

EXPLANATORY STATEMENT

Issued by Authority of the Deputy Prime Minister
and Minister for Agriculture and Water Resources
Export Control Act 1982 and Export Control (Orders) Regulations 1982

Export Control (Fees) Amendment (Tariff Rate Quotas) Order 2016.

Legislative Authority

Section 25 of the *Export Control Act 1982 (the Act)* relevantly provides that the Governor-General may make regulations empowering the Minister to make orders, not inconsistent with the regulations. Regulation 3 of the *Export Control (Orders) Regulations 1982* provides that the Minister may, by instrument in writing, make orders, not inconsistent with regulations made under the Act, with respect to any matter for or in relation to which provision may be made by regulations made under the Act.

Under subsection 33(3) of the *Acts Interpretation Act 1901*, where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Purpose

The purpose of the *Export Control (Fees) Order 2015* (the Order) is to prescribe fees, persons liable to pay fees or late fees, the time for payment of fees and exemptions from fees and to provide for related application and transitional provisions.

The Order gives effect to the new export services cost recovery fees developed as part of the Department of Agriculture and Water Resources' (the department) redesign of cost recovery arrangements.

The purpose of the *Export Control (Fees) Amendment (Tariff Rate Quotas) Order 2016* (the Amendment Order) is to amend the Order to prescribe additional fees for the issue of tariff rate quota certificates to be granted under orders made under the recently enacted section 23A of the *Export Control Act 1982*.

Background

Where export tariff rate quotas are established by trade agreements Australia seeks to manage the quotas in order to offer exporters the maximum concessions possible on agricultural products. For example, eight new quotas introduced under the Japan-Australia Economic Partnership Agreement saved exporters approximately \$3 million in tariffs in the period January to May 2015.

Australia administers quotas in a way that:

- minimises market distortion from quota administration
- minimises regulatory intervention and barriers to exporting
- optimises the commercial value and use of the quota
- ensures consistent, transparent and efficient administration

- considers commercial arrangements, and
- rewards market development.

The *Export Control Amendment (Quotas) Act 2015* (the Quotas Act), which received royal assent on 11 December 2015, enables the Secretary to make orders providing for, or in relation to, the establishment and administration of a system, or systems, of tariff rate quotas for the export of goods. Orders may be made to cover goods currently subject to quota regulation but could cover any other goods that quotas may apply to in the future. The Quotas Act complements the government's strategic approach for capturing premium markets outlined in the Agricultural Competitiveness White Paper and builds on the gains from recent free trade agreements with our major trading partners. The Quotas Act was passed after the Order was made.

The Amendment Order includes new fees which will apply to the future issue of tariff rate quota certificates under orders to be made under the new section 23A of the *Export Control Act 1982*. These fees were determined as part of the cost recovery review carried out in 2015 and are supported by financial modelling.

The Order, as amended by the Amendment Order, will operate alongside the legislative framework for cost recovery through charges where a service is provided directly to an individual or business or organisation. These charges are contained within the *Export Charges (Imposition—Customs) Act 2015* and the *Export Charges (Imposition—General) Act 2015*.

Impact and Effect

The Amendment Order brings quota certification fees in line with the broader cost recovery structures.

The impact and effect of the cost recovery changes were considered as part of the cost recovery review conducted in 2015. The fees reflect the relative costs associated with processing of an application with each type of certification requiring differing levels of intervention and effort. An electronic certificate requires the least direct intervention in the receipt, assessment and issuance of the certificate. A manual certificate requires manual intervention in the receipt, assessment and/or issuance of the certificate. A replacement certificate process is the most resource intensive and requires manual assessment on a case-by-case of why the original certificate has not been used and the action required to confirm, assess, and reproduce a quota certificate.

Consultation

The department consulted with stakeholders during the development of the redesigned cost recovery fees and charges. This included the department working with all export-related industry consultative committees and other clients and interested stakeholders through public engagement forums. The department released draft Cost Recovery Implementation Statements (CRISs) for public comment and provided opportunity for stakeholders to provide feedback through a submissions process.

Stakeholder feedback was taken into account and the final CRISs were certified by the Secretary of the department and endorsed by the Minister for Agriculture and Water Resources. The Minister for Finance agreed to release the final CRISs which are available on the department's website.

A Regulatory Impact Statement (RIS) was completed on the department's quarantine, imported food and export certification cost recovery redesign, (Office of Best Practice Regulation (OBPR) ID: 17726). OBPR assessed the RIS as best practice. A copy of the RIS is attached. For the subsequent changes included in this Amendment Order the department consulted with the OBPR and it was determined a RIS was not required, OBPR ID: 20350.

The Order is compatible with human rights and freedoms recognised or declared under section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*. A full statement of compatibility is set out in the Attachment.

The Order is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Details of the *Export Control (Fees) Amendment (Tariff Rate Quotas) Order 2016*.

Section 1 – Name

This section provides that the name of the Amendment Order is the *Export Control (Fees) Amendment (Tariff Rate Quotas) Order 2016*.

Section 2 – Commencement

This section provides for the Amendment Order to commence the day after it is registered.

Section 3 – Authority

This section provides that the Amendment Order is made under regulation 3 of the *Export Control (Orders) Regulations 1982*.

Section 4 – Schedules

This section provides that the Order is amended as set out in the schedule.

Schedule 1 – Amendments

Export Control (Fees) Order 2015

Item 1 Section 5 (Paragraph (a) of the definition of *export document*)

This item amends the definition of an export document in the Order to include a 'tariff rate quota certificate'.

Item 2 Section 5

This item inserts a definition of tariff rate quota certificate into the Order. A tariff rate quota certificate is defined as a certificate issued under an order made under section 23A of the *Export Control Act 1982*.

Item 3 At the end of subsection 6(1)

This item amends subsection 6(1) of the Order to provide that fees are imposed in connection with the performance of services by departmental authorised officers in relation to the export of goods in relation to which an application for a tariff rate quota certificate has been made.

Item 4 Section 10 (table item 5, column 1)

This item amends item 5 of the table to section 10 of the Order so that it provides for the fees for the issue of export documents for goods in relation to which a government certificate has been issued under section 8.02 or 8.05 of the *Export Control (Prescribed Goods–General) Order 2005*, with the exception of tariff rate quota certificates.

Item 5 Section 10 (after table item 5)

This item inserts a new item (5A) in the table to section 10 of the Order that provides for a fee for the issue of a tariff rate quota certificate for any product not covered by existing items 3 or 4 in the table. The fees will apply to non-prescribed goods tariff quota certificates as both meat and dairy products are already accounted for under table items 3 and 4.

The fees reflect the costs associated with processing of an application, with a manual application requiring extra time and input for the production of a quota certificate. Additionally, the replacement fee reflects the workload involved in confirming, assessing, and reproducing a quota certificate

Item 6 Section 10 (table item 6, column 1)

This item expands item 6 of the table to section 10 of the Order to provide that the fee for the provision of any consumable material used in performing a service referred to in the table is an amount equivalent to the cost of the consumable material. The inclusion of the word ‘any’ clarifies that only where consumable materials are used, will they be charged for.

Item 7 Section 10 (table item 6, column 1)

This item amends item 6 of the table to section 10 of the Order to provide that the fee for the provision of consumable materials applies to items 1-5A in the table, allowing for new item 5A included in this Amendment Order.

Item 8 Section 10 (before the note)

This item inserts an additional note to section 10 of the Order that provides for the explanation that tariff rate quota certificate charges for meat and milk products are already accounted for in the table.

Item 9 Section 10 (note)

This item changes the numbering of the note to section 10 of the Order to allow for the inclusion of an additional note.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Export Control (Fees) Amendment (Tariff Rate Quotas) Order 2016

This Legislative Instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Legislative Instrument

The purpose of the *Export Control (Fees) Order 2015* (the Order) is to prescribe fees, persons liable to pay fees or late fees, the time for payment of fees and exemptions from fees and to provide for related application and transitional provisions.

The Order gives effect to the new export services cost recovery fees developed as part of the Department of Agriculture and Water Resources' redesign of cost recovery arrangements.

The purpose of the *Export Control (Fees) Amendment (Tariff Rate Quotas) Order 2016* is to amend the Order to prescribe additional fees for the issue of tariff rate quota certificates to be granted under orders made under the recently enacted section 23A of the *Export Control Act 1982*.

Human rights implications

This Legislative Instrument does not engage any of the applicable rights or freedoms.

Conclusion

This Legislative Instrument is compatible with human rights as it does not raise any human rights issues.

The Hon. Barnaby Joyce MP
Deputy Prime Minister and Minister for Agriculture and Water Resources