

23 April 2010

Dr Wendy Craik AM
Presiding Commissioner
Wheat Export Marketing Arrangements
Productivity Commission
Locked Bag 2
Collins St
Melbourne VIC 8003

Dear Dr Craik,

Grain Trade Australia welcomes the opportunity to comment on the Commissions Draft Report on Wheat Export Marketing Arrangements.

Please contact Grain Trade Australia should you require further information.

Yours sincerely



Geoff Honey
CEO

Section 5 - Access to Port Terminal Facilities, Involvement of the ACCC, page 146

Issue

GTA would like to provide additional and better comment in relation to the resolution of day to day disputes. Ashley Roff expressed that, *"We're somewhat concerned because most of the membership of GTA tend to be access seekers, so we'd need some comfort that whoever was going to do the arbitration would have a balanced view about the outcome."*

Response

The GTA Dispute Resolution Service operates under the Commercial arbitration act and the GTA Dispute Resolution Rules which detail the operation of the Dispute Resolution Service (DRS). An award of a GTA arbitration carries as much weight as an award of the court and if a party wishes to appeal a GTA Award then the appropriate jurisdiction is the relevant State Supreme Court.

Rule 17.3 of the GTA Dispute Resolution Rules states

"An Arbitrator shall not be interested in the transaction nor directly interested as a member or financially associated with any party to the arbitration. Where a nominee arbitrator has made a disclosure or where a party independently knows of circumstances likely to give rise to justified doubts as to his or her impartiality or independence, a party shall be at liberty to object to his or her nomination, in which case the party shall nominate a new arbitrator or GTA shall nominate another arbitrator where the arbitrator was nominated by GTA."

The GTA DRS is widely used across the grains industry and the impartiality of the GTA Arbitrators has never been questioned.

However, all market participants must enjoy a high degree of comfort that, should their dispute come before GTA, it will be handled expeditiously, on the facts presented and the award will be found based on an impartial review of the facts as presented by the parties.

GTA therefore would propose:

- That GTA will develop a special set of *"Dispute Resolution Rules - Access Undertakings"*.
- A specialist panel of arbitrators would be formed, i.e. *"Arbitration Panel – Access Undertakings"*,
- The panel would be formed from senior grain industry personnel who are quite independent of the parties.

Section 8 - Wheat Quality Standards, Responsibility for wheat receival standards, page 260

Issue

"some participants noted their concerns regarding trends in the setting of standards by GTA."

"The Western Australian Farmers Federation considered that growers were not adequately represented on GTA, and that votes of growers were ineffective, resulting in 'GTA tending to set standards that benefit marketers to the disadvantage of growers' (sub. 29, p. 15)."

Response

GTA develops the GTA Grain Standards for use by industry, such standards being the subject to yearly review. The process is as follows:

- GTA develops an Issues Paper for distribution to industry and which is also placed on the GTA website
- GTA encourages submissions from members and the broader grains industry.
- The GTA Standards Committee, which incidentally has grower representation, considers all submissions
- The Standards Committee develop a DRAFT set of Standards which are then subject to another review round.

This process is repeated as required until there is industry consensus.

It needs to be stressed that **ANY** GTA process, be it a standard or trade rule or contract must not and does not advantage one industry sector over another. GTA is tasked with "facilitation of trade" and such actions would be in opposition to this role.

The comment that the standards are set to disadvantage growers is countered by:

- the lack of **any** evidence to demonstrate this occurs;
- the presence of growers on the GTA Standards Committee as are all other market sectors;
- the ability of organisations to either use the standards set by GTA or modify to suit their own needs; and
- is reliant on the incorrect assumption that growers are the only sellers in the market. The primary buyer of grain quite often will buy the grain and thereby they in turn will be subject to the same grain standards that they bought on. If the standards were to the advantage of the buyer, which is denied, then they (the buyer) would in turn be disadvantaged as they are now the seller.

GTA is able to obtain very clear directions from various industry sectors such as the Stockfeed Manufacturers Council of Australia, Pulse Australia and Australian Oilseeds Federation to name a few. The difficulty arises when we attempt to obtain a national production sector opinion as there is no national body representing this sector.

Section 8 – Wheat Quality Standards, Collection of End Point Royalties, page 269

Issue

“End Point Royalties

*It was broadly acknowledged that the inclusion of an item regarding End Point Royalties in the Wheat Exports Australia accreditation process had been significant in grain traders signing up to collect End Point Royalties via their contracts with growers. That said, there are other avenues that **could** be used to facilitate this process, such as through GTA standard contracts. “*

Response

A statement regarding End Point Royalties is already embedded in the GTA Contract No 3 - Grower Contract Confirmation as follows:

Disclosures: *Is any of the crop referred to in this contract subject to a mortgage, encumbrance or lien and/or PBR and/or EPR liabilities?*

NO ☐ YES ☐ (Please ✓ appropriate box) If "yes" please provide details

Section 9 - Other Industry Good Functions, Advocacy, page 279

Response

GTA currently is an active advocate for the grains industry in various fora as follows:

GTA is a member of:

1. **International Grain Trade Coalition (IGTC)** – members are drawn from the major grain exporting countries. The IGTC represents their interests at world trade forums such as the UNEP Convention on Biological Diversity, better known as the Cartagena Protocol.

The GTA CEO has represented the **international grain trade** at various overseas workshops in particular:

- 9th ASEAN Task Force on Codex, held in Vientiane, Laos -May 2009
- GM - Low Level Presence Workshop, Hanoi, March 2010

2. **Australian Quarantine Inspection Service Grains Industry Consultative Committee.** Currently the GTA CEO is **Chairman of the Grains Industry Ministerial Task Force** which further demonstrates standing of GTA within the Australian grains industry regarding the issue of impartiality.

3. **Food Chain Assurance Advisory Committee**, a committee of the Attorney General.

GTA makes representations to :

1. **Australian Securities Investment Commission (ASIC)** in relation to Financial Services Reform Act (FSRA), Australian Financial Services Licence (AFSL) requirements and other ASIC issues relating to the grain industry.
2. **Department of Agriculture, Fisheries and Forestry**, as required.
3. **Department of Foreign Affairs and Trade** In January, GTA briefed DFAT on the grain industry position in relation to the Cartagena Protocol on Biosafety.
4. **Financial Ombudsman Service** that was established to resolve disputes between parties to financial and derivative based products.