vanderhoek Report does not assist the Commission to form a view that microflute is a like good to kraft paperboard as Dr Vanderhoek did not answer that question.</li> </ul>   |
| 41      | 20 April 2021         | Visy          | <p>In response to GPIL's submission (EPR item No. 4), Visy states that:</p> <ul style="list-style-type: none"> <li>● microflute that is produced by Visy is stored on pallets for use at a later production stage;</li> <li>● GPIL does not directly refute the evidence Visy provided to the Commission that small format beverage packaging sold in Australia falls outside the goods description;</li> <li>● its proposed approach is not unconventional or novel as claimed by GPIL. Visy claims that it seeks the Commission to apply its criteria as per the Manual and references overseas jurisdictions to provide an indication of the level of analysis that is required when dealing with intermediate goods;</li> <li>● it refutes GPIL's claim that the words 'like goods' do not appear in the Anti-Dumping legislation. However Visy continues to assert that the overarching purpose of the dumping legislation is to protect Australian industry from the nefarious effects of dumping;</li> <li>● GPIL's argument that Visy seeks a goods analysis of the end products rather than the goods under consideration is misleading and a misrepresentation of Visy's application and subsequent submissions;</li> <li>● it has not provided generalised assertions, rather has provided evidence; and</li> <li>● the descriptor wet strength treatment was included in the goods description to exclude non-wet strength treated kraft paperboard which is used in other applications. Visy claim that GPIL is confusing a comparison between imported goods that are in or out of the goods description with a like goods comparison between kraft paperboard and microflute.</li> </ul> <p>Visy also replies to GPIL's submission in response to the SEF (EPR item No. 39), stating that:</p> |

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|         |                       |               | <ul style="list-style-type: none"> <li>• both kraft paperboard and microflute are unconverted paperboard-based goods that are then converted for the same end use;</li> <li>• there is no visible washboard effect, discernible to the naked eye, on packaging made from microflute;</li> <li>• tariff classifications that differ is not uncommon and many goods subject to measures fall into different tariff classifications;</li> <li>• the contention made by GPIL 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, demonstrates the absurdity of GPI’s position and ignores the commercial reality of specialised manufacturing conversion machinery required to convert kraft paperboard and microflute”;</li> <li>• GPIL’s reference to kraft paperboard as a ‘form of packaging’ and claims that microflute has no packaging is erroneous;</li> <li>• it fails to see the relevance of section 2 of GPIL’s submission with respect to Mr Klass’s reports, arguing that a party may provide technical information via a third party on its behalf and that such information is not afforded any special status.</li> </ul> |