

4th July 2018

Wheat Port Code Review Taskforce
Department of Agriculture and Water Resources
GPO Box 858
Canberra ACT 2601

By email: wheatportcodereview@agriculture.gov.au

RE: Port Code Review

Grain Trade Australia (GTA) appreciates the opportunity to provide this response to the interim report in relation to the Port Terminal Access (Bulk Wheat) Code of Conduct (the Wheat Port Code). As with our previous submission and other consultations with the Review Team, GTA has not commented on specific operational issues associated with the Wheat Port Code (Code), however, notes that some of its members may do so in individual submissions. Rather GTA's comments are restricted to the regulatory framework and principles relating to the Code. The attachment to this submission addresses the specific questions raised in the interim review and endeavours to provide some insights to how the industry operates.

The Australian grains industry has shown resilience while undergoing considerable change since deregulation of bulk wheat exports; it has evolved and adapted positively to the new environment. Today the industry is a market-oriented internationally competitive sector, with an international reputation for safe and quality grain; reliable supply and multiple players competing to buy and sell grain for supply to domestic and export grain processors. Values for Australian grain are transparent and set through the combination of international market conditions and domestic/regional grain supply and demand factors.

Evidence since deregulation shows that:

- There has been substantial investment in new port infrastructure and capacity to provide greater flexibility and competition;
- There has been substantial investment in up-country pathways focused on reducing total supply chain costs. This is delivering increased competition and flow on benefits for supply chain participants and growers;
- A number of new supply-chains and export pathways have developed; and
- Exports have expanded, and the industry has been able to react to global competitive threats and changing demand patterns.

GTA notes the discussion that has occurred in relation to the proposals by ACCC to extend the regulatory footprint of the Code and notes that representatives of both exporter and grower organisations have expressed that the Code may not be the most appropriate instrument by which to achieve the outcomes that growers, some exporters, and by extension the ACCC, are seeking.

As such, there is potential for unintended consequences from using the Code to try to address issues in the supply-chain that are not captured in the purpose and scope of the Code. This arises from the difficulty around implementation of export related up-country activity and risks that this may lead to reduction in services and higher costs borne by the growers.

GTA notes the findings of the interim report and subsequent ACCC comments regarding anti-competitive behaviours. While GTA does not have visibility of the complaints that have led to ACCC's position, we believe it is important that the Review Team do have visibility of this to help inform their findings.

GTA also notes the views of growers, exporters and ACCC regarding supply-chain issues and encourages the Government to ensure that regulation imposed is proportionate to the problems identified and is conscious of the potential for any unintended consequences. This may also include looking at industry processes and/or commercial solutions as they could provide a satisfactory outcome.

GTA further notes the ACCC's concerns regarding dispute resolution and the apparent reluctance for parties to pursue recourse through the ACCC dispute resolution process. The grains industry has a well-established, rigorous and proven arbitration and dispute resolution process for commercial disputes as well as a complaints handling procedure through the industry Code of Practice. There may be opportunities to integrate elements from these activities into an industry agreed model suitable to the objectives of the Wheat Port Code.

The industry has progressively developed an industry-driven and managed framework to facilitate trade. The grains industry has developed processes and systems to self-regulate activities and support trade across the value-chain, GTA has established a range of codes and guidelines to provide transparency and certainty for players, while the grower organisations have produced the Guide "Growing Australian Grain" to cover on-farm activities.

GTA has recently undertaken a review of the Industry's Code of Practice and associated Technical Guideline Documents to ensure they continue to meet the needs of the industry now and into the future.

It is acknowledged that in the development and evolution of the Australian grains industry there remains a number of varying perspectives on the regulatory oversight of Port Terminal Operators (PTOs). As the sector evolves, opportunities should be considered over time, to appropriately align oversight of PTOs with the industry's self-regulatory approach, with the objectives to promote competition, flexibility and investment with a view to drive further efficiencies in the grains supply-chain.

Thank you for your consideration of this submission.

Yours sincerely,



Pat O'Shannassy
CEO

Attachment I: Comments on questions raised in the Interim report

Request for information 1 – access for third parties in vertically integrated port terminal operator networks

- The Port Terminal Operators are different businesses and operate in different market environments depending on their location. The drivers of profit will likely differ from business to business but generally vertically integrated operators in the grain value chain have a diverse view of value drivers across their business and seek commercial opportunities across the breadth of their investments.
- Vertically integrated port terminal operators have incentive to provide 'open access' to their infrastructure. The vertically integrated operator will seek to encourage multiple buyers to participate because:
 - growers want a choice of buyers when delivering
 - they may not be in a position to purchase all of the grain received and handled within the its network and/or
 - they may not be willing to assume the large (potentially unmanageable) price risk associated with owning or trading this quantity of grain but will seek to maximise volumes handled upcountry and through its system to generate and maximise throughput revenue without commodity price risk.
- As such, the vertically integrated port terminal operator are likely to see benefits from a greater number of buyers operating within its network with growers incentivised to deliver their grain to their local site in response to the competitiveness of bids from multiple buyers.

Request for information 2 – can/do exporters pass all costs back to growers

- The experience of the industry in the period since deregulation is that costs of shipping slots and related transactions have not been routinely passed back to growers, but rather the trade has risked capital and borne costs associated with committing to shipping slots or capacity
- The Wheat Port Code allowed the industry to move away from auction systems to more efficient capacity allocation systems. The trade (not growers) incurred significant cost during the operation of the auction systems, with many small exporters not being able to, or choosing not to, access capacity due to execution risk and working capital requirements. The allocation systems operating today are more efficient and balanced in terms of costs, risks and potential financial outcomes. The ability to be able to add capacity and/or move capacity in response to supply chain conditions is important to outcomes for access seekers and can assist in improving efficiency and facilitating competition within agreed protocols.
- The costs incurred through the auction allocation system were a significant constraint on industry working capital and resulted in a significant increase in the risk profile of exporters, who were faced with the dilemma of forfeiting prepaid shipping slots or competing excessively to minimise losses due to exposure of large investment in purchasing forward shipping capacity. The costs of these impacts were borne by the export sector, and not passed back to growers. In fact, growers have been often paid in excess of export parity in a large number of occasions
- While port terminal throughput costs may be passed back to growers, equally costs incurred through unnecessary regulation of the export supply chain that result in higher costs, inefficiencies and/or market distortion may also be borne by growers.

Request for information 3 – potential for self-regulation

- In principle, reducing the regulatory burden should reduce costs in the supply chain and consequentially, improve grower and supply chain competitiveness
- While current evidence supports the need for continued oversight, it is also evident that the industry is adjusting and moving in right direction.
- The Code was an important step in moving the industry to a lower regulatory burden environment enabling the industry to move away from the Access Undertakings that were introduced at the time of bulk wheat export deregulation.
- A longer-term direction for the industry should be to aim to move towards well balanced regulation, and where possible, align with industry agreed and managed frameworks.
- There would be several aspects to be considered in moving to an industry agreed framework including that any such model would require:
 - obligations on both port terminal service providers and exporters. The current provisions that exempt ports could be a good model for industry to consider; and
 - a robust complaints handling procedure and dispute resolution mechanisms with in principle support of participants

Request for information 4 – extension of regulation up-country (and to other commodities)

- This is primarily covered in GTA's submission.
- It is noted that it is important that market share data is viewed within the context of the market environment at the time and the risk appetite of individual players. This will result in exporters' viewing the value proposition differently at any point in time. It is also recognised that some parties may have different economic drivers given they have different equity status in a Port. This does not necessarily imply anticompetitive behaviour.
- In relation to other grains, port terminal operators, through agreed industry practice, already apply the exempt provisions of the Code (e.g. those regarding capacity allocation, transparency (stem reporting) and negotiation in good faith) to other bulk grain exports.
- In relation to application to upcountry activities of non-exempt port terminal operators, it is difficult to comment on this without good visibility of the anti-competitive behaviours/actions that appear to be of concern and the target of this extension of the regulation. There are industry concerns that the Code may not be the most appropriate instrument by which to achieve the outcomes that growers, some exporters, and by extension the ACCC, are seeking.
- As such, there may be potential for unintended consequences from using the Code to try and address issues in the supply chain that are not captured in the purpose and scope of the Code

Request for information 5 – Consistency in port loading statements

GTA supports the principle of consistency, but does not have any comment on the specific proposals.