



Introduction

Grain Trade Review is a publication that examines shipping and contractual issues relevant to the maritime trade with grains, feed and oilseeds.

In this issue, the Editor reviews the following topics:

- **The Contractual Implications Of Changes To VAT Rate Or Trade Tariffs On The Maritime Trade With Soya Beans**
- **NAEGA FOB Export Contract Form No. 2, Edition 2024**

If you have any comments about the matters reviewed in this edition, please address them to editor@commoditylaw.eu

The Contractual Implications Of Changes To VAT Rate Or Trade Tariffs On The Maritime Trade With Soya Beans

by Vlad Cioarec, International Trade Consultant



A government act or order which introduces a new VAT rate or new trade tariffs does not prevent delivery of the goods, but it could have an impact on the commodity prices and cause delays in the customs clearance and the delivery of the goods. Therefore, the commodity suppliers should include among their sale terms and conditions either provisions specifically covering trade tariff increase or alternatively, a clause covering the change of regulations that could have a material adverse economic effect on the contracting parties. An example of such a clause is the Clause 64 in BP's General Terms and Conditions for the Sales and Purchases of Crude Oil and Oil Products, which has the following provisions:

“Section 64 - New and changed regulations, etc.

64.1 It is understood by the parties that the Seller is entering into the Agreement in reliance on the laws, rules, regulations, decrees, agreements, concessions and arrangements ("Regulations") in effect on the date hereof with governments, government instrumentalities or public authorities affecting the Crude Oil or Product sold hereunder including those relating to the production, acquisition, gathering, manufacturing, transportation, storage, trading or delivery thereof, insofar as such Regulations affect the Seller or the Seller's supplier(s).

64.2 If at any time and from time to time during the currency of the Agreement any Regulations are changed or new Regulations have become or are due to become effective, whether by law, decree or regulation or by response to the insistence or request of any governmental or public authority or any person purporting to act therefor, and the material effect of such changed or new Regulations (a) is not covered by any other provision of the Agreement; and (b) has or will have a material adverse economic effect on the Seller, the Seller shall have the option to request renegotiation of the price(s) or other pertinent terms of the Agreement. Such option may be exercised by the Seller at any time after such changed or new Regulations are promulgated by written notice to the Buyer, such notice to contain the new price(s) or terms desired by the Seller. If the parties do not agree upon new price(s) or terms satisfactory to both parties within 15 days after the date of the Seller's notice, either party shall have the right to terminate the Agreement immediately at the end of such 15 day period.”

Who Bears The Liability For Financial Losses Arising From Delays In FOB Sale Contracts

In FOB contracts, the sellers shall bear all the risks and costs until the time of delivery of goods on board the carrying ship at the loading port. Therefore, the sellers shall bear the additional costs in the case of delays in the clearance of goods by the customs authority, including any charge for the time spent on demurrage by the ship.

In the scenario where a trader buys a commodity cargo on FOB terms for re-sale on CFR terms and incurs a financial loss due to unfavorable price movements while the chartered ship waits for the cargo at the loading port, he can also claim damages for late delivery, in addition to demurrage, but only in the case of contracts stating the delivery period as a shipment period, because in such contracts the seller's obligation to load the goods by the end of the contract delivery period is considered a condition of the contract. In the case of such contracts, the sellers' obligation to have the cargo ready for loading by the contractual due date implies the obligation to have the cargo

cleared by the customs authority by the due date and to do what else it is necessary to enable the vessel to berth on the expiry of the pre-advice period for the vessel's readiness for loading.

However, most of the FOB contract forms incorporated by the grain exporters state the delivery period as a vessel presentation period rather than as a shipment period. In such case, the time of delivery is an obligation which is not of the essence of the sale contract (i.e. not a condition of the contract). At least, this is the rule in English case law. In the case of the prolonged delays in vessel berthing, loading or in the completion of the necessary formalities for the vessel departure, the seller will be liable for demurrage, but the buyer cannot terminate the contract in the case of unfavorable price movements, unless the buyer is able to include in contract specific provisions in this regard. For instance, Clause VI (5) of INCOGRAIN Contract No. 13 stipulates that if the seller does not commence loading within three working days following the day when the vessel is in all respects ready to load at the loading berth, he shall be in default, save in case of force majeure.

In the absence of such provisions, even if the buyer's vessel arrives at loading port and tenders valid NOR when there is sufficient time left for the completion of loading by the end of the last day of the contract delivery period, the seller is not contractually obliged to complete loading by that time. He is not even required to commence loading within a prescribed time. If, for whatever reason, the loading berth or the goods are not available at the time of the vessel's arrival at the loading port, the vessel can be kept waiting and the buyer cannot withdraw the vessel until after the expiry of a "frustrating time", that is ill-defined by the English Courts¹. The seller shall not be in breach of contract for failing to provide a free berth and commence loading promptly after the vessel presentation for loading, unless the sale contract provides otherwise.

Who Bears The Liability For Financial Losses Arising From Delays In CFR Sale Contracts

In CFR contracts, the buyers shall bear all the risks and costs after the time of delivery of goods on board the carrying ship at the loading port. Therefore, the buyers shall bear the additional costs in the case of delays in the clearance of goods by the customs authority at the discharge port, including any charge for the time spent on demurrage by the ship.

Prolonged delays in the customs clearance of goods at the discharge ports are not uncommon in the maritime trade with China.

For instance, in 2017, while several ships carrying soya bean cargoes were on route to China, the Chinese government decided to reduce the VAT charged on imports of agricultural commodities. In order to take advantage of the reduction of VAT, the Chinese importers let the ships waiting until the decree reducing the VAT entered into force.

A famous case was in June 2018, when the ship "Peak Pegasus" carrying a cargo of 70,000 tonnes of U.S. soya beans sold by Louis Dreyfus to the Chinese buyer Sano Grain rushed from Seattle in a race against the clock in an attempt to reach the Chinese Dalian Port before the noon on 6 July 2018 when new 25% tariffs imposed by Chinese government on US agricultural commodities took effect. The ship missed the noon deadline by just a few hours and then had to wait for over a month off the port pending a settlement over the import tariff. Two other ships carrying U.S. soya bean cargoes, "Star Jennifer" and "Cemtex Pioneer", had a similar experience.

If the CFR sale contracts provide that the quality specifications have to be met at the time and place of delivery of goods on board the carrying ship, then the cargo quality characteristics determined at that time and place shall be conclusive evidence, i.e. final and binding, and the buyers shall bear the risk of deterioration of cargo in the event of prolonged storage on board the carrying ship at the discharge port².

1 See the English law case *ERG Raffinerie Mediterranee SPA v. Chevron USA Inc.*, [2007] 2 Lloyd's Rep. 542, [2007] EWCA Civ. 494.

2 See the article "Who Bears The Risk Of Deterioration Of Perishable Commodities In FOB, CFR And CIF Sale Contracts" published in *Commoditylaw's Grain Trade Review* Edition No. 4.



In March 2024, the North American Export Grain Association (NAEGA) published a new edition of the FOB Export Contract Form No.2 to be used in the FOB sales of grains and oilseeds in bulk by the US and Canadian grains and oilseeds exporters. This article reviews the contract provisions, including the new updates.

Delivery Terms And Vessel Requirements

The Paragraph 1 of Clause 8 provides that delivery shall be made at the discharge end of the loading spout, i.e. FOB Spout Trimmed, because the US terminal elevators assume responsibility for grain only until it leaves the loading spout.

The FOB Spout Trimmed delivery is possible only if the buyer nominates and provides a vessel suitable for spout trimming, i.e. a self-trimming bulk carrier. Hence, the requirement in the Paragraph 2 of Clause 8 for the buyers to nominate self-trimming bulk carriers.

Passing Of Risks And Insurance Cover

In the FOB Spout Trimmed delivery, the seller is responsible for delivering the grain ex elevator spout, i.e. at the discharge end of the shiploader spout. Therefore, the seller's liability shall be limited to his actions in delivering the grain at the discharge end of the shiploader spout.

The risk of loss shall pass to buyer upon delivery of grain at the discharge end of the shiploader spout. The buyer assumes all risks once the grain leaves the discharge end of the shiploader spout. Therefore, the buyer must obtain insurance cover extending from the time the grain leaves the shiploader spout for the purpose of loading.

The buyer has the obligation to provide evidence of insurance cover on the terms stipulated in the Clause 14, i.e. insurance covering marine and war risks, plus strikes, riots, civil commotions and mine risks, at least 5 days prior to the expected date of vessel readiness to load. If the buyer fails to provide such evidence to seller at least 5 days prior to the expected date of vessel readiness to load, the seller shall have the right to obtain such insurance cover for the buyer's account.

ETA Pre-Advice Requirements

The buyer must give the seller the pre-advice of the expected date of vessel readiness to load, i.e. the date on which the shipowners and buyers expect the vessel to arrive at loading port and be ready for loading, in the number of days to be agreed upon by the seller and buyer at the time of concluding the contract and declare the quantity required to be loaded.

Conditions For The Vessel Substitution

Clause 9 provides that the nomination of the substitute vessel shall be subject to the same pre-advice requirements as for the originally nominated vessel, UNLESS the substitute vessel is expected to be ready for action on the same date as the originally nominated vessel, plus or minus one day. In other words, in cases where the substitute vessel is expected to be ready for loading on the same date as the originally nominated vessel, the substitute vessel's nomination notice can be served with a shorter pre-advice than the pre-advice period required in the sale contract for the nomination of the original vessel.

Conditions For The Vessel Presentation For Loading

Clause 8 provides that buyer must present the vessel at loading port “*in readiness to load*” within the contract delivery period and the buyer's vessel must “*file*” before the end of the contract delivery period.

Then Clause 18 stipulates that:

“If vessel fails to file before the end of the Delivery Period, Buyer shall be in breach of contract and Seller shall carry the grain for Buyer's account and risk ...”

Clause 8 defines the meaning of the words “*file*” and “*readiness to load*” as follows:

“For the purposes of this contract a vessel shall be considered filed when it

(a) has tendered valid notice of readiness to load to the charterer or its agent, at the port of loading,

(b) has given written advice of such tender to the loading elevator, complete with all customarily required documents, such advice having been presented between the hours of 09:00 and 16:00 local time on a business day or between the hours of 09:00 and 12:00 noon on Saturday (provided not a holiday) and

(c) is ready to receive grain in the compartments required for loading under this contract.”

The shipping terms and conditions of NAEGA FOB Export Contract Form No. 2 are based on the US and Canadian Shipping Regulations for the export of grain and oilseeds in bulk.

Conditions For The Vessel Presentation For Loading Bulk Grain Cargoes At The US Ports

The vessels arriving to load grain at US ports must first pass the National Cargo Bureau and Federal Grain Inspection Service (FGIS) inspections before obtaining the permission to berth.

The vessel shall be considered physically ready to load when it is ready in every respect to receive grain in all compartments necessary for loading the quantity required to be loaded. The vessel's NOR shall not be effective and laytime shall not commence to run until all holds necessary for loading the quantity required to be loaded have passed the inspection.

The National Cargo Bureau surveyor will inspect the vessel's holds and hatch covers to verify their watertightness, but he will also verify the vessel's documents, i.e. the document of authorisation for the carriage of grain in bulk and grain stability booklet, to see whether the vessel complies with the stability requirements and it is structurally safe to load grain in bulk.

The Federal Grain Inspection Service surveyors inspect the vessel's holds to see whether they comply with the standards of fitness stated in the FGIS Directive 9180.48/4/08/09. The FGIS Directive stipulates that the vessel's holds must be clean, free of any residue of previous cargoes, dry, free of infestation, free of rodents and toxic substances and free of foreign odour.

Only after the vessel has passed the National Cargo Bureau and Federal Grain Inspection Service inspections, it can tender NOR to the charterer's agent. The vessel's NOR must be accompanied by the Certificate of Readiness to Load issued by the National Cargo Bureau surveyor and the Official Stowage Examination Certificate issued by the FGIS surveyors.

Upon the receipt of the vessel's NOR, Certificate of Readiness to Load and Official Stowage Examination Certificate, the charterer's agent must file a berth application to the grain elevator operator for obtaining the permission to berth.

The berth application must be accompanied by the following documents:

- a copy of the vessel's NOR signed by the charterer's agent;
- a copy of the Certificate of Readiness to Load issued by the National Cargo Bureau surveyor;
- a copy of the Official Stowage Examination Certificate issued by the FGIS surveyors stating that the vessel is ready to load in all compartments required for loading the grain cargo;

- evidence that the vessel has been entered at the US Customs House;
- a copy of the vessel's International Tonnage Certificate;
- Master's proposed stowage plan.

These are the “*customarily required documents*” referred to in the Paragraph 5 of Clause 8 in the case of vessels presenting for loading US grain or oilseeds.

Once the berth application is accepted by the grain elevator operator, the vessel is entered in the line-up of vessels waiting for their turn to be called at berth for loading. Therefore, what the nominated vessel must “*file*” before the end of the contract delivery period is the berth application accompanied by the NOR and the “*customarily required documents*” mentioned above.

Conditions For The Vessel Presentation For Loading Bulk Grain Cargoes At Canadian Ports

At the Canadian ports, the fitness of the holds for loading and carriage of grain and oilseeds is verified by the Minister of Transport, respectively by the Port Warden in the Port of Quebec, and the Canadian Food Inspection Agency (CFIA).

The vessel shall be considered physically ready to load when it is ready in every respect to receive grain in all compartments necessary for loading the quantity required to be loaded. The vessel's NOR shall not be effective and laytime shall not commence to run until all holds necessary for loading the quantity required to be loaded have passed the inspection.

The Minister of Transport, respectively by the Port Warden in the Port of Quebec, will inspect the vessel's holds and hatch covers to verify their watertightness, but it will also verify the vessel's documents, i.e. the document of authorisation for the carriage of grain in bulk and grain stability booklet, to see whether the vessel complies with the stability requirements and it is structurally safe to load grain in bulk.

The Canadian Food Inspection Agency inspectors verify the compliance with the cleanliness and phytosanitary requirements.

Only after the vessel has passed the Minister of Transport/Port Warden and Canadian Food Inspection Agency inspections, it can tender NOR to the charterer's agent. The vessel's NOR must be accompanied by the Certificate of Readiness to Load issued by the Minister of Transport/Port Warden and the Ship Inspection Approval For Loading form (CFIA/ACIA 1281) issued by the Canadian Food Inspection Agency.

Upon the receipt of the vessel's NOR, Certificate of Readiness to Load and Ship Inspection Approval For Loading form (CFIA/ACIA 1281), the charterer's agent must file a berth application to the grain elevator operator for obtaining the permission to berth. Once the berth application is accepted by the grain elevator operator, the vessel is entered in the line-up of vessels waiting for their turn to be called at berth for loading.

Like in case of vessels presenting for loading grain in bulk at US ports, the vessels presenting for loading grain in bulk at Canadian ports must “*file*” the berth application accompanied by the NOR and the “*customarily required documents*” before the end of the contract delivery period.

Extension Of The Delivery Period

If the buyers' vessel fails to file a berth application and thereby, the buyers fail to present a vessel ready in all respects to load before the end of the delivery period, that is, before 16:00 hours of the last day of the contract delivery period, the buyers shall be deemed in breach of contract.

The NAEGA FOB Export Contract Form No. 2 does not give the buyers a right to request extension of the delivery period. The extension of the delivery period is subject to a subsequent agreement between the sellers and buyers as to the buyers' liability for the cargo carrying charges that will accrue from the day following the expiration of the original delivery period until the day that the full cargo is loaded (Bill of Lading date). The FOB buyers should ensure that there are provisions in charter party which give them the possibility to recover the cargo carrying charges paid to sellers

from the shipowners or require the shipowners to settle the cargo carrying charges directly with the shippers.

In a voyage charter party, the charterers will agree the extension of laycan subject to the shipowners' accepting the liability for the cargo carrying charges accrued after the laycan¹, but in a time charter party, in the absence of specific provisions the cargo carrying charges will be considered too remote to be recoverable.

In a charter party dispute brought to a tribunal of the London Maritime Arbitrators Association (LMAA)², a FOB buyer, who had to pay cargo carrying charges due to the vessel's failure to pass the inspection of hatch covers and holds within the contract delivery period, sought to recover the amount of carrying charges from the shipowners as damages for the breach of charter party. The LMAA tribunal rejected the claim on the grounds that there were no provisions in charter party referring to the liability for the cargo carrying charges in case of the vessel's failure to pass the inspection of hatch covers and holds and the shipowners could not reasonably have foreseen that additional storage charges were likely to be incurred.

The Clause 18 of the NAEGA FOB Export Contract No. 2 provides that if the sellers and buyers agree to extend the delivery period, then the buyers will have 35 calendar days from the last day of the original delivery period to present a vessel ready in all respects to load. If the buyers' vessel fails to file a berth application before 16:00 hours of the 35th calendar day following the last day of the original delivery period, the seller has three options:

- to continue to carry the commodity for the buyer's account and risk;
- to declare the buyer in default;
- to tender to buyer warehouse receipts for a quantity equal to the mean contract quantity, in exchange for which the buyer shall pay the FOB contract price plus the accrued carrying charges, but less the loading charges, weighing and inspection charges.

Seller's Timing Obligations And Commencement Of Laytime

The port operators schedule the grain shipments in function of the vessel's laycan and expected readiness date at the loading port. Therefore, the commencement of laytime will depend not only upon the time when the vessel is in all respects ready to load and tenders valid NOR, but also on whether the NOR is tendered within the laycan (delivery period) and after the expiry of the ETA pre-advice period, because the seller's timing obligations to provide a free berth and commence loading are set in function of the expected date of vessel readiness to load pre-advised by the buyer. The seller must have the goods ready for loading as from the vessel's expected readiness date originally notified by the buyer in the vessel's nomination notice and not sooner.

If the buyer's vessel tenders valid NOR within the laycan (delivery period) after the expiry of the ETA pre-advice period, the laytime shall commence to run at 07:00 hours on the next working day following the day of tendering valid NOR and filling the berth application³.

If the buyer's vessel arrives at loading port before the first layday, the seller/port operators will allow the vessel to tender NOR and file the berth application, but the seller/port operators shall not be obliged to commence loading before the first layday. In such case, the laytime shall start to count at 00:00 hours on the first layday (first working day of the laycan/delivery period), unless the seller manages to have the goods ready for loading before the first layday and agrees to load earlier in which case the time used for loading before 00:00 hours of the first layday shall count.

If the buyer's vessel arrives at loading port before the expiry of the ETA pre-advice period, the seller/port operators will allow the vessel to tender NOR and file the berth application, but the seller/port operators shall not be obliged to commence loading and the NOR shall not become

1 The grain traders using "NIPPONGRAIN" Charter Party form should pay attention to the Clause 12 (b) which provides that: *"The Owners shall not be responsible for any charges and/or expenses whatsoever incurred to the Charterers which may result from the Vessel's missing the cancelling date."*

2 See London Arbitration 12/03, (2003) 620 LMLN 2(2)

3 See Clause 1 of Addendum No.1 to NAEGA FOB Export Contract.

effective before the expiry of the ETA pre-advice period. In such case, the laytime shall start to count at 07:00 hours on the next working day following the expiry of the ETA pre-advice period, unless the seller manages to have the goods ready for loading earlier in which case the laytime shall commence to count from the time of commencement of loading.

The Laytime Implications Of The Vessel's Failure To Pass The Holds' Inspection

The vessel shall be considered physically ready to load when it is ready in every respect to receive grain in all compartments necessary for loading the quantity required to be loaded. The vessel's NOR shall not be effective and laytime shall not commence to run until all holds necessary for loading the quantity required to be loaded have passed the inspection.

After passing the holds' inspection and tendering the Notice of Readiness, the buyer's vessel must maintain a ready to load condition to retain her turn to loading.

Upon the vessel's berthing, the vessel's holds are re-inspected by the FGIS/CFIA surveyors. If the vessel fails the re-inspection at the loading berth, the laytime or the time on demurrage shall cease to count from the time the holds fail the re-inspection until the vessel passes⁴.

The usual reason why the vessels fail the re-inspection of holds at the berth is due to insects that entered into the holds after the initial inspection. Typically, the number of holds that fail the re-inspection is less than the number of holds required to be loaded. The NAEGA FOB Export Contract does not say how the time shall count in such case. The sale contracts incorporating the terms of NAEGA FOB Export Contract should stipulate that in the event that the number of holds that fail the re-inspection is less than the number of holds required to be loaded, the laytime shall be suspended pro rata for the rejected holds from the time they are rejected until they are re-passed. The rejection of two of the five holds required to be loaded would not normally affect the loading of the approved holds and thereby, the time counting in respect of those holds.

Time Counting In Case Of Multiple Loading Ports

Clause 6 of Addendum No.1 provides that if the first, second or subsequent ports have been nominated by the seller under the contract, the laytime for the second and/or subsequent port(s) shall commence to count upon the vessel's arrival at the respective ports, except when the vessel fails the holds' inspection at such ports, in which case the laytime shall cease to count until the holds pass the inspection.

Settlement Of Demurrage Claims

The contractual time limit for the settlement of demurrage claims is 40 days from the “*date of mailing of properly documented claim*”.

Contractual Implications Of The Force Majeure Declaration By The Seller

Clause 20 stipulates what happens if a specified force majeure event prevents or delays the seller to deliver the goods.

If a specified force majeure event prevents or delays the delivery of the goods, the seller must send notice to the buyer not later than 7 calendar days after the force majeure event occurs or not later than 2 business days after the first day of the contract delivery period, whichever occurs later. At the buyer's request, the seller shall also have to provide a certificate issued by NAEGA certifying the existence, validity and duration of the force majeure event.

If a specified force majeure event prevents or delays the delivery of the goods, the sale contract shall be suspended for the duration of the force majeure event⁵. Clause 20 does not provide for how long the sale contract can be suspended nor whether the buyers can cancel the sale contract if the force majeure event continues beyond a specified period.

⁴ See Clause 7 of Addendum No.1 to NAEGA FOB Export Contract.

⁵ The duration of the force majeure event is referred to as the “Cause Period”.

Clause 20 provides that if the force majeure event occurs before or during the contract delivery period and terminates during or after the contract delivery period, then the contract delivery period shall be deemed to be extended by a number of days equivalent to the period starting with the commencement of the force majeure event or the commencement of the delivery period, whichever is the later and ending with the termination of the causes and/or the resumption of work after the termination of the causes, whichever is later, but such additional period shall not exceed 30 days. The provisions of Clause 20 may also be invoked in situations where the buyer's vessel has filed the berth application during the contract delivery period but the force majeure event preventing or delaying the delivery of the goods occurs after the end of the contract delivery period. This means that if the buyer's vessel files the berth application before the end of the contract delivery period and is entered in the line-up of vessels waiting for their turn to be called at berth for loading, but the seller cannot commence loading or commences loading and then it has to suspend it due to the occurrence of a force majeure event after the end of the contract delivery period, the seller may invoke the provisions of Clause 20. In such case, if after the resumption of work, the buyer's vessel is not loaded in the order in which it filled the berth application but it is bypassed by other vessel(s) which have filed the berth application at a later date, the seller will have to pay damages to buyer at the charter party demurrage rate for the time lost by the buyer's vessel while waiting its turn to loading.

Clause 4 of Addendum 1 clarifies the issue of time counting during a force majeure event.

In the event that the buyer's vessel or the vessel's agent files the berth application within the contract delivery period and the seller declares force majeure before the expiry of the time allowed for loading, the time shall cease to count for the duration of the force majeure event (the Cause Period).

In the event that the buyer's vessel or the vessel's agent files the berth application within the contract delivery period and the seller declares force majeure after the expiry of the time allowed for loading, the demurrage shall continue to accrue notwithstanding the force majeure event.

In the event that the buyer's vessel fails to file the berth application within the contract delivery period and thereafter the seller declares force majeure, the time shall not count during the force majeure event (the Cause Period) even if the buyer's vessel manages to file the berth application during the force majeure event (the Cause Period). Furthermore, in such scenario, the buyer shall have to reimburse seller the carrying charges for the cargo accrued after the end of the contract delivery period.

Conclusive Inspection And Determination Of The Cargo's Quality And Condition

The quality and condition of the goods ascertained at the time and place of loading by the Federal Grain Inspection Service (FGIS) for the US grain shipments, respectively by the Canadian Grain Commission's inspectors for the Canadian grain shipments shall be final, that is, provided that the official inspection certificates evidence that the grain shipment is within the contract quality specifications, no claim can be made by the buyer for subsequent deterioration.

Weight Determination

The contract form does not state how the weight of cargo is to be ascertained and by whom.

At the US ports, the weighing of bulk grain shipments is made in the terminal elevator scales under the supervision of the Federal Grain Inspection Service. The weight figure determined ashore is verified by the vessel's draft surveys conducted by the National Cargo Bureau surveyors. The weight figure ascertained and certified at the time and place of loading by the Federal Grain Inspection Service shall be final.

At the Canadian ports, the weighing of bulk grain shipments is made in the terminal elevator scales under the supervision of the Canadian Grain Commission's inspectors. The weight figure ascertained and certified at the time and place of loading by the Canadian Grain Commission's inspectors shall be final.