

Mr Anthony Wing  
General Manager  
Transport and General Prices Oversight  
ACCC  
GPO Box 520  
MELBOURNE VIC 3001

26 May 2009

**Re: Access to Ports and Grain Terminal facilities by Superintendence and Inspection companies as a part of wheat export operations.**

**This submission relates to Port Access Undertakings submitted by Co-operative Bulk Handling Limited, GrainCorp Operations Limited and ABB Grain Ltd.**

Dear Mr Wing,

It is well noted that an intent of the recent changes to the Wheat Export Marketing Act was to open the exports of Australian wheat up to competition. It is also clear that the intent of the Port Access Undertakings that have been required of the three major port operators is to ensure that all exporters have full access to ports to facilitate their ability to fully participate in the wheat export trade.

In reading and considering the various Access Undertakings however, it became clear that one important aspect has been overlooked by both the undertakings and the review. Superintendence and Inspection companies, of which SGS is one operating in Australia, are commonly engaged by exporters and/or international grain buyers and end users as their representative at port with the mandate of protecting their client's interests with respect to grain quality and quantity during loading. These companies play a vital role in facilitating trade by assisting their clients to mitigate the substantial risks taken on by parties buying and selling large quantities of grain.

The concern faced by Superintendence Companies and their clients in relation to load ports in Australia is that, while specific details vary between operators, Australian port operators are generally very restrictive in granting access to these companies' representatives at loading. As a result of these restrictions, Superintendence Company are unable to provide a level of service to exporters or buyers which is considered standard practice internationally and which has come to be considered a normal and mandatory part of international grain trade.

At the most basic level the impact of this restricted access is that exporters and buyers cannot gain the same level of assurance of quality they expect based on their international experiences. More concerning though is the fact that restricted Superintendence access may result in sellers from Australia being in breach of contract or failing to meet importing country regulations. For example, grain is increasingly traded on the international market using Grain and Feed Trade Association (GAFTA) contracts. These contracts call for specific sampling and inspection regimes carried out by GAFTA registered Superintendence Companies and include full representation and attendance during loading. The result is that Superintendence Companies cannot issue GAFTA compliant certificates that are a contractual requirement. Additionally, countries such as Kenya have specific import regulations requiring Verification of Conformity to Kenyan standards to be performed by a specified Superintendent Company. Again, these standards contain strict sampling and inspection rules that cannot be met under

current Port Operator policies. Lastly, the certificates that result from the inspection and testing conducted by Superintendence Companies frequently form a crucial part of shipping documents required for payment against contracts of Letters of Credit which often require full supervision.

The access requirement of Superintendant Companies during loading of wheat vessels can be summarised quite simply. Exporters or buyers appoint Superintendence Companies to be their “eyes and ears” during loading. To fulfil this requirement, Superintendent Companies require unrestricted access to loading areas throughout the entire loading operation. They need to be able to conduct or comprehensively witness and supervise sampling operations. They need to be able to test or gain access to test results in real time to allow their clients to act on quality issues as they arise. They need to have timely access to up to date and accurate information pertaining to the loading operation and issues as they arise.

The above mentioned requirements can be contrasted with the current port operator policies. Each port operator differs in their policy and also the extent to which they have a formal published policy. However, by way of example, the below is an extract of the policy currently implemented by one port operator.

“It is prohibited by (Port Operator) policy to have any non-(Port Operator) personnel in the laboratory or sampling areas during operational activity...

The procedure for dealing with external inspectors is that they are:

- Shown the laboratory areas and sampling systems prior to loading
- Provided with a room with suitable amenities
- Samples are brought to them on a regular basis during vessel loading (approximately every 500 tonnes, or as agreed)

This policy has been in force due to safety, security, and commercial confidentiality issues related to the laboratory and sampling areas...

At completion of loading, samples are collated in accordance with our ISO 9001 quality system and provided to the Cargo Superintendent in accordance with the clients agreed pre-load instructions.”

In the above example, safety, security and commercial confidentiality are cited as reasons for these restrictions; however these fail to stand up to scrutiny. For example:

- Safety: Superintendant Companies do not need to conduct operations or go to areas in ports that are not common operations for port staff. Superintendant Company staff can participate in safety inductions and training as required.
- Security: If required, Superintendent Companies can supply staff with security clearance to a Maritime Security Identification Card level, which under the *Maritime Transport and Offshore Facilities Security Act 2003* and related regulations allows the holder unmonitored access to a maritime security zone. Note that this level of security clearance is above that required at many ports as Grain Terminals (excepting the actual berth area) often fall outside the maritime security zone at the port.

- Commercial Confidentiality: As Superintendence Companies are appointed by either the buyer or the seller and in some cases both (i.e. the owners or receivers of the grain) it is very difficult to understand how their attendance at loading can be seen to compromise commercial confidentiality.

Clearly such port operator policies are not in line with the expectations of exporters and overseas buyers as, even at the most basic level, Superintendence Companies are prevented from verifying the source of samples they are supplied with. This lack of access to fulfill our role in the export process is of growing concern both to Superintendence Companies and more importantly to our clients, the exporters and buyers of Australian wheat. We believe that a continuation of such restrictive access policies will jeopardize Australia's place in the international market in the future. As such we would urge the ACCC to include the requirement of access to Superintendence and Inspection Companies to port facilities as a key requirement of Port Access Undertakings from Port Operators.

Please do not hesitate to contact us should you require further information of the role Superintendence and Inspection companies play in facilitating grain export or the nature of current port access arrangements.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'D. Robey'.

Darren Robey  
**Business Manager**  
**SGS Australia – Agricultural Services.**