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Australian Government

Wheat Exports Australia

**Submission to the
Productivity Commission's Draft Report
on
the *Wheat Export Marketing Act 2008*
and the
*Wheat Export Accreditation Scheme 2008***

10 May 2010

FOREWORD

Wheat Exports Australia (WEA) was established under the *Wheat Export Marketing Act 2008* (the Act) and has responsibility for administering the *Wheat Export Accreditation Scheme 2008* (the Scheme).

WEA stands ready to implement whatever changes the Government mandates in relation to wheat export marketing arrangements in the future. WEA will ensure an orderly transition to any new arrangements, insofar as they relate to WEA.

WEA has reviewed the Productivity Commission's Draft Report (22 March 2010) on the Wheat Export Marketing Arrangements.

The purpose of this submission is to:

- (a) assist the Commission to finalise its report to the Government by clarifying some details of the administration of accreditation and related processes; and
- (b) suggest additional matters for the Commission's consideration.

Draft Report Chapter 4 -Accreditation of exporters

Transition Period

The Report contends that the transition period, at least for accreditation, has passed. It would be useful if the Commission could elaborate on this conclusion and also on the reasoning for recommending the date for cessation of accreditation be 30 September 2011.

It would also be useful for the Commission to elaborate on:

- the processes that need to be put in place (and an associated timetable) to conclude accreditation requirements;
- how the port terminal access undertaking arrangements for the period from 2011 to 2014 should be decoupled from the accreditation process. In particular, the provision of adequate time for port terminal operators to seek approval from the ACCC for extension of their access undertakings needs to be addressed;
- the preparedness of the industry to be further liberalised or fully de-regulated.

Conditions of accreditation

There are a number of mandatory conditions imposed on every accreditation as specified in sections 22 to 26 of the Scheme. They include reporting requirements under the Act for accredited exporters to produce both an Annual Export Report and an Annual Compliance Report to WEA following the completion of each marketing year (sections 15 and 16 of the Act). WEA has no discretion in waiving this reporting requirement. It should be noted that the provision of this information is an integral component of the ongoing monitoring regime, to confirm that exporters are complying with their accreditation conditions, and is also used in the production of WEA's annual Report for Growers.

In addition to these mandatory conditions, WEA may impose further conditions on an accreditation under subsections 8(4) or 15(3) of the Scheme. This allows WEA the flexibility to impose conditions it considers appropriate to the activities of a particular exporter. WEA must first consult the applicant prior to imposing any additional conditions, with an explanation as to why it is considering imposing the additional conditions. Each applicant is given the opportunity to comment on the proposed conditions, which is to be taken into account when WEA makes its decision. The Act affords the right to each applicant to seek a review of decisions made by WEA.

This discretionary power enables WEA to consider the individual applicant's circumstances and export proposal when undertaking the fit and proper assessment. This has meant in practice that a number of exporters have been granted accreditation through tailoring specific conditions of accreditation that ensure WEA is satisfied that the applicant is fit and proper to undertake its export proposal. Rather than impose 'rigidities' upon exporters, the flexibility to impose additional conditions has enabled a wider range of companies to be accredited than would otherwise have been the case, ultimately enhancing marketing choice for growers and delivering upon the policy mandate established by the Act.

Transparency

The Act requires WEA to maintain on its website, a register of all accredited exporters including their conditions of accreditation for the purpose of transparency. It should be noted that there are a number of conditions of accreditation that are accompanied by explanatory notes outlining the nature of the condition.

However due to the sensitive nature of specific exporter information, WEA does not provide a public explanation on the reasons why additional conditions are imposed on particular accredited exporters. Exporters would rightly regard the publication of such commercial-in-confidence information as a breach of confidence. Sanctions apply to WEA employees and members regarding the mishandling of protected confidential information under sections 73 and 74 of the Act.

WEA is required to produce a Report for Growers at the conclusion of each marketing year (section 65 of the Act) and its inaugural report was published online on 22 December 2009. This formal reporting mechanism to growers provides information about WEA's operation of the Scheme, including the compliance of exporters with their conditions of accreditation and details of any action taken by WEA in relation to this. The Report for Growers also includes statistical information on wheat exports. WEA welcomes feedback from industry on the format and content of this report, as a means to improve the transparency of its operations.

Fees and charges

WEA may charge a fee on a cost-recovery basis for the processing of applications under the Scheme in accordance with section 10 of the Act. Ordinarily application fees paid to WEA would not be refundable. However WEA may decide to refund fees in exceptional circumstances. This has occurred on three occasions.

The current fee structure for applications is as follows:

	Including GST	Excluding GST
New Application	\$13,299	\$12,090
Renewal	\$7,084	\$6,440
Variation	\$6,248	\$5,680
Reconsideration	\$3,344	\$3,040

Following the finalisation of an internal audit commissioned by WEA in April 2010, the following table represents the estimated actual costs incurred by WEA in the assessment of applications under the Scheme during 2009:

	Including GST	Excluding GST
New Application	\$27,038	\$24,580
Renewal	\$18,821	\$17,110
Variation	\$19,811	\$18,010
Reconsideration	\$33,451	\$30,410

It should be noted that these findings were based on the actual applications received during 2009; being 5 new applications, 22 accreditation renewal applications, one variation application and one reconsideration application. Care should be taken in relying upon this information as an indicator of future cost recovery in any re-setting of application fees.

The complexity of applications for both variation and reconsideration will vary considerably based on the nature of the request, as will the need for external professional support in considering each application. For example, whilst the actual costs relating to the sole application for reconsideration have been used in the internal audit, the actual cost of that single application for reconsideration was high as legal advice was required to properly consider the complex matter put before WEA. This single case may not be representative of any future applications for reconsideration.

The need to amend the fee structure will be considered by WEA later in 2010, taking into account the Commission's final Report into Wheat Marketing Arrangements and its potential impact on the Scheme.

Costs of accreditation and compliance

The draft Report refers to the compliance costs for exporters "...estimates provided by accredited exporters of the cost of complying with WEA processes in the first year range from \$200 000 to \$600 000" (page 73). This and other statements in the Report seem to imply ongoing annual costs for all accredited exporters of this magnitude.

It is noted that this cost range is based on figures provided by only 3 of the 29 accredited exporters (GrainPool, GrainCorp and AWB). These exporters are amongst the largest exporters, with two of them subject to additional costs due to having to comply with the port terminal access test.

Also, the first year of accreditation was unique as most companies faced both the cost of initial accreditation and subsequent renewal. As most exporters now have multiple year accreditations, their ongoing direct costs of maintaining accreditation will be substantially reduced and should prove much more modest when averaged over two or three years.

The monitoring process is designed to provide WEA with the tools to consider the ongoing 'fit and proper' status of each exporter. It is worth noting that the ongoing monitoring process for each exporter includes; an audit on average every two years (but only if the exporter is active), obligation to report any Notifiable Matters, an annual update of the exporter's export proposal and financial situation and submission of an Annual Export Report and Annual Compliance Report.

With regard to the Annual Export Report and Annual Compliance Report, such information is not available from other sources and the reports are an integral part of the ongoing monitoring regime. These reports are not voluminous and are largely a tool for the exporters to confirm that they have complied with their conditions of accreditation. These Reports represent a very convenient and cost-effective monitoring mechanism.

WEA welcomes the Commission's call for further feedback from exporters on the costs associated with applying for accreditation and complying with accreditation processes. In particular, it would be useful to assess such costs in future years and in the context of a \$4.9 billion Australian wheat industry with exports valued at some \$3.5 billion. (Australian Bureau of Agricultural and Resource Economics, *Australian Commodities December Quarter 2009*, Canberra.)

Improvements in governance

A significant outcome of the Scheme has been the improvements made by a number of exporters in their governance, risk management, financial resources and supporting guarantees as a result of the accreditation process. Without such improvements some applications would not have been successful.

The policy intention of the accreditation process was to introduce companies and co-operatives of good repute and financial capability to the bulk wheat export industry. WEA considers that the accreditation and ongoing compliance processes have introduced additional rigour into the business practices of a number of exporters that was not there before, increasing comfort for growers and customers that is not easily quantifiable. Some of these less readily apparent benefits, including those relating to parent company support, may not remain in place if the accreditation regime is terminated.

Duplication of information

WEA has reservations about the claims by some exporters that much information WEA uses for its fit and proper assessments and for monitoring purposes duplicates an accredited exporter's obligations under other Acts or ASX Listing Rules etc. Most of the information WEA relies on in making an accreditation decision or monitoring a company is not required to be disclosed by the *Corporations Act 2001* or the ASX. Also, most exporters are not listed.

The processes involved in accreditation are included in the Draft Report (Box 4.2, page 78). The results of research and findings during the process such as audit reports and risk assessment reports are treated as protected confidential information.

It is noted that the information available from the ASIC website for unlisted companies is limited, particularly where the accounts are special purpose accounts. Most of the information WEA uses for the purposes of accreditation is not publicly available and not obtainable from commercial providers. Further, most exporters do not have an Australian Financial Services Licence, so any protection that might otherwise be afforded to their counter-parties (including growers) under this regime is not available.

Uncertainty of renewal process

WEA is very aware of the uncertainty for accredited exporters associated with the renewal process. For this very reason the Scheme requires applications for renewal to be submitted between three and six months before the expiration of the current accreditation period, to allow renewals to be processed well in advance of the end of the accreditation period, thus limiting any uncertainty.

Despite this, most of the recent renewal applications were submitted just over the three months minimum time prior to expiry of the existing accreditation. Nevertheless all 22 such applications were processed and renewed before the expiry of the original accreditation period. During the renewal assessment process applicants were kept informed of the progress of their application and advised immediately if there was a potential problem or issue, thereby limiting any uncertainty.

In the case of GrainCorp Operations Limited, Viterra Ltd (at the time ABB Grain Ltd) and GrainPool Pty Ltd; the major uncertainty with their renewal was the requirement to have an Access Undertaking for their related port operations accepted by the Australian Competition and Consumer Commission (ACCC) before 1 October 2009. In these cases WEA processed the relevant renewal applications in advance and made in-principle decisions to renew pending the ACCC decisions on the Access Undertakings. Renewal of the accreditation of these three exporters was provided within one day of the respective Access Undertakings being accepted by the ACCC. The uncertainty would have been much reduced if these exporters had started the Access Undertaking process in a timely fashion, as they were encouraged to by WEA, ACCC and DAFF on several occasions in 2008 and early 2009.

Costs - indirect

Pages 114 – 116 of the draft Report summarise the “indirect costs associated with losses in economic efficiency ... imposed by accreditation”. Further, the Report states on page 119 that the indirect costs “can be expected to increase over time as the distortions become more entrenched and harder to unwind”.

WEA contends under the following sub-headings that these “indirect costs” are overstated and in practical terms are minimal at worst.

Barriers to entry.

29 companies have been accredited, ranging from multinational grain traders, to large Australian companies, to medium and smaller niche traders and one wheat grower. WEA is not aware of any potential bulk wheat exporters being prevented from seeking accreditation due to the scope or cost of the accreditation process. WEA’s objective is to enable all potential bulk wheat exporters to be accredited, provided of course that they pass the relevant criteria established in the Act and the Scheme.

Lack of transparency and uncertainty

Previous comments address these two issues.

Rigidities

Conditions on restricting tonnages have applied to eight exporters, at their request to match their financial support and facilitate their accreditation. Such conditions have not in practice limited the operations of those exporters. In one case the exporter applied for and was subsequently granted an increased tonnage limit to enable additional exports to be made.

Only one exporter has a condition limiting its exports to certain market destinations. As was proposed by that exporter, the condition limits the export of wheat to its related overseas companies.

Should any exporter wish to vary a condition then WEA will quickly process such an application. This has occurred on the one occasion mentioned above without any loss of a market opportunity.

Asymmetric regulation

The comments that accreditation may result in distortions by encouraging wheat to be exported by bag and container rather than in bulk and by other grains and agricultural commodities being exported instead of bulk wheat seem somewhat tendentious. The direct and indirect costs of accreditation are quite minor compared to the trade in wheat and other grains and therefore it is considered that it is quite unlikely that there would be any material asymmetric ramifications of the type conjectured in the Report. Rather, it is suggested that export method and type of commodity are driven by economic factors such as overseas demand and freight cost relativities.

The Commission notes in the draft report that the impact of asymmetric regulation only applies at the margin and that business driven such as access to credit and differential freight rates are the actual determinants of business activities.

Duplication

It is not clear where “WEA may be duplicating and crowding out the services that are provided by industry consultants and analysts.” In this regard it should be noted that WEA does not provide any advice.

Draft Report Chapter 5 - Access to port terminal facilities

Transition and Access Undertakings

The Commission proposes abolishing the accreditation scheme on 30 September 2011, but continuing with the current port access undertaking to 2014. It would be helpful if the mechanism to do this were explained in more detail.

The Commission recommends that access negotiations beyond 2014 “explicitly relate only to spare or excess capacity.” This appears to be contrary to the government’s support for equal access for all exporters to port facilities. The Minister in his second reading speech on 29 May 2008 said:

“One of the concerns identified during consultation was the risk of a single wheat export monopoly being replaced by three regional monopolies.

There were varying views on how to manage this risk, and the government considered a number of options to meet the principle of ensuring effective competition without imposing an unnecessary regulatory burden on business.

The government was also mindful that imposing a significant regulatory burden on the supply chain would only result in increased costs being passed back to growers.

So we have decided to impose specific requirements on accredited exporters that operate bulk grain terminals at ports, as these are the facilities with natural monopoly characteristics and are the infrastructure bottleneck in the export supply chain.

Unless all exporters can obtain access to these critical facilities on fair and reasonable terms then one of the major objectives of the policy could be frustrated.”

It is noted that the access regimes have only been in place for seven months and exporters are having issues exporting wheat from every state.

There is a major concern by many in the industry of the dominant and seemingly compromised positions of bulk handling companies that are both suppliers of an effective monopoly service and a competitive customer for that service. In a large crop year there may be zero surplus capacity for other traders to access the export terminal facilities during many months if the port owners have first right of use.

The Commission seems to have adopted a view that the terminal owners have “no incentive to hinder access”. This may be true in a general sense, however it does not address the issue of exporters gaining access at a particular time. Every terminal has excess capacity over the course of a year, but often insufficient capacity at various times (generally in the months following harvest when multiple exporters are seeking access). It would be an enormous change to the status quo if from 2014 on the terminal owners had first right to use the terminals, after which the excess capacity would then be made available to other exporters.

End