

## **EXPLANATORY STATEMENT**

### *Export Control Act 1982*

### *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019*

#### **Legislative Authority**

Section 23A of the *Export Control Act 1982* (the Export Control Act) provides the Secretary of the Department of Agriculture (the Department) with the capacity to create 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. Subsection 23A(2) relevantly provides that the orders may make provision for, or in relation to the surrender, transfer, variation, and cancellation of tariff rate quota entitlements.

#### **Purpose**

The purpose of the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019* (Order) is to set out the administrative arrangements for the fair and equitable allocation of, and access to, the European Union (EU) sheepmeat and goatmeat quotas. The quotas permit Australian exporters to export stipulated volumes of sheepmeat and goatmeat to the EU.

#### **Background**

The EU allows Australia to ship quantities of sheepmeat and goatmeat to EU member countries each calendar year (1 January to 31 December) at reduced tariff rates under country-specific quotas.

Australia manages the quotas on a cost-recovery basis. The aim of the quota allocation is to optimise the value of the quotas for the collective benefit of the Australian sheepmeat and goatmeat industries.

#### **Impact and Effect**

The Order provides for administrative arrangements to ensure fair and equitable access by quota users to the EU market. The impact of the Order is minimal and provides for improved administrative arrangements as set out in the Export Tariff Rate Quota Regulatory Streamlining Regulation Impact Statement.

#### **Consultation**

Before making the instrument, the Department completed the Export Tariff Rate Quota Regulatory Streamlining Regulation Impact Statement (RIS) (OBPR ID 20651), which included consultation with meat industry representatives through the Australian Meat Industry Council Quota Committee, and with affected exporters not represented by the Committee. The RIS was endorsed by OBPR and approved by the Minister for Agriculture on 28 June 2018.

## **Details/ Operation**

Details of the Order are set out in Attachment A.

## **Other**

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

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

*Details of the Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019*

**Part 1—Preliminary**

Section 1 - Name

This section provides that the name of the Order is the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019* (Order).

Section 2 - Commencement

This section provides that sections 1 to 41 of the Order commence the day after this instrument is registered. Schedule 1 commences on 1 January 2020.

Section 3 - Authority

This section provides that the Order is made under section 23A of the *Export Control Act 1982*.

Section 4 - Schedules

This section provides that each instrument specified in the Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

Section 5 - Purpose of this instrument

This section provides the scope of the Order as relating to the establishment and administration of a system of tariff rate quotas for the export from Australia of eligible meat to the EU under the Australian tariff rate quota and eligible meat under the erga omnes tariff rate quota. The two different quota systems reflect that the Department is responsible for managing access to the Australian tariff rate quota, whereas the Department is only responsible for issuing tariff rate quota certificates for the erga omnes tariff rate quota (erga omnes being Latin for ‘towards all’ and in the context of tariff rate quotas, denotes tariff rate quotas that can be accessed by any nation meeting any requirements of the tariff rate quota).

Section 6 – Definitions

This section provides definitions of terms used throughout the Order.

***access amount*** for a quota year means the total carcase equivalent weight of eligible meat that may be exported from Australia to a member country of the EU in the quota year under the Australian tariff rate quota.

**approved form** for making an application or giving a notice means a form approved by the Secretary under subsection 35(2) for making that kind of application or giving that kind of notice.

**approved manner** for making an application or giving a notice means a manner approved by the Secretary under subsection 35(1) for making that kind of application or giving that kind of notice.

**Australian tariff rate quota** means the annual Union import tariff quota for CN code 0204 that is specified for Australia in the Annex to the Commission Implementing Regulation (EU) No 1354/2011, as in force from time to time.

Note: The Regulation could in 2019 be viewed on the EUR-Lex website (<https://eur-lex.europa.eu>).

Paragraph 25(5)(aba) of the Export Control Act permits an order made under that Act to apply, adopt or incorporate any matter contained in any instrument or writing that:

- sets out, or provides a method for calculating, the tariff rate quota for the importation of goods into a country; and
- is made by the authority or body in that country responsible for regulating the importation of goods into that country;

as in force at a particular time or as in force from time to time.

Here, the relevant European Commission Regulation (No 1354/2011) sets out tariff rate quotas for the importation of goods into EU countries and so would meet the requirements of subparagraph (i). In relation to the ‘authority in that country’, the EU has ‘exclusive competence’ over customs, including the setting of uniform customs tariffs for importation of goods into member states, which means that members states cannot (as a general rule) legislate or regulate these matters. In this context, given that the regulation of tariff rate quotas for the importation of goods into an EU country is done by the EU and its institutions, the relevant EU body (in this case the Commission) is regarded as meeting the description in subparagraph (ii).

**balance** means the balance of an exporter’s tariff rate quota entitlement, as set out in section 6.

**carcase equivalent weight** means:

- (a) for bone-in eligible meat—its weight; or
- (b) for boneless mutton—its weight divided by 0.55; or
- (c) for boneless goatmeat—its weight divided by 0.55; or
- (d) for boneless lamb—its weight divided by 0.6.

**consignment** means a single shipment (by sea or air) of eligible meat by an exporter to a single consignee.

**eligible meat** means fresh, chilled or frozen mutton, lamb or goatmeat, but does not include:

- (a) edible offal; or
- (b) canned or processed meat; or
- (c) product for ships’ stores; or
- (d) a product for which a tariff rate quota certificate is not required by the EU.

**entitlement-based amount** refers to the definition as set out in paragraph 20(5)(a) regarding issuing tariff rate quota certificates.

***erga omnes tariff rate quota*** means the annual Union import tariff quota for CN code 0204 that is referred to as *erga omnes* in the Annex to the Commission Implementing Regulation (EU) No 1354/2011, as in force from time to time. This tariff rate quota is managed by the EU and is accessible on a first come, first served basis on arrival of an export consignment in the EU.

Note: The Regulation could in 2019 be viewed on the EUR-Lex website (<https://eur-lex.europa.eu>).

Paragraph 25(5)(aba) of the Export Control Act permits an order made under that Act to apply, adopt or incorporate any matter contained in any instrument or writing that:

- sets out, or provides a method for calculating, the tariff rate quota for the importation of goods into a country; and
- is made by the authority or body in that country responsible for regulating the importation of goods into that country;

as in force at a particular time or as in force from time to time.

Here, the relevant European Commission Regulation (No 1354/2011) sets out tariff rate quotas for the importation of goods into EU countries and so would meet the requirements of subparagraph (i). In relation to the ‘authority in that country’, the EU has ‘exclusive competence’ over customs, including the setting of uniform customs tariffs for importation of goods into member states, which means that member states cannot (as a general rule) legislate or regulate these matters. In this context, given that the regulation of tariff rate quotas for the importation of goods into an EU country is done by the EU and its institutions, the relevant EU body (in this case the Commission) is regarded as meeting the description in subparagraph (ii).

***EU*** means the European Union and includes the United Kingdom during any UK withdrawal transition period (defined below).

***EU-accredited establishment*** means an establishment that:

- (a) is under the full-time inspection and supervision of the Department; and
- (b) is registered under the *Export Control Act 1982*; and
- (c) has been accredited by AUS-MEAT Limited (ACN 082 528 881), and the Department, for the export of meat to the EU.

***exporter*** means the holder of a meat export licence issued under section 10 of the *Australian Meat and Live-stock Industry Act 1997* allowing the holder to export sheepmeat or goatmeat to the EU.

***penalty amount***: refers to the definition as set out in subsection 11(4).

***performance period*** for a quota year means the period of 12 months ending on the 31 October before the quota year begins.

***quota year*** means a calendar year beginning on or after 1 January 2020.

***relevant liability*** means:

- (a) a fee imposed under the *Export Control (Fees) Order 2015* that is due and payable; or
- (b) a charge prescribed by the *Export Charges (Imposition—Customs) Regulation 2015* that is due and payable; or

(c) a charge prescribed by the *Export Charges (Imposition—General) Regulation 2015* that is due and payable.

**tariff rate quota certificate** means a certificate issued under section 19 (tariff rate quota certificates before additional allocations), 20 (tariff rate quota certificates after additional allocations) or 28 (tariff rate quota certificates for erga omnes tariff rate quota).

**UK withdrawal transition period** means the period (if any) when transitional arrangements agreed between the United Kingdom and the European Union relating to trade are in force following the withdrawal of the United Kingdom from the European Union (colloquially referred to as ‘Brexit’).

**uncommitted access amount:** refers to the definition as set out in subsection 20(6).

## **Part 2 - Australian tariff rate quota**

### **Division 1 - Introduction**

#### Section 7 - Purpose of this part

Section 7 provides for a system of tariff rate quotas for the export from Australia to the EU of eligible meat under the Australian tariff rate quota (defined in section 6).

### **Division 2 - Tariff rate quota entitlement**

#### Section 8 - Tariff rate quota entitlement

Section 8 provides for how a tariff rate quota entitlement balance, at a time in a quota year, is calculated.

Section 8 provides that the balance of an exporter’s tariff rate quota entitlement, at a time in a quota year, is the total at that time of the amounts of tariff rate quota entitlement allocated or transferred to the exporter in relation to the quota year under sections 10 (initial allocation), section 13 (transfers) and section 17 (additional allocation), reduced by the following:

- amounts of tariff rate quota entitlement transferred by the exporter under section 13;
- amounts of the exporter’s tariff rate quota entitlement cancelled under section 14, 15, 16 or 18 in the quota year;
- amounts stated in certificate issued to the exporter under section 19 in the quota year;
- entitlement-based amounts stated in certificates issued to the exporter under section 20 in the quota year.

Note 1 to section 8 provides that the definition of entitlement-based amount is specified in paragraph 20(5)(a). Note 2 to section 8 provides that where a certificate is cancelled under section 23(4) any amount mentioned in paragraphs 3(d) and 3(e) is disregarded. The effect of annotations of certificates is set out in section 24.

## Section 9 - Application for tariff rate quota entitlement

Section 9 provides for how an application for a tariff rate quota entitlement is made to the Secretary.

Subsection 9(1) provides that the Secretary (or delegate) may invite exporters to apply to the Secretary (or delegate) to be allocated an amount of tariff rate quota entitlement under subsection 10(1) for a quota year.

Subsection 9(2) provides that if the Secretary does make an invitation under subsection 9(1), an exporter may apply to the Secretary to be allocated an amount of tariff rate quota entitlement under subsection 10(1) in accordance with the invitation. If the invitation imposes a deadline for applications, the application must be made before the deadline.

Subsection 9(3) provides that the application must be:

- made in the approved manner (if any) and approved form (if any), or if neither apply, then made in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

## Section 10 - Initial allocation

Section 10 provides for how the initial allocation of tariff rate quota entitlement is determined by the Secretary (or delegate) using the method statement in subsection 10(1) and when the Secretary (or delegate) must notify the applicants.

Subsection 10(1) provides that the Secretary (or delegate) must determine the amount of tariff rate quota entitlement to be allocated to each applicant that applied under section 8 for the quota year, using the method statement.

The inputs and formula set out in section 12 are prescriptive and as a result there is no discretion to the calculations. This ensures a consistent result every time the calculations are made. As applicants can view the legislation, they can be aware of the exact process to calculate the entitlements, ensuring transparency.

- Under step 1 of the method statement (using the formula in section 12), the resultant calculation is based on each exporters' quota exports and accredited exports (explained in section 12) to produce proportional allocations. Using previous export history is deemed the most effective way of determining the amount of quota an exporter is likely to be able to use while avoiding discretionary decision making methods.
- The reduction of penalties and redistribution of quota under steps 2 and 3 are designed to deliver the policy intent of deterring behaviours that impede optimal quota use, and rewarding those exporters who have operated within the rules.
- The use of a minimum allocation (applying to steps 4 and 5) is to avoid allocating commercially unviable amounts. A standard single shipment of sheepmeat or goatmeat is 12,000 kg.
- The necessity of rounding (in step 6) is to allocate to the nearest kilogram, without exceeding the access amount for the tariff rate quota.

Subsection 10(2) provides that the Secretary (or delegate) must give each applicant a written notice stating whether the applicant is allocated an amount of tariff rate quota entitlement under this section for the quota year and if so, the amount of the initial allocation.

### Section 11 - Penalty amount

Section 11 provides for a process of determining whether a penalty should be applied to an applicant's initial allocation of tariff rate quota entitlement under section 10, and if so, what the amount should be. The purpose of the penalty is to incentivise exporter's to return quota amounts that they will not use, to increase the chance of quota being available to other exporters in a position to use it.

Subsection 11(1) provides that for the purposes of step 2 of the method statement in subsection 10(1), an applicant is subject to a penalty for a quota year if the applicant's certified exports as worked out under subsection 11(2) are less than 90% of the applicant's annual entitlement as worked out under subsection 11(3).

Subsection 11(2) provides that the applicant's certified exports are the amounts stated in any certificates issued to the applicant under section 19, and the entitlement-based amounts stated in any certificates issued to the applicant under section 20, in the previous quota year before 30 November. This subsection includes a note to clarify that the amount stated in a certificate is disregarded if the certificate is cancelled, as stipulated in subsection 23(4). It also clarifies that the annotation of certificates in accordance with section 24 may also have an effect.

Subsection 11(3) provides that the applicant's annual entitlement is the total of the amounts of tariff rate quota entitlement allocated or transferred to the applicant under section 10 (allocations), section 13 (transfers) and section 17 (additional allocation) in relation to the previous quota year, reduced by the total of:

- any amounts of tariff rate quota entitlement transferred by the applicant under section 13 in the previous quota year, and
- amounts of the applicant's tariff rate quota entitlement cancelled under section 14, 15 or 16 in the previous quota year.

Subsection 11(4) provides that the applicant's penalty amount is half of the amount by which the applicant's annual entitlement exceeds the applicant's certified exports. For example, where an applicant's certified exports were less than 90% of their annual entitlement, and the applicant's annual entitlement exceeds their certified exports by 100 tonnes, the penalty amount would be 50 tonnes.

### Section 12 - Formula for working out initial allocation

Section 12 sets out the formula used in the method statement for calculating the initial allocation of an exporter's tariff rate quota entitlement.

For the purposes of the method statement in subsection 10(1), the formula is the following:

$$0.8 \times AA \times \frac{\text{Applicant's quota exports}}{\text{Total quota exports}} + 0.2 \times AA \times \frac{\text{Applicant's accredited exports}}{\text{Total accredited exports}}$$



where:

*AA* means the access amount for the quota year.

***applicant's accredited exports*** means the carcase equivalent weight of all the applicant's exports of eligible meat from an EU-accredited establishment to any foreign country in the performance period for the quota year, including amounts exported by another exporter in the performance period that have been transferred to the applicant under section 25.

***applicant's quota exports*** means the total of the amounts stated in certificates issued to the applicant under section 19 or 20 in the performance period for the quota year. The note to this definition provides that the amount stated in a certificate that has been cancelled is disregarded (see subsection 23(4)), and to see also section 24 for the effect of annotations of certificates.

***total accredited exports*** means the carcase equivalent weight of all quota applicants' exports of eligible meat from an EU-accredited establishment to any foreign country in the performance period for the quota year, including amounts exported by another exporter in the performance period that have been transferred to an applicant under section 25.

***total quota exports*** means the total amount of the *applicant's quota exports* for all quota applicants; that is the combined total across all quota applicants.

The greater part of entitlements are allocated based on in-quota exports (0.8, or 80 per cent, of the access amount based on *applicant's quota exports*). This reflects that previous recent quota usage is the best indicator for determining how to allocate.

The remaining 20 per cent of the access amount is allocated based on *applicant's accredited exports*. This is designed to provide a pathway for exporters (commonly referred to as new entrants) to access the tariff rate quota market. New entrants need to first demonstrate that they are genuine exporters by exporting to non-quota markets; this needs to be through EU-accredited establishments to demonstrate that the exporter can meet the standards set by the EU market. This export history can then contribute towards the 20 per cent element of the calculation in order to gain an entitlement.

The formula is also designed to provide an incentive to exporters maintaining EU-accreditation of establishments (which assists in expanding exporters' options for exports) and to diversify their exports to other markets. This represents an industry recognition that the Australian tariff rate quota is relatively small and there is a benefit to the wider Australian industry to exporters maintaining multiple markets.

### Section 13 - Transfer of tariff rate quota entitlement

Subsection 13(1) provides that if, at any time before 1 November in a quota year, the balance of an exporter's tariff rate quota entitlement is greater than zero, the exporter (being the transferor) may transfer all or part of the balance to another exporter (being the transferee).

Subsection 13(2) provides that the transferor must give the Secretary (or delegate) a notice setting out the transferor's name, the name of the transferee and the amount transferred.

Subsection 13(3) provides that a notice given under subsection 13(2) must be:

- given in the approved manner (if any) and approved form (if any), or if neither apply, then given in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

The policy intent in allowing transfers is to recognise that an allocation process at the start of a quota year is extremely unlikely to optimise distribution perfectly. Transfers provide a mechanism to allow tariff rate quota entitlements to adjust to meet exporter needs; that is, an exporter who does not require as much as they were allocated can transfer to an exporter that requires more to meet their export needs.

Transfers are not permitted on or after 1 November to ensure the reclaim and reallocation processes (detailed in sections 15 to 17) are not undermined. If transfers were still allowed after that time it would not provide the needed incentive to return amounts of entitlement an exporter is not in a position to use.

#### Section 14 - Return of tariff rate quota entitlement before 1 November

Subsection 14(1) provides that if, at any time before 1 November in a quota year, the balance of an exporter's tariff rate quota entitlement is greater than zero, the exporter may return all or part of the balance by giving the Secretary (or delegate) notice of the amount to be returned.

Subsection 14(2) provides that a notice given under subsection 14(1) must be:

- given in the approved manner (if any) and approved form (if any), or if neither apply, then given in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

Subsection 14(3) provides that the amount stated in the notice given in subsection 14(1) is cancelled at the time the notice is given.

This subsection includes a note which provides that any amount cancelled under this section may be allocated to other exporters after 1 November as provided in section 17.

#### Section 15 - Notice about tariff rate quota entitlement before 1 November

Subsection 15(1) provides that an exporter must, before 1 November in a quota year, give the Secretary (or delegate) a notice under this section if either or both of the following apply:

- the balance of the exporter's tariff rate quota entitlement will be greater than zero on that day;
- the balance of the exporter's tariff rate quota entitlement was greater than zero at any time in the quota year and the exporter wants to apply for an additional amount of tariff rate quota entitlement.

Paragraph 15(1)(b) has the effect of ensuring only exporters who have been given an initial allocation of tariff rate quota in the quota year can apply for an additional allocation, so they are prioritised. Other exporters may apply for tariff rate quota certificates after additional

allocations under section 20 if there is an uncommitted access amount following additional allocations under section 17.

Subsection 15(2) provides that the notice given in subsection 15(1) must, if paragraph 15(1)(a) applies, state how the exporter intends to deal with the balance and if the exporter wants to return all or part of the balance, state the amount to be returned, and if paragraph 15(1)(b) applies, state the amount the exporter is applying for.

Subsection 15(3) provides that any amount stated in the notice for the purposes of subparagraph 15(2)(a)(ii) is cancelled at the time the notice is given.

This subsection includes a note which provides that any amount cancelled under this section may be allocated to other exporters after 1 November as provided in section 17.

Subsection 15(4) provides that a notice given under subsection 15(1) must be:

- given in the approved manner (if any) and approved form (if any), or if neither apply, then given in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

#### Section 16 - Cancellation of tariff rate quota entitlement for failure to give notice

Section 16 provides that if, under paragraph 15(1)(a), an exporter is required to give a notice before 1 November in a quota year and does not do so, the balance of the exporter's tariff rate quota entitlement as at the end of 31 October is, at that time, cancelled.

This section includes a note which provides that any amount cancelled under this section may be allocated to other exporters after 1 November as provided in section 17.

#### Section 17 - Additional allocations after 1 November

Section 17 provides for how the additional allocation of tariff rate quota entitlement is determined by the Secretary (or delegate) using the method statement in subsection 17(1) and when the Secretary (or delegate) must notify the applicants.

Subsection 17(1) provides that the Secretary (or delegate) must, as soon as practicable after 1 November in a quota year, determine the additional amount of tariff rate quota entitlement to be allocated to each applicant under paragraph 15(2)(b) as follows:

- if the total amount of tariff rate quota entitlements cancelled in the quota year under sections 14, 15 and 16 (being the *cancelled amount*) exceeds the total of the amounts applied for under paragraph 15(2)(b)—allocate each applicant the amount applied for.
- otherwise—allocate each applicant the amount worked out using the method statement that follows & subsection 17(1).

The method statement provides a process to proportionally allocate the cancelled amount based on the same export parameters as used to determine initial allocations.

- In this instance, however, applicants are limited to the amount of quota they applied for; the intent with this process is to only allocate as much quota to an applicant as they are able to use, given the proximity to the end of the quota year.

- The formula in section 12 is applied, but the *cancelled amount* replaces references to AA in the formula, and only those exporters who applied under paragraph 15(2)(b) are considered applicants for the purpose of the calculations. This has the effect of proportionally allocating the available amount between the applicants.
- If any applicant reaches their request amount, they are removed from any further calculations and any additional quota amount that would have been allocated to them remains unallocated. If there is still an unallocated *cancelled amount* and applicants who have not received their request amount, the calculation is repeated.
- This cycle is repeated until there is no unallocated quota remaining (note this is the final outcome, as otherwise section 17(1)(a) would have applied).
- As for section 10 calculations, it is necessary to round the allocations to the nearest kilogram, without exceeding the access amount for the tariff rate quota.

Subsection 17(2) provides that the Secretary (or delegate) must give each applicant a written notice stating whether the applicant is allocated an amount under this section for the quota year and if so, the amount allocated.

### Section 18 - Return of tariff rate quota entitlement on or after 1 November

Subsection 18(1) provides that if, at any time on or after 1 November in a quota year, the balance of an exporter's tariff rate quota entitlement is greater than zero, the exporter may return all or part of the balance by giving the Secretary (or delegate) notice of the amount to be returned.

Subsection 18(2) provides that a notice given under subsection 18(1) must be:

- given in the approved manner (if any) and approved form (if any), or if neither apply, then given in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

Subsection 18(3) provides that the amount stated in the notice is cancelled at the time the notice is given.

The note to this subsection provides that any amounts cancelled under this section form part of the uncommitted access amount for which certificates may be issued under section 20. However, they do not reduce the applicant's annual entitlement for the purposes of working out a penalty amount under section 11.

This section provides a pathway for exporters to return unneeded tariff rate quota but does not incentivise retaining or applying for additional tariff rate quota under section 15 if they are not in a position to use it. The policy intent is to incentivise exporters to return unneeded amounts of tariff rate quota entitlement before the additional allocation process in section 17, to increase the chance of quota being available to exporters in a position to use it. Returning tariff rate quota close to the end of the quota year does not provide a legitimate opportunity for other exporters to use it, so should not be rewarded.

### **Division 3 - Tariff rate quota certificates**

#### Section 19 - Tariff rate quota certificates before additional allocations

Subsection 19(1) provides that at any time before the Secretary (or delegate) allocates amounts under section 17 in relation to a quota year (additional allocations after 1 November), an exporter may apply to the Secretary (or delegate) for a tariff rate quota certificate for the export from Australia to a member country of the EU of a consignment of eligible meat in the quota year under the Australian tariff rate quota.

The note to this subsection provides that the application in this subsection must be made in accordance with section 21.

Subsection 19(2) provides that, subject to subsection 19(4), the Secretary (or delegate) must issue the applicant a tariff rate quota certificate in relation to the consignment if, at the time the Secretary (or delegate) deals with the application, the balance of the applicant's tariff rate quota entitlement for the quota year is greater than zero.

Subsection 19(3) provides that the certificate issued under subsection 19(2) must be issued for the carcase equivalent weight of the consignment or if that weight is greater than the balance of the tariff rate quota entitlement, that balance.

This provision ensures that an exporter's use of quota cannot exceed their entitlement which contributes to ensuring that, overall, the access amount of the Australian tariff rate quota cannot be exceeded.

Subsection 19(4) provides that the Secretary (or delegate) may decide not to issue a tariff rate quota certificate to the applicant if the Secretary (or delegate) considers that it is not appropriate to issue the certificate, taking into account;

- any failure by the applicant to comply with a request under subsection 33(3) (relating to audits) in the quota year or a previous quota year,
- a failure of the applicant to hold any licence required under a law of the Commonwealth to export the goods,
- any relevant liability in relation to a tariff rate quota certificate or the export of eligible meat that has not been paid by the applicant (including if the applicant is jointly liable with another person or other persons),
- whether the applicant's business as an exporter of eligible meat is not financially viable or is not likely to remain so, and
- whether it would not be in the best interests of the eligible meat industry for the certificate to be issued.

Subsection 19(5) provides that a tariff rate quota certificate issued under this section in relation to the export of a consignment of eligible meat in a quota year has no effect before the start of the quota year to which the certificate relates and ceases to have effect if the consignment is not accepted for entry into the EU before the end of the quota year.

This provision ensures that a tariff rate quota certificate issued for a particular quota year cannot be used in any other quota year, ensuring the access amount of the Australian tariff rate quota cannot inadvertently be exceeded in a subsequent quota year.

## Section 20 - Tariff rate quota certificates after additional allocations

Subsection 20(1) provides that at any time after the Secretary (or delegate) allocates amounts under section 17 in relation to a quota year (additional allocations after 1 November), an exporter may apply to the Secretary (or delegate) for a tariff rate quota certificate for the export from Australia to a member country of the EU of a consignment of eligible meat in the quota year under the Australian tariff rate quota.

The note to this subsection provides that the application must be made in accordance with section 21.

Subsection 20(2) provides that the Secretary (or delegate) must deal with applications under this section in the order in which the applications are received.

Subsection 20(3) provides that subject to subsection 20(6), the Secretary (or delegate) must issue the applicant a tariff rate quota certificate in relation to the consignment if, at the time the Secretary (or delegate) deals with the application, either or both of the following apply:

- the balance of the applicant's tariff rate quota entitlement is greater than zero;
- there is an uncommitted access amount (see subsection 20(6)).

Subsection 20(4) provides that the certificate issued under subsection 20(3) must be issued for the carcase equivalent weight of the consignment or if that weight is greater than the total of the balance of the applicant's tariff rate quota entitlement and the uncommitted access amount, that total.

This provision ensures that an exporter's use of Australian tariff rate quota after additional allocations cannot exceed the balance of their tariff rate quota entitlement or the overall uncommitted access amount of the tariff rate quota.

Subsection 20(5) provides that if a certificate is issued to an applicant under this section, the applicant's tariff rate quota entitlement is reduced by the lower of:

- the amount stated in the certificate, and
- the amount that was the balance of the applicant's tariff rate quota entitlement just before the certificate was issued.

Any remaining amount reduces the uncommitted access amount.

Subsection 20(6) provides that the *uncommitted access amount*, at a time in a quota year, is the total of the amount (if any) that remained unallocated after the Secretary (or delegate) allocated amounts under section 17 and any amounts cancelled under section 18 in the quota year, reduced in accordance with paragraph 20(5)(b).

Subsection 20(7) provides that the Secretary (or delegate) may decide not to issue a tariff rate quota certificate to an applicant if the Secretary (or delegate) considers that it is not appropriate to issue the certificate, taking into account;

- any failure by the applicant to comply with a request under subsection 33(3) (relating to audits) in the quota year or a previous quota year,
- a failure of the applicant to hold any licence required under a law of the Commonwealth to export the goods,

- any relevant liability in relation to a tariff rate quota certificate or the export of eligible meat that has not been paid by the applicant (including if the applicant is jointly liable with another person or other persons),
- whether the applicant's business as an exporter of eligible meat is not financially viable or is not likely to remain so, and
- whether it would not be in the best interests of the eligible meat industry for the certificate to be issued.

Subsection 20(8) provides that a tariff rate quota certificate issued under this section in relation to the export of a consignment of eligible meat in a quota year ceases to have effect if the consignment is not accepted for entry into the EU before the end of the quota year.

This provision ensures that a tariff rate quota certificate issued for a particular quota year cannot be used in any other quota year, ensuring the access amount of the Australian tariff rate quota cannot inadvertently be exceeded in a subsequent quota year.

### Section 21 - Requirements for applications under section 19 or 20

Subsection 21(1) provides that section 21 applies in relation to an application under section 19 or 20 in relation to a consignment of eligible meat.

Subsection 21(2) provides that an application under section 19 or 20 must not be made more than 3 weeks before the applicant intends the consignment to leave Australia. This is particularly relevant to where an uncommitted access amount is available, and is intended to prevent attempts to 'reserve' amounts of quota through extremely early applications.

Subsection 21(3) provides that an application made under section 19 or 20 must be:

- made in the approved manner (if any) and approved form (if any), or if neither apply, then made in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

The note to this subsection provides that a person may commit an offence or be liable to a civil penalty if the person makes a false or misleading statement in an application or provides false or misleading information or documents (see sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

Subsection 21(4) provides that the Secretary (or delegate) may accept any information or document previously given to the Secretary (or delegate) in connection with an application made under this instrument as satisfying any requirement to give that information or document under subsection 21(3).

Subsection 21(5) provides that an application is taken not to have been made if the application does not comply with subsection 21(3). This is important with regard to section 20(2) as this means that an incomplete application does not reserve a place in the order for which applications are to be dealt with.

Subsection 21(6) provides that the Secretary (or delegate) may request further information from the applicant that is relevant to the application.

Subsection 21(7) provides that any further information in relation to the application (whether or not provided in response to a request under subsection 21(6)) must be given to the Secretary (or delegate).

Subsection 21(8) provides that an application is taken to be received by the Secretary (or delegate) when all of any information or documents required by the Secretary (or delegate) to accompany the application have been received, and if further information is requested under subsection 21(6) in relation to the application, that further information is received.

Subsection 21(9) provides that a person who has made an application under 21(3) may withdraw the application at any time before the Secretary (or delegate) makes a decision on the application.

#### Section 22 - Recording issue of tariff rate quota certificate

Section 22 provides that if the Secretary (or delegate) issues a tariff rate quota certificate to a person under this instrument, the Secretary (or delegate) must make an entry reflecting the issue of the certificate in an electronic system maintained by the Department and either send the certificate to the person or notify the person of the issue of the certificate.

#### Section 23 - Cancellation of tariff rate quota certificate

##### *Cancellation on request*

Subsection 23(1) provides that the Secretary (or delegate) must cancel a tariff rate quota certificate issued to a person under section 19 or 20 for the export of a consignment of eligible meat to the EU in a quota year if

- the certificate has not been accepted by the EU, and
- the person requests the Secretary (or delegate) in writing to cancel the certificate, and
- if hard copies of the certificate were issued, the person also gives the Secretary (or delegate) either all the hard copies of the certificate or a declaration, in any form the Secretary (or delegate) requires, accompanied by any evidence the Secretary (or delegate) requires, about why the copies cannot be given.

##### *Cancellation on the Secretary's own initiative*

Subsection 23(2) provides that the Secretary (or delegate) may cancel a tariff rate quota certificate issued to a person under section 19 or 20 for the export of a consignment of eligible meat to the EU in a quota year if the certificate has not been accepted by the EU and any of the following apply:

- the certificate is incorrect in any respect;
- the consignment does not leave Australia within 6 weeks after the certificate was issued;
- the person has failed to comply with a request under subsection 33(3) in the quota year or a previous quota year;
- the person does not hold, or ceases to hold, any licence required under a law of the Commonwealth to export the goods;



- a relevant liability in relation to a tariff rate quota certificate for the export of eligible meat has not been paid by the person (including if the person is jointly liable with another person or other persons);
- the person's business as an exporter of eligible meat is not financially viable or is not likely to remain so;
- the Secretary (or delegate) considers that it would not be in the best interests of the eligible meat industry for the person to continue to hold the certificate;
- the quota year for which the certificate was issued has ended.

#### *Notice and recording of cancellation*

Subsection 23(3) provides that if a tariff rate quota certificate is cancelled under this section, the Secretary (or delegate) must record the cancellation in an electronic system maintained by the Department and for a cancellation under subsection 23(2), notify the person to whom the certificate was issued, in writing, of the cancellation.

#### *Effect of cancellation*

Subsection 23(4) provides that subject to Part 4 (review of decisions), a tariff rate quota certificate that is cancelled under this section is taken never to have been issued.

### **Division 4 - Miscellaneous**

#### Section 24 - Annotation of tariff rate quota certificate

Subsection 24(1) provides that if

- an appropriate EU authority annotates a tariff rate quota certificate to show that the weight of the consignment to which the certificate relates is less than the weight stated in the certificate, and
- the exporter to whom the certificate was issued gives the Secretary (or delegate) a copy of the annotated certificate (before the time required by subsections 24(2) or 24(3) if applicable),

then the amount stated in the certificate is taken to be the amount as affected by the annotation.

Subsection 24(2) provides that for the purposes of subsection 11(2), the exporter must give the Secretary the copy of the annotated certificate before the next 30 November after the certificate was issued.

Subsection 24(3) provides that for the purposes of the definition of *applicant's quota exports* in section 12, the exporter must give the Secretary the copy of the annotated certificate before the 30 November that occurs immediately after the end of the performance period mentioned in that definition.

Subsection 24(4) provides that an annotation of a certificate that was issued under section 20 affects the applicant's entitlement-based amount (if any) before it affects the uncommitted access amount.

This section ensures that, where consideration in section 8 is given to volumes stated in certificates, the difference due to annotation is corrected and the exporter's tariff rate quota entitlement (as defined in section 8) will reflect this.

However, subsections 24(2) and (3) ensure that calculations made using *applicant's quota exports* in the formula in section 12 cannot be deemed incorrect retrospectively; that is, the *applicant's quota exports* were accurate at the time of calculation, and so subsequent annotations do not necessitate a reconsideration.

#### Section 25 - Transfer of export records

Section 25 provides a process for exporters to transfer credit of export records to another exporter. This influences an exporter's accredited exports, as defined in section 12, which affects the calculation of entitlements.

Subsection 25(1) provides that an exporter may, by notice given to the Secretary (or delegate) before the end of the 7 November after the end of the performance period for a quota year, transfer to another exporter all or part of the carcase equivalent weight of the person's exports of eligible meat from an EU-accredited establishment in the performance period, other than exports under the Australian tariff rate quota. The note to this subsection provides that transfers are taken into account in working out the transferee's accredited exports, and total accredited exports, for the quota year as outlined in section 12.

Subsection 25(2) provides that the notice provided under subsection 25(1) must state the name of the person transferring the weight, the transferee's name and the carcase equivalent weight, in kilograms, to be transferred.

Subsection 25(3) provides that a notice given under subsection 25(1) must be:

- given in the approved manner (if any) and approved form (if any), or if neither apply, then given in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

#### Section 26 - Errors in export records

Subsection 26(1) provides that the Secretary (or delegate) may correct an error in a record of an exporter's exports (whether the error is notified by the exporter under subsection 26(2) or otherwise). If the Secretary (or delegate) does correct an error in a record, the Secretary (or delegate) must notify the exporter of the correction.

Subsection 26(2) provides that if an exporter thinks that a record of its exports given to the exporter by the Secretary (or delegate) contains an error, the exporter must give the Secretary notice of the error within 30 days after receiving the record.

Subsection 26(3) provides that a notice given under subsection 26(2) must be:

- given in the approved manner (if any) and approved form (if any), or if neither apply, then given in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

## **Part 3 - Erga omnes tariff rate quota**

### Section 27 - Purpose of this Part

This part provides for a system of tariff rate quotas for the export from Australia to a member country of the EU of eligible meat under the erga omnes tariff rate quota. The erga omnes tariff rate quota is managed by the EU and is available to countries eligible under the World Trade Organization's most favoured nation (MFN) arrangements. A tariff rate quota certificate issued by the Australian Government is required for an exporter to access the erga omnes tariff rate quota on arrival of the consignment in the EU. As the Australian Government does not manage the erga omnes tariff rate quota, issuing a certificate does not guarantee entry at the more favourable tariff rate.

### Section 28 - Tariff rate quota certificates for erga omnes tariff rate quota

Subsection 28(1) provides that an exporter may apply to the Secretary (or delegate) for a tariff rate quota certificate for the export from Australia to the EU of a consignment of eligible meat in the quota year under the erga omnes tariff rate quota.

Subsection 28(2) provides that the application must not be made more than 3 months before the start of the quota year.

Subsection 28(3) provides that an application made under subsection 28(1) must be:

- made in the approved manner (if any) and approved form (if any), or if neither apply, then made in writing; and
- accompanied by any information or documents required by the Secretary (or delegate).

Subsection 28(4) provides that if an exporter applies under subsection 28(1) for a tariff rate quota certificate, the Secretary (or delegate) may issue the tariff rate quota certificate to the exporter.

Subsection 28(5) provides that if the Secretary (or delegate) decides not to issue the tariff rate quota certificate to the exporter, the Secretary (or delegate) must give the exporter a written notice that sets out the terms of the decision, the reasons for the decision and particulars of the exporter's right to have the decision reviewed under Part 4.

Subsection 28(6) provides that a tariff rate quota certificate issued under this section in relation to the export of a consignment of eligible meat in a quota year has no effect before the start of the quota year and ceases to have effect if the consignment is not accepted for entry into a member country of the EU before the end of the quota year.

## **Part 4 - Review of decisions**

### Section 29 - Application for reconsideration by Secretary of decision

Subsection 29(1) provides that if a decision is made to refuse to issue a tariff rate quota certificate under section 19 or 20 on a ground mentioned in subsection 19(4) or 20(7), the

applicant for the certificate may apply to the Secretary (or delegate) to have the decision reconsidered.

Subsection 29(2) provides that if a decision is made to cancel a tariff rate quota certificate under subsection 23(2) (cancellation on the Secretary's own initiative), the person to whom the certificate was issued may apply to the Secretary (or delegate) to have the decision reconsidered.

Subsection 29(3) provides that if a decision is made under subsection 28(5) to refuse to issue a tariff rate quota certificate under subsection 28(1), the applicant for the certificate may apply to the Secretary (or delegate) to have the decision reconsidered.

Subsection 29(4) provides that an application to have a decision reconsidered must be made in writing, set out the reasons for the application and be lodged with the Secretary (or delegate) within 28 days after the day the decision first came to the notice of the applicant, or within any further period the Secretary (or delegate) allows.

### Section 30 - Secretary to reconsider decision

Subsection 30(1) provides that on receipt of an application under section 29 for reconsideration of a decision, the Secretary (or delegate) must reconsider the decision and, subject to section 32, may decide to affirm, vary or set aside the decision, and if the Secretary (or delegate) decides to set aside the decision, make any decision that the person who made the decision could have made.

Subsection 30(2) provides that a decision set aside by the Secretary (or delegate) ceases to have effect.

Subsection 30(3) provides that a decision made by the Secretary (or delegate) under this section takes effect on the day specified in the decision or if a day is not specified, on the day the decision was made.

Subsection 30(4) provides that the Secretary (or delegate) must give the applicant written notice of the Secretary's decision under this section within 45 days after the day the application for reconsideration was received.

Subsection 30(5) provides that the notice given under subsection 30(4) must set out the reasons for the Secretary's (or delegates) decision.

### Section 31 - Review by Administrative Appeals Tribunal

This section provides that applications for review of decisions of the Secretary made under section 30 can be made to the Administrative Appeals Tribunal.

### Section 32 - Reconsidering and reviewing decisions

Subsection 32(1) provides that for the purposes of reconsidering or reviewing a decision to refuse to issue a tariff rate quota certificate under section 20 on a ground mentioned in subsection 20(7), references in section 20 to the uncommitted access amount at a time are

taken to be references to the uncommitted access amount (if any) at the time of the reconsideration or review.

This provision ensures that a decision to issue a tariff rate quota certificate can only be made on reconsideration if there is an uncommitted access amount as defined in section 8 at the time of the reconsideration decision, so that the access amount of the tariff rate quota cannot be exceeded.

Subsection 32(2) provides that for the purposes of reconsidering or reviewing a decision to cancel a certificate under section 23(2), references in sections 19 and 20 to the balance of the applicant's tariff rate quota entitlement are taken to be references to the balance at the time of the reconsideration or review. This ensures that a different decision can only be made if sufficient tariff rate quota entitlement is available, so that the access amount of the tariff rate quota cannot be exceeded.

## **Part 5 - Miscellaneous**

### Section 33 – Audits

Subsection 33(1) provides that the Secretary (or delegate) may require an audit to be carried out in relation to a tariff rate quota certificate issued to a person or all tariff rate quota certificates issued to a person during a specified period.

Subsection 33(2) provides that an audit must be carried out by an auditor approved in writing by the Secretary.

Subsection 33(3) provides that a person who is carrying out an audit in relation to one or more tariff rate quota certificates issued to a person may request the person to do either or both of the following:

- produce any documents, records or things that the auditor is satisfied are relevant to the audit;
- provide the auditor with all reasonable facilities and assistance for the effective carrying out of the audit.

The Secretary may require an audit to be carried out to verify that the products for which tariff rate quota certificates were issued met all requirements to be considered as eligible products for the tariff rate quota.

### Section 34 - Decisions made by computer

Subsection 34(1) provides that the Secretary may arrange for the use, under the Secretary's control, of computer programs for making decisions under this instrument.

Subsection 34(2) provides that the Secretary must take all reasonable steps to ensure that decisions made by the operation of a computer program under an arrangement made under subsection 34(1) are correct.

Subsection 34(3) provides that a decision made by the operation of a computer program under an arrangement made under subsection 34(1) is taken to be a decision made by the Secretary.

Subsection 34(4) provides that the Secretary may make a decision in substitution for a decision taken to have been made by the Secretary under subsection 34(3) if the Secretary is satisfied that the decision made by the operation of the computer program is incorrect.

This section provides the Department with the ability to use computer systems where suitable, providing efficiencies while ensuring all decisions are properly made.

#### Section 35 - Approved manner and form

Subsection 35(1) provides that the Secretary (or delegate) may, in writing, approve a manner for making applications or giving notices under this instrument.

Subsection 35(2) provides that the Secretary (or delegate) may, in writing, approve a form for making applications or giving notices under this instrument.

### **Part 6 - Application and transitional provisions**

#### Section 36 – Definitions

This section provides that **old Order** means the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2016*.

#### Section 37 – Application of this instrument

Subsection 37(1) provides that this instrument applies in relation to the quota year starting on 1 January 2020 and later years.

Subsection 37(2) provides that for the purposes of the allocation of tariff rate quota entitlements for the quota year starting on 1 January 2020:

- this instrument applies; and
- sections 8, 9 and 10 of the old Order do not apply.

#### Section 38 – Determining initial allocation for 2020 quota year

Subsection 38(1) provides that this section applies for the purposes of determining amounts of tariff rate quota entitlement to be allocated under subsection 10(1) for the quota year starting on 1 January 2020.

Subsection 38(2) provides that in using the method statement in subsection 10(1) (calculating allocations):

- disregard steps 2 and 3 and any references to the step 2 amount, and
- in step 4, treat the reference to step 3 as a reference to step 1; and

- in step 5, treat the references to the step 3 amount as a reference to the step 1 amount, and
- disregard paragraph (a) of step 7.

This provision ensures penalties are not considered for the 2020 quota year allocations, but allocations can still be calculated correctly. Penalties are not considered for the 2020 quota year as they were not part of the previous ruleset under which exporters were operating during 2019. Given that penalties are calculated based on the previous quota years' usage (being 2019 in this case), it would not be appropriate to apply them.

Subsection 38(3) provides that in using the formula in section 12:

- references to amounts exported by another exporter in the performance period for the quota year that have been transferred under section 25 are taken to include references to amounts exported by another exporter in the 12 month period ending 31 October 2019 and transferred under section 18 of the old Order, and
- references to certificates issued under section 19 or 20 in the performance period for the quota year are taken to include references to certificates issued under section 15 or 16 of the old Order in the 12 month period ending on 31 October 2019.

This provision ensures that exporters are credited with the correct performance records for calculating initial allocations of tariff rate quota entitlements.

#### Section 39 - Record of exports given before 1 January 2020

Subsection 39(1) provides that the section applies if an exporter was given a record of the exporter's exports under section 26 of the old Order before 1 January 2020 and immediately before that day, the 30 day period referred to in that section has not ended.

Subsection 39(2) provides that the record is taken, on and after 1 January 2020, to be a record given to the exporter under section 26 of this instrument on the day the record was given to the exporter under section 26 of the old Order. This ensure that an exporter can still provide the Secretary (or delegate) a notice under section 26(1).

#### Section 40 – Determining initial allocation for 2021 quota year

Subsection 40(1) provides that the section applies for the purposes of determining amounts of tariff rate quota entitlement to be allocated under subsection 10(1) for the quota year starting on 1 January 2021.

Subsection 40(2) provides that in using the formula in section 12, references to certificates issued under section 19 or 20 in the performance period for the quota year are taken to include references to certificates issued under section 15 or 16 of the old Order in the period starting 1 November 2019 and ending on 31 December 2019.

This provision ensures that exporters are credited with the correct performance records for calculating initial allocations of tariff rate quota entitlements in 2021.

#### Section 41 - Repeal of this part

This part is repealed at the start of 1 January 2021.

## **Schedule 1 - Repeals**

This schedule provides that the whole of the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2016* is repealed.



## **ATTACHMENT B**

### **Statement of Compatibility with Human Rights**

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

*Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas)  
Order 2019*

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 (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019* is to set out the administrative arrangements for the fair and equitable allocation of, and access to, the European Union (EU) sheepmeat and goatmeat quotas.

#### **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.

**Debbie Langford  
Assistant Secretary  
Residues and Food Branch  
Exports Division  
Department of Agriculture**