

23 September 2015

Ms Vikki Fischer
Director - Grain and Seed Export Program
Department of Agriculture - Biosecurity
GPO Box 858
Canberra ACT 2601

Via email: paul.taylor@swa.gov.au

Dear Ms. Fischer,

Re: Comments on China's Proposed Grain Law

Grain Trade Australia has a number of questions and concerns with China's proposed law for **"Administrative Measures for Inspection, Quarantine and Supervision of Inbound and Outbound Grains" (hereafter the "grain law")**. GTA understands that China notified the World Trade Organisation (WTO) on 4 August 2015 of the proposed changes.

This submission details the issues that GTA believes need to be addressed to ensure that the new laws facilitate the trade in grain between Australia and China and to assist the Department in development of the Australian Government response to the World Trade Organisation.

This document should be read in conjunction with the GTA Briefing paper Report of a meeting held in Beijing from 11 to 12 August 2015 regarding the "AQSIQ's Draft Administrative Measures for Inspection, Quarantine, and Supervision of Inbound and Outbound Grains" or "New Grain Laws" (attached).

Comments and questions related to specific provisions in the various Articles may be found below. However, there are several overarching matters that we believe require further clarification or scrutiny.

1 China's international trade agreement obligations

Perhaps one of the most relevant questions from a trade perspective, given the law is focused on border issues, relates to **how this proposed law interacts with China's international trade agreement obligations**. For example, we noticed that while there is reference to a number of other related laws and regulations already in force in China, there is no reference to China's implementing legislation for the various international and bilateral trade agreements, arrangements and protocols which it observes.

Bilateral protocols which already contain country specific phyto-sanitary provisions are particularly critical to retain and ensure that these specific and agreed upon provisions supersede the more generic elements contained in the proposed law.

For instance, China and Australia need to comply with the requirements **agreed in the recently signed Australia/China Wheat & Barley Protocol** and ensure these arrangements will take precedence over these draft laws in all grain exports from Australia.

Additionally, we are also concerned that there is **no direct mention or linkage to China's obligations under the WTO Agreements**, notably the:

1. Technical Barriers to Trade (TBT Agreement); and
2. the Sanitary and Phyto-Sanitary Measures Affecting Trade (SPS Agreement).

How will China ensure that the provisions of these agreements are enshrined into, and complementary with, this new proposed grain law?

2 Phyto-sanitary assurance systems

In addition, we have noticed that in a number of sections the proposed grain law either directly requires or implies a prescriptive approach to establishing a sanitary and phyto-sanitary assurance systems. We wonder about a number of implications for such an approach including:

- the impact on Chinese government resources and ensuring that reasonable timelines can be met to not create arduous or drawn out processes,
- the impact on exporting country government resources from a similar perspective; and
- the impact on both exporting and/or importing private enterprises.

For example, rather than a simple registration application for traceability or liability purposes (common in many other countries) there appears to be an “evaluation” process as part of the submission for registration of a facility, and even a pre-screening by governmental authorities in the exporting country.

It is not clear to us why this approach is required, especially for the very low risk activity of importing or exporting bulk grain. This is one example of many similar provisions where the proposed requirements may be much more detailed than necessary to meet the regulatory objective.

3 Use of existing regulatory requirements in Australia

Moreover, we do not see any mention of potential opportunities to consider using existing regulatory requirements in Australia as a means to satisfying China’s phyto-sanitary regulatory objectives. For example, in Australia all grain port terminals and container packing facilities must be licensed as a Registered Establishment with DA Biosecurity.

A further point regarding registrations - **which facilities would be captured in this registration process and who would bear what costs** (including audits by Chinese officials) and overall reporting requirements?

Is there not an opportunity to consider, for example, an annual update from DA Biosecurity to China on licensed facilities within its jurisdiction?

The Australian Government should be entrusted to manage the above requirements at the point of export.

4 Registration of all grain producers

The idea of registration of all grain producers is of notable concern given the vast numbers of farmers involved and the incredible effort that would be required to try and comply with a producer registration.

5 Quality requirements

The numerous mentions of “quality requirements” take on a regulatory tone are also of significant concern to the industry. The legitimate government objective of setting mandatory phyto-sanitary measures and their implementing framework of quarantine and inspection provisions should not be confused with commercial considerations around quality. Such confusion opens the door to large contractual risk, hurting trade rather than facilitating it. **We believe the focus of this law must be maintained on the identification and management of phyto-sanitary and food safety risks.**

There are also significant extraterritorial ramifications for several of the proposed requirements in the proposed grain law, such as the potential for “spot checks” by Chinese officials of foreign facilities, regulatory oversight by China of foreign facilities through evaluation, verification and audit requirements, among others.

6 Established commercial practices

Perhaps the most difficult aspect of this concern is the implication in the proposed grain law that exporting governments should somehow be directly involved in all aspects of foreign trade with no provisions for long accepted private sector practices. For example, third party certification of grain shipments is commonplace in the industry, yet the proposed grain law only makes mention of government issued quality certificates.

This is one example of many throughout the law where China is implying that foreign governments 'ought' to be involved in various international grain trade activities that are:

1. unnecessarily restrictive,
2. resource intensive, and
3. likely contrary to established private sector practices.

This is further evidenced in several provisions in the proposed grain law that relate to commercial law and commercial interactions, where the international grain industry over centuries has developed globally accepted requirements in relation to contract structure, quality terms, trade execution, maritime law and related commercial trade interactions.

We believe it would be a serious error to establish government legislation that either ignores or contradicts these efficient, internationally accepted, consistent and clear rules frameworks for the global trade in grains.

7 Clarity of purpose

Lastly, there are numerous instances where the proposed grain law is vague or ambiguous in its requirements. This could easily result in significant room for variance in interpretation among governments and importers/exporters which would add an unnecessary level of risk to the grain trade with China.

As much as possible, the possibility of subjective interpretation of the rules by any party (government or private sector) should be avoided by clearly laying out the requirements with no reliance on ad hoc administrative application of "the rules". We believe it would be as important to border officials as to companies to have all of the rules clearly laid out to ensure the legitimate trade in grain is not hampered by subjective decisions.

8 Concluding comments

Both the general analysis above as well as the detailed comments below point to the complexity of this legislation and the need for a well thought out implementation plan. Having an appropriate transition period and lead time for companies to prepare to comply will be important aspects in the successful enforcement of this new law. As such, we would like to see specific discussion of implementation within the legislative provisions, to give the Australian exporters the clarity, assurance and time they require to properly abide by any new rules.

These comments are not exhaustive given the very detailed and broad provisions set out in the proposed grain law and the potential for stakeholders to overlook certain aspects or their practical effect on the trade. That being said, we trust that these comments and questions are helpful to the Chinese government as it seeks to implement both an effective, efficient, transparent and least trade restrictive sanitary and phyto-sanitary assurance framework in the trade in grains.

Article Specific Comments & Questions

Article 1

- Reference to implementing legislation for trade agreements, in particular the WTO Agreements (namely the SPS and TBT Agreements), would seem appropriate given the context of the proposed law and the other Chinese legislation already referenced in this article.

Article 2

- Assume BEANS means all pulse commodities.
- Assume processed means for H/C and S/F uses.

Article 4

- Risk analysis - need to ensure what AQSIQ determines as risk, is implemented consistently across the country jurisdictions in China and is applied on a consistent basis throughout the year (and not vary by shipment).

Article 5

- There are references to “quality” requirements by private sector enterprises in this paragraph. Quality is a commercial consideration and we believe it is confusing to add this term and/or provision into a proposed law meant to address phyto-sanitary regulatory objectives.

We would encourage China to remove reference to “quality” in this article to preserve the focus of its proposed law and not create unnecessary barriers to trade should some border inspectors deem “quality” to be a regulatory requirement whose determination could easily be contradictory with the quality requirements set out in the commercial contract related to that shipment.

Article 6 (and Article 38 on Supervision and Administration)

- “AQSIQ shall implement a registration system” - AQSIQ should rely on the country of export Government to manage this. Inspection and registration only required for specific high risk commodities as agreed b/w China and Australian government.
- Full registration of all overseas grain product importer production, processing and storage enterprises would seem to represent an extraordinary and onerous registration system that would likely be burdensome to Chinese government agencies, exporting companies and exporting governments. The requirement for “producers” to register is particularly onerous as currently proposed.
- Further items of concern under Article 6 include:
 - Requirement of a “recommendation” on registration from the exporting government, including approval and examination of facilities by the exporting government. Should not need Australia to notify of every new registered establishment. Information available from Australian Government can be sought when required.
 - Requirement of competent authority to submit request for extension to AQSIQ for a renewal is administratively burdensome and not required. Managed by Australian Government.
 - Renewal required every 4 years – GTA does not see this as a requirement given that it is managed by the Australian Government under defined protocols.
 - Possibility of “spot checks” conducted by Chinese officials on overseas facilities – not required, managed by DA Biosecurity.
 - “Evaluation” to be conducted by Chinese authorities after an application is received. Not required, managed by DA Biosecurity.

General comments on Article 6:

- The establishment approval may stay valid until AQSIQ raises concerns about an establishment having consistent violation of not meeting Chinese requirements. Under such cases, the export country National Plant Protection Organisation (NPPOs) may investigate the violation and put a mechanism in place to address China's issues and request for extension of registration. AQSIQ reported revoking the registration of an establishment without specifying the mechanism for re-instating its registration. This will put some establishments out of businesses.

- The registration of establishments by AQSIQ creates additional administrative burden for both China and NPPOs. Under the Wheat & Barley Protocol Australia provides a list of registered establishments and exporters to China which will continually need to be updated. We are concerned that this may create issues where CIQs may not have access to the latest update, or where a new exporter or registered establishment is not on the list.
- If China seeks to ban a registered establishment or exporter from exporting to China then DA Biosecurity would presumably suspend or revoke registration of the establishment or exporter and presumably China would have a list of those entities. Grain cannot be exported from Australia unless it is sampled and inspected at a registered establishment.

Article 7

- Prohibition on addition of “foreign substances” requires better definition. For example, a previous version of the draft law had this worded as not being able to “reverse add impurities”. This could be easily interpreted in numerous ways that would be harmful to current grain trade practices that still meet contractual quality requirements and statutory phyto-sanitary rules including, among other things:
 - Addition of certain processing by-products or dockage to pelletized protein products,
 - Blending programs to reduce occurrence of certain naturally occurring toxins in grain, oilseed or pulse crops,
 - Other practices that may combine various products received at an origination and handling company that might be construed as an “impurity” by Chinese authorities in the absence of clear rules.
- If China is requiring competent authorities in the exporting country to “accredit” these facilities, why do they not simply accept this “accreditation” and remove the need for individual registrations. This seems unnecessarily duplicative. In addition, it is not clear that all countries have a competent authority who currently conducts all of the named activities and creates an unnecessary burden on exporting country governments for very little benefit.

Article 8

- We question the need and rationale for the onerous and ambiguous provisions for so-called “new grains” before exporting a “new grain” to China. This term, without further definition, could be interpreted broadly and encompass situations such as a new species for an existing commodity.
- Also, this is determined on the basis of Australia meeting IP conditions as stipulated by China. If able to meet, exports can proceed without a further check. International rules IPPC govern this access.
- This article allows for a retroactive review (e.g., testing, sampling) of grain shipments already landed in China and deemed by its authorities to have met the quarantine and inspection requirements. It would allow Chinese authorities to intercept shipments already cleared by border authorities, representing a clearly duplicative process that adds unnecessary uncertainty for both importers and exporters.

Article 9

- Introduces measures to limit inbound grain and grain products to “designated ports only” – with rules about how ports may be designated available to receive grain to be established by AQSIQ. This is clearly trade restrictive and unnecessary given the low risks apparent in grain movements. What is the objective that China is trying to meet by restricting ports of entry?
- Need clear guidelines on how each port is approved/not approved on the basis of risk/quarantine.

Article 10

- Discusses rules requiring importers to “apply for quarantine approval before the conclusion of a trading contract” as well as designate which port the shipment will go to. Clearly this is unrealistic, overly prescriptive and completely inconsistent with how the international trade in grain is conducted. This would be a considerable additional cost, and risk, for exporters injecting an incredible amount of uncertainty into contract negotiations that otherwise do not exist.
- GTA would propose that AQSIQ is responsible for issuing the IP and ensuring it is consistent across the commodity throughout the year to ensure trade confidence.
- Designated Establishments - May not always be known prior to obtaining an IP from China.

General comments on Article 10:

AQSIQ will allow grains imported into China to meet the quality, safety and quarantine requirements. The phytosanitary import requirements must be separated from the commercial requirements.

The details of the commercial requirements cannot be endorsed on a phytosanitary certificate. Where applicable the commercial requirements may be aligned with International Standards.

The conditions under this article effectively align with elements of the Australian/China Wheat and Barley Protocol.

Article 11

- This article appears to indicate that provisions of bilateral agreements supersede other rules in this law where a conflict arises between the provisions of a bilateral agreement and those set out in this proposed law. We would agree with this proposal if that is the case and would recommend that this be stated explicitly in this article to avoid future confusion or conflict in interpretation.
- What is meant by “national technical standards” set out in this article? There is concern that this might cause confusion if grading standards fall under this category which may be contradictory to the quality requirements set out in the contract. We would recommend this read “national technical standards related to phyto-sanitary measures” to avoid this confusion.

Article 12

- Requires a “plant quarantine certificate” to be issued by the “official authority” in the exporting country. Does this preclude all third party certification for grain quality for shipments destined for China?
- In the case of GMO grains, there is a proposed requirement for exporters to include in the entry inspection declaration a “copy of relevant approvals” made by China for the GMO events that may be in the shipment. This adds a significant and onerous layer of administration on exports when one considers that major export grains such as corn, soybeans and canola have multiple approved biotechnology events in commercial cultivation around the world.
- Moreover, the exporter is not typically the responsible party for the regulatory approval process of biotechnology events in China, and would not have reasonable commercial access to these documents, whereas the government of China (having made the approval in the first place) has them on file. What is the rationale for this proposal?
- In addition, there is no evidence that rDNA technology carries any additional risk in comparison with other plant breeding methods. What is the regulatory objective in adding this layer of administration onto an already unpredictable and difficult approval process in China for products derived through biotechnology?

Article 13

- As currently drafted, this suggests that:
 - ALL incoming grain must be fumigated. Is this China’s intention? If so, this would in our view constitute a very large and costly unnecessary barrier to trade given the decades of trade that has occurred without this provision and the fact that China’s exposure to phytosanitary risks has not changed materially to warrant such a dramatic measure; or does it
 - assume some treatment has occurred. Will only occur if it is a pre-shipment requirement of China. If no treatment, no declaration or monitoring required.

Article 14

- This Article includes various restrictions on the location of inspections and in particular, that it take place at anchorage vs. at berth; while for containers inspection must take place at “designated sites”. Again, this seems overly prescriptive given the numerous infrastructure related nuances that undoubtedly exist at various ports. Has China conducted a review of the implications of this proposal at all of the ports currently accepting grain products? What is the practical effect on the trade of this requirement?
- “significant abnormality” - Needs to be defined so consistent across all ports in China

Article 15

- The wording for the on-site inspection for various elements requires further definition. For example, “damp” is open to interpretation, particularly when moisture content is a typical

term in commercial contracts and the proposed law should not create confusion between inspection provisions and those of a commercial nature.

- Similarly, “admixture in cereal grains” is also an overly broad term that requires clarification. Can China clarify what regulatory objective it hopes to achieve in limiting so-called ‘admixture’ and what it specifically means in using this term?
- There do not appear to be any service standards on how long inspection, testing and clearance activities should take. Considering the extraordinary cost of delays at port for large grain vessels and shipments, we would recommend China consider what these regulatory service standards should look like to provide predictability and consistency in approach.
- Definition – “insects” means - live stored grain insects
- Sampling – stipulated rates in legislation for consistency across regions in China.

Article 17

- “other living harmful insect” - should only be quarantine pest as defined by IPPC rules
- “Seed coating agent, fumigant contamination or toxic weed seed exceeds the threshold” What treatment would be applicable for fixing these issues? Need to be defined so can be applied in each instance

Article 18

- Return and destroy provisions for shipments not cleared for landing appears to be overly prescriptive and potentially inconsistent with current and accepted grain trade contract provisions and other long established practices such as those guided by international maritime law. Has China analysed these implications?
- “national technical codes” - Unsure of what this is and its relevance to the import permit and other quarantine requirements. Needs to be clarified otherwise any issue “with the grain could be a “concern under this basis”
- “Any soil” - can’t have nil tolerance. Limits defined in IP.
- “The grains have been decayed or deteriorated due to water damage or mold” - To what extent and how many? Could be feed grain that meets standards and has no mycotoxins and thus not a food safety issue.

Article 20

- Places limitations on inbound grains to be processed at “designated places” only. If inbound grains have been cleared at port and meet the legitimate SPS regulatory requirements of China, what is the purpose of this further prescription? Is China implementing similar rules for domestic grain processing?
- Has China done an analysis of current processors of imported bulk grain who may not meet the requirements set out in this article? In other words, what is the practical implication of this provision? Will there be dramatically fewer facilities allowed to process product as a result?

Article 21

- The issues detailed in this clause are not an issue to be dealt with by the grain exporter.

Article 23

- We recommend service standards be included in this article (i.e., specific timelines) rather than terms such as “promptly” or “timely manner” which can result in unnecessary delays without recourse.

Article 33

- This should relate only to those diseases, weeds or pests that pose significant a phyto-sanitary risk to China and are noted in the Import Permit.

Article 34

- Dynamic risk level management – this should not change on a vessel basis. Needs to be managed via government to government basis.

Article 35

- References to quality in this article, similar to Article 5, create confusion around the intent of the proposed law. We would recommend removing reference to quality.

Article 36

- In the context of a risk assessment, quality should not be a regulatory factor and we submit should be removed from this article.

Article 37

- Quality should be similarly removed from provisions related to “emergency response”.
- What is the “emergency response plan”?

Article 39 & 42

- Similar concerns about the use of the term “quality”; recommend removing it from these provisions.

Article 41

- “quarantine agency” - exporting country Government also notified

Article 43

- “inconsistence with the physical conditions of the declared grains”. - from a quarantine perspective, not quality. Needs boundaries. Needs to recognize mitigation may occur as noted previously in this document and then can be approved for entry without a “fine”

Article 46 & 49

- The potential penalty of up to 20% of the value of the goods being sold for non-declaration of a contaminant appears excessive (as does an automatic “not less than 5%” penalty), especially in light of the potential for unintentional appearance of items in a grain shipment, as well as the ambiguity around specific requirements for specific grains that may be subject to this punishment.
- This provision has the potential to significantly alter the contractual relationship between importer and exporter where such a large risk exists. Contractual penalties (e.g., contract default, non-delivery, extension, demurrage, etc.) are already a very significant deterrent to the risk of not being able to clear the border. What is the objective in this highly punitive proposal? Should this not be only for extreme circumstances of willful non-compliance?

Article 52

- This Article allows for AQSIQ to revoke a company’s registration thereby prohibiting that company from any further trade in grain to China. While the Article does qualify the application to only “serious” circumstances (what constitutes a ‘serious’ circumstance?), a ‘one strike you’re out rule’ is a massive risk for exporters. Moreover, without clear rules around what constitutes a ‘serious circumstance’, the potential for and likelihood of this rule not being equally applied across various commercial actors is extremely high.

Article 55

- Reference to “quality” should be removed per comments noted above on the same matter.
- It seem counterintuitive to have penalties for failure to “voluntarily recall”. How can a recall be considered voluntary if one faces stiff penalties for not recalling?

Article 59

- What is meant by “border trade”

Please revert if GTA is able to provide further information/clarification.

Yours sincerely



Geoff Honey
Chief Executive Officer

Report of a meeting held in Beijing from 11 to 12 August 2015 regarding the
**“AQSIQ's Draft Administrative Measures for Inspection,
Quarantine, and Supervision of Inbound and Outbound Grains”
or “New Grain Laws”**

Introduction

- Grain Trade Australia works with a number of likeminded organisations world-wide on trade related matters that are pre-competitive. This is achieved through membership of the International Grain Trade Coalition.



- China released “*Draft Administrative Measures for Inspection, Quarantine, and Supervision of Inbound and Outbound Grains*”.
- At the invitation of the COFCO Group and the Chamber of Commerce of Import and Export of Foodstuffs, Native Produce and Animal By-Products (CNFA), International Grain Trade Coalition (IGTC) members and corporate stakeholders had the opportunity to engage with the General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ) on the new laws.
- AQSIQ is a ministerial administrative agency directly under the State Council of the People’s Republic of China in charge of national quality, metrology, entry-exit commodity inspection, entry-exit health quarantine, entry-exit animal and plant quarantine, import-export food safety, certification and accreditation, standardization, as well as administrative law-enforcement or in layman’s terms – The Chinese Governments Department of Quarantine
- In preparation for the meetings, GTA released to members an **Industry Briefing Paper** containing the wording of the “New Grain Laws” (with commentary from GTA and the Australian Government Department of Agriculture Biosecurity) and invited comments from GTA members (Appendix 2, attached).
- Member comments were aggregated into a **Summary of GTA submissions** (Appendix 1, attached) which was shared with other IGTC members prior to the meetings.
- This report is designed to inform GTA members of the issues discussed at the meeting and outcomes/next steps.
- IGTC are currently finalising a comprehensive report documenting all of issues/areas of the concern raised at the meeting in relation to the proposed Grain Import Laws. This will be shared with AQSIQ and will be available to IGTC members meeting and participants.
- GTA will circulate this report once it is available.
- GTA has prepared a draft of the IGTC Report to the IGTC Drafting Committee comprising, GTA, COFCO, Canada Grains Council, Cargill, CNFA and New Hope

Attendance – Trade Associations & Government

Country representation	IGTC members
Argentina Embassy	<ul style="list-style-type: none">• Centro de Exportadores de Cereales
Australian Embassy – Agricultural Attaché	<ul style="list-style-type: none">• Grain Trade Australia• Australian Grain Exporters Association rep.by GIMAF
Brazilian Embassy	
Canadian Embassy	<ul style="list-style-type: none">• Canola Council of Canada• Canada Grains Council
China - General Administration of Quality Supervision, Inspection and Quarantine (AQSIQ)	<ul style="list-style-type: none">• COFCO Group• CFNA (Chinese Chamber of Commerce)
Global trade association	<ul style="list-style-type: none">• Grain & Feed Trade Association (GAFTA)
US Embassy	<ul style="list-style-type: none">• North American Export Grain Association• US Grains Council

Attendance – Corporate Stakeholders (Export & Import)

ADM	BASF China	BTG
Buenos Aires Grain Exchange	Bunge China	Cargill
CHS	Clarkson Shipping Service	Gavilon
Glencore Beijing	Haerbin Halei Fuel	Hanfeng Huayu
ITOCHU China	Jiusan Group	Louis Dreyfus (Singapore & HK)
McDonald Pelz Global Commodities	Mitsubishi	Mitsui
New Hope Liuhe	Nidera Shanghai	RMG
Sanhe Hopefull Grain	SGS Tianjin	Sinograin
Xiawang Group	Zen-Noh Grain Corp	

1 Background

At invitation of the COFCO Group and the China Chamber of Commerce of Import and Export of Foodstuffs, Native Produce and Animal By-Products (CNFA), the International Grain Trade Coalition (IGTC) organised a 2 day Working Meeting on 11-12 August 2015 in Beijing, China.

As an IGTC member, GTA was invited to join the meetings to examine the proposed “AQSIQ's Draft Administrative Measures for Inspection, Quarantine, and Supervision of Inbound and Outbound Grains” or “*New Grain Laws*”.

GTA circulated the *New Grain Laws* with commentary and collated feedback from members, industry partners and the Department of Agriculture ahead of the GTA Operations Manager attending the meetings.

2 Summary of Issues presented by GTA

This summary of issues was circulated to all GTA members who provided feedback ahead of the meetings for further comment and individual discussions were held as requested. Very positive feedback was received at the time.

It was also shared with Dept. Agriculture staff here and in the Australian Embassy in China and other members of IGTC who would be attending the China meetings.

Issues in no particular order:

- Australia needs to enforce the requirements agreed in the recently signed China Wheat & Barley Protocol and ensure these arrangements will take precedence over these draft laws in all grain exports from Australia (discussion of this will need to be managed carefully/detail omitted with competing grain exporters in attendance at the meeting). One such example is our empty vessel inspections requirements we have in place.

- Many of the administration requirements outlined appear to place additional requirements to the IP on inbound grain. There should be no further requirements or additional Chinese agencies involved. In our case, the Australian Government should be entrusted to manage these requirements at the point of export.
- Concern over the need to have a Chinese operated 'Registration system' administered by Chinese government agencies and requiring audits by their staff. If registration of exporters is to continue this should continue to be managed by the Australian Govt only.
- Re: registrations - which facilities would be captured in this registration process, who would bear what costs (including audits by Chinese officials) and overall reporting requirements
- Further to this, there are concerns that production along with processing and storage enterprises for inbound grain are referenced – registration of the production sector/farms would be unworkable.
- Assurance needed from the Chinese Government that these and any other import requirements will be transparent and managed consistently across their ports and government agencies
- There are a number of ambiguous terms/procedures throughout the document that require further clarification. Some of these include risk analysis, gross violation, fumigation requirements, sampling techniques and jurisdictions
- The period of 4yr registration needs to be addressed. In the case of Australia, this should be managed by the Australian Govt. and therefore no limit with Chinese Govt required.
- Need to ensure that these laws cover phytosanitary/quarantine standards only, (no commercial sales quality contract terms should be included – this is to be left to the buyer and seller)

3 Beijing, China Meetings

Monday 10 August 2015

- GTA was invited to attend a short briefing meeting with Anna Somerville, the Dept. Agriculture Counsellor in the Australian Embassy in China.
- Anna Somerville and her colleagues from the Australian Dept. Foreign Affairs and Trade had received the GTA summary issues ahead of the meeting which were discussed in preparation for the IGTC meetings.
- The Australian Ambassador to China Ms Frances Adamson also attended the meeting and was well aware of the proposed *New Grain Laws* and the IGTC meetings taking place, along with other trade related issues (i.e. Sorghum imports)

Day 1 Meetings - Tuesday 11 August 2015

Morning session

The Working Meetings over the two days were co-chaired by Cathy Liu, General Counsel for COFCO in Beijing and Gary Martin, President of IGTC (CEO NAEGA)

Following several formal introductions from COFCO, CNFA and IGTC a presentation was provided by Mr Yajun Huang from AQSIQ, one of the key staff responsible for drafting of the *New Grain Laws*.

Key point/issues:

- Background on AQSIQ, their footprint and structure across China and the evolution of their organisation/services over the past 10 years
- AQSIQ were pleased for the opportunity to consult with industry and the trade on the proposed legislation
- The drafting of this legislation is a direct response to food safety developing as a legislative priority for China along with food quality and GMO's
- The *New Grain Laws* relate to imports and exports of grain for human consumption and stockfeed
- They perceive that imported grains have higher safety risks and they are focused on particular safety risks including, hazardous organisms, toxic weed seeds, pests, seed coating agents and chemical/fumigation residues

- They enforced the point that these laws are not intended to disrupt trade into China. When safety is not an issue they wish to facilitate trade and provide good service to grain importers and exporters.
- AQSIQ highlighted some of the key measures they have incorporated in the laws to protect them from these risks being:
 - Quarantine permits
 - Registration system for grain suppliers (export, storage and production)
 - Registration of approved designated ports in China
 - Risk control/laboratory testing
 - Pest risk analysis
 - Process to respond to distressed shipments (screening at port)
- A public comment process is now open with the World Trade Organisation (WTO) in parallel to this consultation directly with the trade – this will be open for 2 months
- These laws took a full five (5) years to develop which is longer than in the past as their intention was to make them more instructive.
- They propose that they will start to be implemented in December 2015.

There was a period for questions following the AQSIQ presentation with issues raised from the floor. These covered the registration requirements, existing bilateral agreements and the International Movement of Grain (IPSM) – under development with the International Plant Protection Convention. The inclusion of ‘quality’ in the draft legislation were raised but no definitive answers to these enquires were received.

Afternoon session

- This session was attended by IGTC trade association, Embassy and corporate stakeholders only. The morning session was discussed and further concerns/issues were raised and recorded
- In general there was very strong consensus between the trade associations and exporting companies regarding the issues, rigour and additional administrative requirements included in the draft legislation
- The view point of the importers however differed significantly in some cases. They were supportive of many of the inclusions as they appear to believe they offer Chinese importers and processors greater protection in grain imports
- The group was unable to reach a combined position/consensus on the issues to present back to AQSIQ the following day given the inconsistency of position between exporters and importers.

Day 2 Meetings – Wednesday 12 August 2015

On the Wednesday morning a more informal meeting/workshop session was held with all IGTC members (trade assoc. and corporates) and 4 representatives from the AQSIQ Academy. The Academy is more operational and technically focused. They administer the implementation of quarantine legislation and requirements but are not responsible for their drafting.

There was an open question and answer forum with further discussion on a number of issues touched upon the previous day along with other specific concerns of IGTC members. The Academy staff were not in a position to provide direct responses to these questions but indicated they would note the key questions/points and seek clarification within their departments.

A full list of the concerns/issues raised will be in an initial report being developed by the IGTC drafting committee for consolidation and presentation to AQSIQ. This will be provided at a later stage as required.

4 Agreed next steps

The following steps were decided by the group at the final session on the Wednesday

- AQSIQ would like to continue discussions about the proposed New Grain Laws and import requirements and have agreed that they will approve and sign off a report from the meetings as provided by COFCO/IGTC
- A drafting Committee has been formed to develop this with GTA to provide notes for the first draft (due to Cathy Liu of COFCO who will finalise and translate for AQSIQ).
- The instructions are for this to be very brief and identify questions where IGTC members would like further clarification.
- The submission process is now open with WTO so GTA will work with the Australian Government around content for their submission through this formal process.
- At this stage AQSIQ have provided no firm responses to the issues raised by GTA or other IGTC members nor confirmation of an implementation date and any transitional/interim arrangements.
- This will be an ongoing process and following the report, WTO review process and response from AQSIQ, there is likely to be subsequent meetings by invitation of AQSIQ/COFCO, likely timing being early 2016.

5 Key points / confirmations at this stage

- AQSIQ have confirmed that Bi-lateral agreements such as the Australian Wheat and Barley protocol will have precedence over Multi-lateral arrangements such as these proposed. With the Australia protocol only dated to 2017 however, AQSIQ could not confirm if this would change at this time.
- There is discussion that China/AQSIQ would like these laws to take effect from December of this year but this would be highly impractical, especially surrounding the proposed registration process outlined so the meetings called for a transitional period. This should be able to be negotiated as AQSIQ said repeatedly that these laws were not designed to disrupt trade.
- IGTC members believe that there is flexibility on a number of the requirements drafted into the proposed laws but it is impossible to know which ones at this stage. There is considerably more work required from IGTC under the guidance of COFCO.

Summary of issues raised by GTA members relating to the

**“AQSIQ's Draft Administrative Measures for Inspection,
Quarantine, and Supervision of Inbound and Outbound Grains”
or “New Grain Laws”**

Issues raised (in no particular order)

- Australia needs to enforce the requirements agreed in the recently signed China Wheat & Barley Protocol and ensure these arrangements will take precedence over these draft laws in all grain exports from Australia (*discussion of this will need to be managed carefully/detail omitted with competing grain exporters in attendance at the meeting*). One such example is our empty vessel inspections requirements we have in place.
- Many of the administration requirements outlined appear to place additional requirements to the IP on inbound grain. There should be no further requirements or additional Chinese agencies involved. In our case, the Australian Government should be entrusted to manage these requirements at the point of export.
- Concern over the need to have a Chinese operated ‘Registration system’ administered by Chinese government agencies and requiring audits by their staff. If registration of exporters is to continue this should continue to be managed by the Australian Govt only.
- Re: registrations - which facilities would be captured in this registration process, who would bear what costs (including audits by Chinese officials) and overall reporting requirements
- Further to this, there are concerns that production along with processing and storage enterprises for inbound grain are referenced – registration of the production sector/farms would be unworkable.
- Assurance needed from the Chinese Government that these and any other import requirements will be transparent and managed consistently across their ports and government agencies
- There are a number of ambiguous terms/procedures throughout the document that require further clarification. Some of these include risk analysis, gross violation, fumigation requirements, sampling techniques and jurisdictions
- The period of 4 yr registration needs to be addressed. In the case of Australia, this should be managed by the Aust. Govt and therefore no limit with Chinese Govt required.
- Need to ensure that these laws cover phytosanitary/quarantine standards only, (no commercial sales quality contract terms should be included – this is to be left to the buyer and seller)

Administrative Measures for Inspection, Quarantine and Supervision of Inbound and Outbound Grains

(Draft for Comments)

CHAPTER 1 GENERAL PROVISIONS

Article 1 [Legal Basis]

These Measures are formulated in accordance with the Law of the People's Republic of China on Inbound and Outbound Animal and Plant Quarantine and its Implementing Regulations, the Law of the People's Republic of China on Food Safety and its Implementing Regulations, the Law of the People's Republic of China on Import and Export Commodity Inspection and its Implementing Regulations, the Regulations on Administration of Agricultural Genetically Modified Organisms Safety, the Special Rules of the State Council on Strengthening the Supervision and Administration of the Safety of Food and Other Products, as well as other laws and regulations.

Article 2 [Applicability]

These Measures shall apply to the inspection, quarantine, supervision and administration of inbound and outbound (including transit) grains.

For the purpose of these Measures, “Grains” shall mean the seeds of the cereals, beans and oil crops and the tuberous root or tuber of tuber crops, to be used for processing but not for breeding purpose.

Comment [G1]: Assume BEANS means all pulse commodities.

Comment [G2]: Assume processed means for H/C and S/F uses.

Article 3 [Administrative Authority]

The State Administration for Quality Supervision, Inspection and Quarantine (“AQSIQ”) shall be ultimately responsible for the inspection, quarantine, supervision and administration of inbound and outbound grains throughout the country.

The entry and exit inspection and quarantine agencies established by AQSIQ all over in the country (“Inspection and Quarantine Agencies”) shall be responsible for the inspection, quarantine, supervision and administration of inbound and outbound grains within their respective jurisdiction.

Article 4 [Principles of Risk Management]

AQSIQ and the Inspection and Quarantine Agencies shall manage the risks of quality and safety of inbound and outbound grains, including, based on risk analysis,

Comment [G3]: Need to ensure what AQSIQ determines as risk is implemented consistently across the country jurisdictions in China and is applied on a consistent basis throughout the year (and not vary by shipment).

granting access to inbound and outbound grains quarantine, including analysis of risk of harmful organisms carried in the products, assessment and evaluation of regulatory system, establishing the inspection and quarantine requirements, and registration of overseas production enterprises.

Article 5 [Corporate Responsibility and Supervision]

The consignees and consignors, producers, processors, storage providers and carriers of inbound and outbound grains shall lawfully engage in production and operation, establish and maintain the grains quality and safety control system and the epidemic prevention and control system, ensure quality and safety of inbound and outbound grains, keep honesty and trustworthiness, accept supervision from the general public, and assume social responsibility.

CHAPTER 2 INBOUND INSPECTION AND QUARANTINE

Section 1 Registration

Article 6 [Registration of Overseas Production, Processing and Storage Enterprises]

AQSIQ shall implement a registration system for the overseas production, processing and storage enterprises of inbound grains.

Comment [G4]: Need to ensure what AQSIQ determines as risk is implemented consistently across the country jurisdictions in China and is applied on a consistent basis throughout the year (and not vary by shipment).

Comment [G5]: AQSIQ should rely on o/s Government to manage this. Inspection and registration only required for specific high risk commodities as agreed b/w China and Australian government.

Overseas production and processing enterprises shall satisfy the requirements under the applicable laws, regulations and standards of the jurisdictions where the grains are exported, and also satisfy the requirements under the applicable laws, regulations and compulsory standards of China.

The overseas production and processing enterprises exporting grains to China, which are required for registration, shall be recommended by the competent authority of the exporting jurisdiction to AQSIQ, after the said enterprises have been duly examined and approved by the competent authority of the exporting jurisdiction. Upon receiving the recommendation materials, AQSIQ shall review and confirm the materials. Where an overseas production and/or processing enterprises satisfy the requirements, it shall be registered.

The registration of an overseas production and/or processing enterprise is valid for 4 years.

To make an extension for registration of the overseas production and/or processing enterprise, the competent authority of the exporting jurisdiction shall submit an application for extension to AQSIQ at least six months prior to expiration of the registration. If it is approved by AQSIQ,

Comment [G6]: Should not need Australia to notify of every new registered establishment. Information available from Australian Government can be sought when required, otherwise administrative burden

Comment [G7]: Why not no limit if managed by Australian government

Comment [G8]: Unnecessary administrative burden. Allow Australia to manage

the registration will be extended for another 4 years. If necessary, AQSIQ may dispatch some experts to the exporting jurisdiction to review and evaluate its system, and conduct spot check on the overseas production and processing enterprises requesting extension of registration.

Where the grains exported by a registered overseas production and/or processing enterprise to China fail to pass the inspection and quarantine with gross violation, AQSIQ may revoke its registration.

Comment [G9]: Should only be an audit of approved arrangements for special exported commodities, not for mainstream bulk commodities requiring no special management processes or classified as high risk.

Comment [G10]: Need some criteria to define this

General comments on Article 6:

The establishment approval may stay valid until AQSIQ raises concerns about an establishment having consistent violation of not meeting Chinese requirements. Under such cases, the export country NPPOs may investigate the violation and put a mechanism in place to address China's issues and request for extension of registration. AQSIQ reported revoking the registration of an establishment without specifying the mechanism for re-instating its registration. This will put some establishments out of businesses.

The registration of establishments by AQSIQ creates additional administrative burden for both China and NPPOs. Under the wheat and barley protocol Australia provides a list of registered establishments and exporters to China which will continually need to be updated. We are concerned that this may create issues where CIQs may not have access to the latest update, or where a new exporter or registered establishment is not on the list.

If China seeks to ban a registered establishment or exporter from exporting to China then DA Biosecurity would presumably suspend or revoke registration of the establishment or exporter and presumably China would have a list of those entities. Grain cannot be exported from Australia unless it is sampled and inspected at a registered establishment.

Article 7

The overseas production, processing and storage enterprises that export grains to China shall be ratified by the competent authority of the exporting jurisdiction, and shall have the quality and safety control facilities and quality management system such as sifting and sieving, drying, testing and epidemic prevention. Prohibit reverse adding impurities.

AQSIQ will dispatch some experts to conduct a system examination abroad as appropriate, investigate epidemic situation, inspect production, processing and storage enterprises, and monitor product packing.

Section 2 Inspection and Quarantine

Article 8 [Quarantine Access]

AQSIQ shall maintain a quarantine access system on the inbound grains.

With respect to certain grains imported from the exporting jurisdiction for the first time, the competent authority of the exporting jurisdiction shall submit a written application to AQSIQ, and provide the technical data and information such as types of harmful organisms arising from cultivation, storage and transportation of the grains, extent of harm, prevention and control of harm, and quality

Comment [G11]: In general not practical to implement. Let Australia manage these quality issues as mostly they are not quarantine – which are listed on an Import Permit if required by AQSIQ.

Comment [G12]: Again only for high risk specialist commodities.

and safety control system. Under special circumstances, the importing enterprise may submit the application and provide the technical data and information. AQSIQ may organize to conduct risk analysis on the inbound grains, field survey and negotiation with foreign parties.

AQSIQ shall establish the specific inspection and quarantine requirements for the inbound grains in accordance with compulsory requirements under the laws, regulations and the national technical codes, and publish the category of grains permitted for entry and the list of countries or regions of origin.

With respect to the permitted category of inbound grains and the corresponding jurisdictions of origin, AQSIQ will organize to make a retrospective review on the specific inspection and quarantine requirement for inbound grains as per the overseas epidemic dynamic, intercepted entry epidemic and other quality and safety conditions; if necessary, AQSIQ will dispatch some experts to conduct field survey, carry out pre-inspection, monitor product packing and negotiate with foreign parties abroad.

Comment [G13]: This is not required. This is determined on the basis of Australia meeting IP conditions as stipulated by China. If able to meet, exports can proceed without a further check. International rules IPPC govern this access.

Comment [G14]: Totally impractical. Rely on Australian government to manage exports meeting China's needs.

General comments on Article 8:

The only concern is pre-inspection if it were to take place. This will be an extra cost for Australian industry which is not necessary.

If China has a particular concern, it should be raised with the NPPO rather

Page 7 of 40

than conducting pre-inspection.

Article 9 [Designated Ports]

Inbound grains shall be entered through the ports designated only by AQSIQ. The conditions and management rules of the designated ports shall be prescribed by AQSIQ.

Comment [G15]: Need clear guidelines on how each port is approved/not approved on the basis of risk/quarantine.

Article 10 [Quarantine Permit]

AQSIQ shall maintain a quarantine permit system on the inbound grains. Prior to conclusion of a trading contract, the owner of inbound grains shall apply for the quarantine approval in accordance with the Administrative Measures for Examination and Approval of Inbound Animal and Plant Quarantine and other regulations, obtain the Inbound Animal and Plant Quarantine Permit of the People's Republic of China ("Quarantine Permit"), and include the national grains quality and safety requirements, the plant quarantine requirements and the requirements under the Quarantine Permit in the trading contract.

Comment [G16]: AQSIQ responsible for issuing the IP and ensuring it is consistent across the commodity throughout the year

Due to the restriction of the port conditions, inbound grains shall be delivered to the designated storage and processing establishments with the epidemic prevention and supervision conditions ("Designated Establishments").

To apply for the Quarantine Permit, the owners or their

Comment [G17]: May not always be known prior to obtaining an IP from China

agents shall specify the designated establishments and provide the supporting documents.

The grains without the Quarantine Permit must not be imported.

General comments on Article 10:

AQSIQ will allow grains imported into China to meet the quality, safety and quarantine requirements. The Phytosanitary import requirements must be separated from the commercial requirements.

The details of the commercial requirements cannot be endorsed on a phytosanitary certificate. Where applicable the commercial requirements may be aligned with International Standards.

The conditions under this article effectively align with elements of the wheat and barley protocol.

Article 11[Inspection and Quarantine Basis]

The inspection and quarantine agencies shall conduct inspection and quarantine on the inbound grains according to the following requirements:

(1) The inspection and quarantine requirements under the bilateral inspection and quarantine agreements, protocols and memorandums entered into by China Government and the governments of the grains exporting jurisdictions;

(2) The compulsory requirements under the laws and regulations, and the national technical codes of China, and the inspection and quarantine requirements prescribed by AQSIQ;

Comment [G18]: How many of these do China intend to create? Should be the exception rather than the norm

Comment [G19]: This should be the main focus, as stipulated on the IP

(3) The quarantine requirements specified in the Quarantine Permit.

Article 12 [Entry Inspection Declaration]

Owners or their agents shall make inspection declaration to the inspection and quarantine agencies at the ports of entry before the grains are entered, and provide the following documents as required:

- (1) The plant quarantine certificate issued by the official authority in the grains exporting jurisdiction;
- (2) Certificate of origin;
- (3) Commercial contract, letter of credit, bill of lading, packing list, invoice and other trade documents;
- (4) The Quarantine Permit and other documents as required;
- (5) Other documents specified in the bilateral agreements, protocols and memorandums, and prescribed by AQSIQ.

For inbound genetically modified grains, a copy of the relevant approvals such as the Agricultural Genetically Modified Organisms Safety Certificate and the Accreditation and Approval of Agricultural Genetically Modified Organisms Identification shall also be provided.

Encourage the owners to request from the overseas grains exporters other documents issued by the official authority of the exporting jurisdiction or by the third-party test institutions, such as quality certificate, health certificate, certificate of fitness and weight certificate.

Comment [G20]: Only mandatory where stipulated by AQSIQ in its quarantine legislation

Comment [G21]: Contract issue, not for AQSIQ

Article 13 [Safety Inspection]

Prior to on-site inspection, the inbound grains carriers or their agents shall submit a written declaration of fumigation treatment of inbound grains to the inspection and quarantine agencies at the ports of entry, and take ventilation measures in advance. Without the declaration, the inspection and quarantine agencies will not conduct on-site inspection. If the on-site inspection found that there is any fumigant residue or that concentration of fumigation residual gas exceeds the safety threshold, the inspection and quarantine and the relevant on-site inspection shall be suspended. The on-site inspection shall not be resumed unless the fumigant residue has been effectively removed and the concentration of fumigation residual gas is lower than the safety threshold. ”

Comment [G22]: Assumes some treatment has occurred. Will only occur if it is a pre-shipment requirement of China.
If no treatment, no declaration or monitoring required

Article 14 [Inspection and Quarantine at Designated Places]

Where inbound bulk grains are carried by ships, the inspection and quarantine agencies shall conduct inspection and quarantine on the surface cargo at the anchorage. The ships may enter the ports only if there is no significant abnormality in quality and safety aspects.

Comment [G23]: Needs to be defined so consistent across ports in China

Bulk grains shall be subject to the subsequent inspection and quarantine at the ports.

Where the ships have to be berthed to accept inspection and quarantine, prior consent from the inspection and quarantine agencies shall be obtained.

Where inbound grains are carried by marine container, train or truck, the inspection and quarantine shall be conducted at the places designated by the inspection and quarantine agencies. The inbound grains shall not be transferred without the consent of the inspection and quarantine agencies.

Article 15 [On-site Inspection and Quarantine]

The inspection and quarantine agencies shall conduct on-site inspection and quarantine on the inbound grains. On-site inspection and quarantine includes:

- (1) Cargo certificate check. Check the documents with

the name and quantity (or weight) of the cargo, name of the import, storage and processing enterprise and its registration number, and other information. In case of bulk grains carried by ships, also check the cargo carried in the last voyage and the record of clearance inspection, and assess the quality and safety risk for carrying grains; in case of grains carried by container, also check the container code, sealing mark and other information;

(2) On-site inspection. Focus on whether there is any water damage, mold or deterioration in the grains; whether the grains have harmful organisms such as insects and weed seeds; whether the grains are mixed with cereal grains, sick plant debris, soil, fumigant residue, seed coating agent contamination, animal carcass, animal excrements and other prohibited inbound substances, etc.;

(3) Sampling. Take samples and sent them to the laboratory for testing according to the applicable regulations and standards.

(4) Other on-site inspection activities.

Article 16 [Laboratory Testing]

The inspection and quarantine agencies shall conduct laboratory testing on the field samples and suspicious

Comment [G24]: Should be quarantine aspects as defined in China IP – not required if a weed seed etc. is not a quarantinable object

Comment [G25]: Stored grain insects live

Comment [G26]: Quality issue v quarantine

Comment [G27]: Stipulated rates in legislation for consistency across regions in China

substances according to the relevant procedures and standards, and issue a inspection and quarantine report.

The samples for laboratory testing shall be properly kept and maintained for at least three months. If any abnormality is found in the testing and it is necessary to make field investigation for collecting evidence, the samples shall be maintained for at least six months.

Article 17 [Treatment in Inspection and Quarantine]

Where the inbound grains have any of the following circumstances, fumigation, disinfection or other pesticide treatment shall be conducted at port anchorage, port or designated quarantine supervised place under the supervision of the inspection and quarantine agencies at the ports of entry:

(1) Any pest of quarantine significance or other living harmful insect was found, and it would spread;

(2) Seed coating agent, fumigant contamination or toxic weed seed exceeds the threshold or the grains have any other safety or health problem, and effective technical treatment may be taken;

(3) Quality and safety of the grains endangered by other causes.

Comment [G28]: Should only be quarantine pest as defined by IPPC rules

Comment [G29]: What treatment would be applicable for fixing these issues? Need to be defined so can be applied in each instance

Comment [G30]: Of quarantine laws

Article 18 [Return and Destroy]

Where the inbound grains have any of the following circumstances, such grains shall be returned or destroyed:

(1) Not listed in the list of import entry issued by AQSIQ, or without the documents such as Plant Quarantine Certificate issued by the official authority of the grains exporting jurisdiction, or without the Quarantine Permit;

(2) The testing result of toxic and harmful substances or other safety and health items fails to meet the compulsory requirements under the national technical codes, and the use of the grains cannot be changed or no effective treatments can be taken;

(3) Any genetically modified component was found, but no Agricultural Genetically Modified Organisms Safety Certificate or relevant approval was provided, or the genetically modified component is inconsistent with that indicated in the certificate or approval;

(4) Any soil, pest of quarantine significance or any other prohibited inbound substance was found, and no effective quarantine treatment can be taken;

(5) The grains have been decayed or deteriorated due to water damage or mold, or contaminated by chemical or

Comment [G31]: Unsure of what this is and its relevance to the IP and other quarantine requirements. Needs to be clarified otherwise any issue “with the grain could be a “concern under this basis”

Comment [G32]: Can't have nil tolerance. Limits defined in IP.

Comment [G33]: To what extent and how many? Could be feed grain that meets standards and has no mycotoxins and thus not a food safety issue

radiological substance, and the use of the grains cannot be changed or no effective treatments can be taken;

(6) Quality and safety of grains seriously endangered by other causes.

Article 19 [Certificates Issued at the Ports]

After the inbound grains have passed the inspection and quarantine, the inspection and quarantine agencies shall issue an inbound cargo inspection and quarantine certificate and other relevant documents; if failed to pass the inspection and quarantine, the inspection and quarantine agencies shall issue a Notice of Inspection and Quarantine Decision and the relevant inspection and quarantine certificate.

Article 20 [Processing and Treatment]

The inspection and quarantine agencies shall supervise inbound grains by quarantine. Inbound grains shall be processed and used only at the designated places having the quarantine and treatment conditions. Without effective quarantine treatment or processing, imported grains shall not directly enter into market circulation.

Anti-epidemic measures such as prevention of spill and sealing shall be taken during the steps of handling, transport and processing of inbound grains and treatment

of leftovers. The processing of inbound grains shall have the conditions for effectively killing harmful organisms such as weed seeds and pathogenic bacteria. The leftovers of grain processing shall receive effective quarantine treatments such as heat treatment, crushing or burning.

Comment [G34]: Is a China issue, not for the exporter or export permit conditions.

Comment [G35]: China deals with issuing licenses for approving processing facilities. This treatment may not be required in all circumstances.

The inspection and quarantine agencies shall determine the processing regulatory risk level of inbound grains according to the extent of harmful organisms such as weeds found in inspection on inbound grains, content of impurities and other quality and safety conditions, and in combination of factors such as quarantine treatment conditions of the proposed processing and transportation enterprises, and direct and monitor the enterprises to take safety and control measures including epidemic control and surveillance.

Comment [G36]: How to make their decisions consistent

Article 21 [Grain Reserves and Grain Futures]

Where the inbound grains are specifically used as reserves or for delivery of futures, the production, processing and storage thereof shall comply with the inspection and quarantine regulations of AQSIQ.

Comment [G37]: Not an issue to be dealt with by exporter, only if under IPPC rules AQSIQ stipulates specific IP conditions for this type of grain.

Comment [G38]: Not applicable?

Article 22 [Special Use]

Where a small amount of grains not included in AQSIQ's list of market access are imported for special use such as

scientific research, exhibition and sample, a prior application for special entry quarantine approval shall be submitted to AQSIQ and the Quarantine Permit shall be obtained.

General comments on Article 22:

It looks like the importer has to obtain a special import permit for grains sent as samples for testing etc. This would need to be identify in MICoR.

Article 23 [Institutional Collaboration]

Where inbound grains loading, unloading, storage and processing are subject to the regulation of different inspection and quarantine agencies, the relevant inspection and quarantine agencies shall enhance communication and collaboration, establish corresponding work mechanism, and promptly inform each other of the inspection and quarantine result and regulatory information.

Where the inbound grains are to be unloaded in several ports, the relevant inspection and quarantine agencies shall inform each other of the inspection and quarantine result before the grains are released. If the foreign party is required to provide any testifying document, the relevant inspection and quarantine agencies shall

reach an agreement through negotiation and follow the applicable regulations.

Where the inbound grains are to be transferred from the port of entry, the port inspection and quarantine agency shall promptly issue an inbound grains transfer notice to the destination inspection and quarantine agency before the inbound grains are transferred.

Article 24 [Transit Grains]

Where the grains are transit from a foreign country through China, the owner or its agent shall submit a prior application to AQSIQ or the inspection and quarantine agency, and provide information about transit route, mode of transportation and management measures. The grains may be transit through China only in accordance with the transit grains inspection and quarantine regulatory plan established by AQSIQ, and shall be subject to supervision and administration of the inspection and quarantine agency.

The transit grains shall be sealed in transportation to prevent spill or leakage. Without the approval of the inspection and quarantine agency, the transit grains must not be unpacked or discharged from the means of transportation.

CHAPTER 3 OUTBOUND INSPECTION AND QUARANTINE

Section 1 Registration

Article 25 [Registration of Outbound Grains Production, Processing and Storage Enterprises]

If the grains importing jurisdiction requires that all enterprises producing, processing and storing grains exported from China (“Outbound Grains Production and Processing Enterprises”) must be registered, AQSIQ shall implement a registration system for the outbound grains production and processing enterprises. The outbound grains storage and processing enterprises shall have the quality and safety control facilities such as sifting and sieving, drying, testing and epidemic prevention, and an effective quality, safety and traceability management system.

If the grains importing jurisdiction requires that all enterprises producing, processing and storing grains exported from China must be registered, the competent inspection and quarantine agencies shall register the said enterprises and file a record with AQSIQ.

The outbound grains production, processing and storage enterprises must be legal entity duly registered with the administration for industry and commerce, and hold the Business License for Legal Entity.

The said enterprises shall not be established in any area with compromised hygiene conditions or susceptible to infection of harmful organisms. The storage area shall not concurrently operate, produce or store any toxic or harmful substance. The depot and ground shall be hardened, leveled and free from water. The grains shall be stored by category, kept a distance from ground and wall, and clearly marked.

The enterprises shall establish and effectively implement a whole process management system for their grains. A clear and complete accounting record shall be maintained to accurately reflect the information about traceable inflow and outflow of grains. The accounting record shall be kept not less than two years.

The enterprises shall establish a monitoring system for harmful organisms, hire the personnel to satisfy the needs of epidemic prevention, and have the anti-epidemic measures and ability against pests, mice and birds.

Section 2 Inspection and Quarantine

Article 26 [Fitness Inspection]

The carriers, packers or their agents that operate the means of transportation such as ship or container carrying the outbound grains shall apply to the competent inspection and quarantine agencies for fitness inspection including cleaning, hygiene and air-tightness before the outbound grains are shipped. The outbound grains shall not be shipped without inspection and quarantine or where the inspection and quarantine fails.

Article 27 [Exit Inspection Declaration]

Owners or their agents shall make inspection declaration to the inspection and quarantine agencies of the places where the storage or processing enterprises are situated before the grains are exit, and provide the following supporting documents including trading contract, letter of credit, invoice and self-check certificate, etc.

Where the grains are to be delivered according to the sample, the agreed sample shall also be provided.

Article 28 [Inspection and Quarantine Requirements]

The inspection and quarantine agencies shall conduct the on-site inspection and quarantine and the laboratory test on the outbound grains according to the following requirements:

- (1) Bilateral agreements, protocols and memorandums, and other bilateral arrangements;
- (2) Inspection and quarantine requirements of the importing jurisdiction;
- (3) Inspection and quarantine requirements under the laws, regulations, compulsory standards of China, and under the regulations of AQSIQ;
- (4) Quarantine requirements specified in the trading contract or the letter of credit.

Article 29 [Result Judgment and Certificate Issuance]

Where the inspection and quarantine requirements are met, or met by effective insecticide or technical treatment and through another inspection and quarantine, the inspection and quarantine agencies shall issue the Outbound Cargo Customs Clearance Certificate or the Outbound Cargo Credential for Change of Certificates as required. Where the importing jurisdiction requires an inspection and quarantine certificate, the certificate shall be issued according to the state regulations. Where the importing

jurisdiction requires a new form or content of the inspection and quarantine certificate, the existing certificate may be changed only with the approval of AQSIQ.

If the inspection and quarantine fails and there is no effective insecticide or technical treatment, or another inspection and quarantine still fails through treatment, the inspection and quarantine agency shall issue an Outbound Cargo Non-Conformity Notice, and the grains shall not be exit.

Article 30 [Valid Period of Inspection and Quarantine]

The valid period of inspection on outbound grains is up to 2 months; generally, the valid period of quarantine is 21 days, but it may be extended to 35 days as appropriate during winter (from November to the end of February in the next year) in Heilongjiang, Jilin, Liaoning, Inner Mongolia and Xinjiang. After the inspection and quarantine expires, a new application for inspection on the grains shall be submitted before the grains are exit.

Article 31 [Institutional Collaboration]

The inspection and quarantine agencies at the places of origin and the ports shall establish a communication and collaboration system, and promptly inform each other of inspection and quarantine result and other information.

After the outbound grains has passed the inspection and quarantine at the place of origin, the owner or its agent shall apply to the inspection and quarantine agency at the exit port for inspection during the valid period of the Outbound Cargo Credential for Change of Certificates or the electronic transfer form. In accordance with the regulations regarding inspection on change of certificates for outbound cargo, the inspection and quarantine agency at the exit port shall inspect the outbound grains at the port, particularly whether the certificate is consistent with the cargo and whether there is infection of any harmful organism. After the outbound grains has passed the inspection, the inspection and quarantine agency at the port shall issue the Outbound Cargo Customs Clearance Certificate, based on the Outbound Cargo Credential for Change of Certificates or the electronic transfer form issued by the inspection and quarantine agency of the place of origin. If the inspection fails, the grains shall not be released.

If the outbound grains are to be consolidated at the port, a new application for inspection shall be submitted and the quarantine shall be carried out again. If the importing jurisdiction changes after the outbound grains

have arrived at the port and the new importing jurisdiction has different inspection and quarantine requirements, a new application for inspection shall be submitted and the quarantine shall be carried out again.

CHAPTER 4 RISKS; SUPERVISION AND ADMINISTRATION

Section 1 Risk Monitoring and Alerting

Article 32 [Epidemic Monitoring]

AQSIQ shall monitor various epidemics involving inbound and outbound grains, and prepare a monitoring technical guide.

The inspection and quarantine agencies shall monitor and investigate harmful organisms of quarantine significance such as weeds at grains entry ports, depots, areas near processing plants, transportation routes and areas where grains would scatter during transit and reloading. In case of any epidemic, the inspection and quarantine agencies shall promptly organize the relevant enterprises to take emergent measures, analyze the source of epidemic, and direct the enterprises to take effective corrective measures. The enterprises shall cooperate with the inspection and quarantine agencies to monitor and eradicate the epidemic.

Pursuant to quarantine requirements of the importing jurisdictions, the inspection and quarantine agencies shall investigate and monitor various epidemics at the areas near grain cultivation lands, export depots and processing facilities.

Article 33 [Safety Monitoring]

AQSIQ shall monitor the risk of safety and hygiene of inbound and outbound grains, and prepare a risk monitoring plan regarding safety and hygiene of inbound and outbound grains.

Article 34 [Collection of Risk Data] AQSIQ and the inspection and quarantine agencies shall establish a grains quality and safety data collection and reporting system. The data are mainly sourced from:

- (1) Grains quality and safety information received from inspection and quarantine of inbound and outbound grains;
- (2) Grains quality and safety information received from quality management of inbound and outbound grains trading, storage and processing enterprises;
- (3) Grains quality and safety information received from epidemic monitoring, and safety and hygiene risk monitoring by the inspection and quarantine agencies;

Comment [G39]: Reflected in the IP conditions, not as separate requirements unless an agreed protocol b/w the governments

(4) Grains quality and safety information reported by international organizations, foreign government agencies, domestic and foreign industry associations and consumers;

(5) Other information regarding risk of grains quality and safety.

Article 34 [Risk Study and Classified Management]

AQSIQ and the inspection and quarantine agencies shall assess the risk relating to grains quality and safety information, identify the risk level of the grains, and implement dynamic risk level management. The regulatory measures and business monitoring measures for inbound and outbound grains inspection and quarantine shall be adjusted in line with the risk assessment result.

Comment [G40]: Should not change on a vessel basis. Needs to be managed through Govt. to govt. communication and negotiation.

Article 36 [Major Risk Warning and Lifting]

If major epidemic or major quality or safety issue is found in inbound or outbound grains, AQSIQ and the inspection and quarantine agencies shall take and initialize emergency plan and other emergency measures according to the relevant regulations, and post a warning. When risk of grains safety disappears or is lowered to the acceptable level, AQSIQ and the inspection and quarantine agencies shall lift the warning.

Comment [G41]: In general should alert the exporting country Government as each case arises so they can implement measures to mitigate any issues of legitimate concern to AQSIQ

Article 37 [Information Notification]

AQSIQ and the inspection and quarantine agencies shall notify the relevant agencies and entities including local governments, agriculture and grains administrative authorities, foreign authorities and enterprises operating inbound and outbound grains of the important information about risk of grains safety, and cooperate with those agencies and entities to take necessary measures. Grains safety information shall be made public according to the relevant regulations.

Comment [G42]: Again, as issues arise, not wait for 6 months or when they come to audit an Australian export establishment etc.

Section 2 Supervision and Administration

Article 38

The enterprises propose to engage in storage and processing of inbound grains may submit an application to the local inspection and quarantine agencies.

The inspection and quarantine agencies shall evaluate the application materials and processes of the applicants, and verify the applicants' grain category and ability of storage and processing, in accordance with the requirements prescribed by AQSIQ.

The enterprises engage in storage and processing of inbound grains shall have established an effective quality, safety and traceability management system, and conform

to the quality and safety control requirement such as quarantine and treatment.

Article 39

The inspection and quarantine agencies shall conduct quarantine supervision over the designated enterprises.

When the designated enterprises, consignees and their agents find any major epidemic or public health problem, they shall immediately report it to the inspection and quarantine agencies. The inspection and quarantine agencies shall handle the problem and report it to the superior authorities according to the relevant regulations.

Article 40 [Records]

Inbound and outbound grains consignors and consignees, and production, processing, storage and transportation enterprises shall establish the production and business operation records relating to entry and exit of grains, handling, transportation, storage, processing, treatment of leftovers, and shipment designations, and maintain detailed records of quality traceability and safety control. All the records shall be kept at least two years.

Article 41 [Recall]

Where the inbound grains have any serious safety or quality problem, which has caused or would cause material

damage to human health or ecological safety of agriculture, forestry, husbandry or fishery, the consignee of the inbound grains shall initialize a recall. The consignee shall take actions to avoid or mitigate damages, maintain a recall record, and report the recall and relevant measures to the local inspection and quarantine agency.

Comment [G43]: Exporting country
Government also notified

If the consignee fails to do so, the competent inspection and quarantine agency shall issue an order of recall and report it to AQSIQ. If necessary, AQSIQ may order the consignee to recall the inbound grains.

Article 42 [Classified Management of Enterprises]

AQSIQ and the inspection and quarantine agencies shall implement a classified management system of enterprises in light of their quality management, facilities, control of safety risk and integrity in business operation. With respect to the enterprises at different levels, corresponding inspection and quarantine regulatory measures shall be taken in the aspects such as entry quarantine clearance, entry and exit inspection and quarantine, and daily regulatory actions. The specific standard for classified management shall be established by AQSIQ.

CHAPTER 5 LEGAL LIABILITIES

Article 43 [Failure in Declaration for Inspection or Inconsistence with Physical Conditions]

Upon occurrence of either of the following circumstances relating to inbound grains, the inspection and quarantine agencies shall impose a fine up to RMB 5,000 according to Article 59 of the Implementing Regulations for the Law on Inbound and Outbound Animal and Plant Quarantine:

- (1) Failure in declaration for inspection;
- (2) Inconsistence with the physical conditions of the declared grains.

Upon occurrence of the circumstance in Item (2) above, the issued quarantine certificate shall be revoked.

Article 44 [Without Approval]

Where the quarantine approval procures for inbound grains are not handled according to law or the terms of the quarantine approval are not complied with, the inspection and quarantine agencies shall impose a fine up to RMB 5,000 according to Item 1, Paragraph 1, Article 59 of the Implementing Regulations for the Law on Inbound and Outbound Animal and Plant Quarantine.

Article 45 [Failure in Declaration for Inspection]

Where any person sells or uses inbound or outbound grains which are listed in the import and export commodity

Comment [G44]: From a quarantine perspective, not quality. Needs boundaries. Needs to recognize mitigation may occur as noted previously in this document and then can be approved for entry without a “fine”

Comment [G45]: Relies on AQSIQ issuing an IP

catalog and must be inspected, without declaration for inspection or without having been inspected, the inspection and quarantine agencies shall confiscate the illegal gains and impose a fine at more than 5% but less than 20% of the value of goods according to Article 43 and Article 44 of the Implementing Regulations for the Law on Import and Export Commodity Inspection.

Article 46 [Creation Provision]

Where an inbound or outbound grains consignor or consignees, or a production, processing, storage or transportation enterprise fails to establish the production and business operation files and maintain records according to Article 40 hereof, the inspection and quarantine agency shall order it to make correction and give a warning; if it refuses to make correction, the inspection and quarantine agency shall impose a fine of more than RMB 3,000 but less than RMB 10,000.

Article 47 [Action Without Approval]

Upon occurrence of either of the following circumstances, the inspection and quarantine agencies shall impose a fine of more than RMB 3,000 but less than RMB 30,000 according to Article 60 of the Implementing Regulations for

the Law on Inbound and Outbound Animal and Plant Quarantine:

(1) Without the approval of the inspection and quarantine agency, discharge the inbound grains or transit grains from the means of transportation, or remove the grains from the designated inspection site;

(2) Without approval, unpack the transit grains, or remove or damage animal and plant quarantine sealing or mark.

Article 48 [Integrity of Trading Enterprises and Agents]

Where any consignor or consignee of inbound or outbound grains that listed in the import and export commodity catalog and must be inspected, or its agent or inspection declarer obtains a certificate from the inspection and quarantine agency by providing falsified information about inbound or outbound grains, or fails to make declaration for inspection and evades inspection and quarantine, the inspection and quarantine agency shall confiscate the illegal gains and impose a fine at more than 5% but less than 20% of the value of goods according to Article 46 of the Implementing Regulations for the Law on Import and Export Commodity Inspection.

Article 49 [Forging Inspection Certificate]

Where any person forges, alters, sells, purchases or steals inspection certificate, seal, mark, sealing or customs cargo clearance certificate, or uses forged or altered inspection certificate, seal, mark, sealing or customs cargo clearance certificate, but the conduct does not constitutes a criminal offense, the inspection and quarantine agency shall order him/her to make corrects, confiscate the illegal gains and impose a fine up to the value of goods according to Article 47 of the Implementing Regulations for the Law on Import and Export Commodity Inspection.

Article 50 [Major Epidemic; Forging Quarantine Certificate]

Upon occurrence of either of the following unlawful acts, but it does not constitutes a criminal offense or the circumstance of criminal offense is obviously minor and no criminal punishment is required according to law, the inspection and quarantine agencies shall impose a fine of more than RMB 20,000 but less than RMB 50,000 according to Article 62 of the Implementing Regulations for the Law on Inbound and Outbound Animal and Plant Quarantine:

- (1) Cause a major animal or plant epidemic; or

(2) Forge or alter animal and plant quarantine certificate, seal, mark or sealing.

Article 51 [Revocation of Registration]

Where a production, processing or storage enterprise registered according to these Measures fails to pass the quarantine on its inbound or outbound grains, and the relevant circumstances are serious, the inspection and quarantine agency shall revoke its registration according to Article 61 of the Implementing Regulations for the Law on Inbound and Outbound Animal and Plant Quarantine, in addition to return, destruction or quarantine treatment of the inbound or outbound grains according to relevant provisions of these Measures.

Article 52 [Replacement without Approval]

Where any person replaces the samples taken by the inspection and quarantine agency or the inbound or outbound grains having passed the inspection of the inspection and quarantine agency, the inspection and quarantine agency shall order him/her to make correction and give a warning according Article 48 of the Implementing Regulations for the Law on Import and Export Commodity Inspection, and where the relevant

circumstances are serious, impose a fine at more than 10% but less than 50% of the value of goods.

Article 53 [Without Fitness Inspection]

Where any person provides or uses any means of transportation including container, cabin, aircraft or vehicle without fitness inspection conducted by the inspection and quarantine agency to load and carry any transit grains, the inspection and quarantine agency shall impose a fine up to RMB 100,000 according to Paragraph 1, Article 53 of the Implementing Regulations for the Law on Import and Export Commodity Inspection.

Where any person provides or uses any means of transportation including container, cabin, aircraft or vehicle having failed to pass fitness inspection conducted by the inspection and quarantine agency to load and carry any transit grains, the inspection and quarantine agency at the entry and exit port shall impose a fine up to RMB 200,000 according to Paragraph 2, Article 53 of the Implementing Regulations for the Law on Import and Export Commodity Inspection.

Article 54 [Creation Provision]

Upon occurrence of any of the following circumstances, the inspection and quarantine agencies at the port shall

impose a fine of more than RMB 3,000 but less than RMB 10,000:

(1) Fail to initialize a recall, where the inbound grains have any serious safety or quality problem, or would cause material damage to human health or ecological safety of agriculture, forestry, husbandry or fishery;

(2) Fail to report the recall or treatment of inbound grains to the inspection and quarantine agency;

(3) The inbound grains are not discharged at the inspection site designated by the inspection and quarantine agency;

(4) The inbound grains have any of the circumstances listed in Article 18 of these Measures, and the relevant person refuses to make effective quarantine treatment.

Article 55 [Creation Provision]

Upon occurrence of any of the following circumstances, the inspection and quarantine agencies shall impose a fine up to RMB 30,000:

(1) The inbound or outbound grains are not produced, processed or stored at the registered or designated place;

(2) Sell, purchase or steal any animal and plant quarantine certificate, seal, mark or sealing, or assist in forgery or alteration of any animal and plant quarantine

certificate, seal, mark or sealing;

(3) Use any forged or altered any official quarantine certifying document of the exporting jurisdiction;

(4) Refuse to accept the quarantine supervision from the inspection and quarantine agency.

Article 56 [Punishment on Inspection and Quarantine Personnel]

Where any employee of the inspection and quarantine agencies abuses power, deliberately places obstacles, engages in malpractice for personal benefit, or falsifies inspection and quarantine result, or makes dereliction of duty, or delays issuance of a certificate, he/she shall be imposed an administrative sanction according to law; where the relevant circumstances are serious, criminal penalties shall be imposed according to law.

CHAPTER 6 SUPPLEMENTARY PROVISIONS

Article 57 [Non-processed Grains]

The provisions for regulation and administration of inspection and quarantine on inbound and outbound grains that will be directly sold without processing shall be otherwise prescribed by AQSIQ.

Article 58 [Border Trade]

The relevant regulations of AQSIQ shall apply mutatis mutandis to small amount of inbound and outbound grains in border trade.

Article 59 [Interpretation]

These Measures shall be interpreted by AQSIQ.

Article 60 [Entry into Force]

These Measures shall enter into force as of _____, 20___. The Administrative Measures for Inspection and Quarantine of Inbound and Outbound Grains and Fodders promulgated by AQSIQ in December 2001 shall be abolished simultaneously. In case of any conflict between these Measures and the previous regulations for inbound and outbound grains inspection and quarantine, these Measures shall prevail.

DRAFT translation for GRA member comment