

EXPLANATORY STATEMENT

Export Control Act 1982

Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Amendment (Brexit Transition Period) Order 2020

Legislative Authority

Section 23A of the *Export Control Act 1982* (the Act) provides the Secretary of the Department of Agriculture, Water and the Environment (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.

The power to make the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Amendment (Brexit Transition Period) Order 2020* (the Amendment Order) was delegated by the Secretary under section 19 of the Act on 24 September 2020 to the Assistant Secretary responsible for quota administration.

Purpose

The purpose of the Amendment Order is to amend the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2019* (the Order). The Amendment Order adjusts the tariff rate quota (TRQ) administration in the Order to cater for the United Kingdom (UK) ending its Brexit transition period on 31 December 2020 and the consequential requirement to create separate TRQs for each of the European Union (EU) and the UK for sheepmeat and goatmeat, and makes other consequential amendments.

Background

The Australian Government manages the sheepmeat and goatmeat TRQs for the EU. As part of certain World Trade Organization arrangements, Australia is responsible for managing access to the TRQs, including issuing certification so that Australian exports can enter under more favourable tariff rates. As a result of the UK ending its transition from the EU with effect from 31 December 2020, Australia's TRQs relating to the EU have been split between the EU and UK in line with the volumes stipulated by the EU and the UK (for the EU refer to <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32019R0216>; for the UK refer to https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762822/UKs_Goods_Schedule_at_the_WTO.pdf).

Impact and Effect

The Amendment Order enables the department to administer the newly split EU and UK TRQs separately, including transitional arrangements to adjust how entitlements are calculated in the 2021 quota year immediately following the split, and allows the department to issue quota certificates for the respective TRQs.

Consultation

Before making the instrument, the department consulted with the meat industry representatives through the Quota Consultation Committee of the Australian Meat Industry Council, and with affected exporters not represented by the committee, on the process by which exporters' TRQ entitlements would be calculated in the first quota year of the new EU and UK TRQs. The consultation commenced in February 2019 and concluded in June 2020.

There are no changes in relation to all other elements of the TRQ management. The Office of Best Practice Regulation (OBPR) confirmed that a Regulation Impact Statement is not required (OBPR ID: 25108)

Details of the Amendment Order are set out in [Attachment A](#).

The Amendment 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 [Attachment B](#).

The Amendment 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) Amendment (Brexit Transition Period) Order 2020*

Part 1—Preliminary

Section 1 – Name

This section provides that the name of the Amendment Order is the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Amendment (Brexit Transition Period) Order 2020*.

Section 2 – Commencement

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

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 the Order is amended the day after the instrument is registered.

Schedule 1 – Amendments

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

Item 1 – Section 1

Item 1 omits “*(Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas)*” from section 1 and substitutes “*(Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom)*”, providing a new name for the Order that reflects that there are now separate quotas for the European Union (EU) and the United Kingdom (UK).

Item 2 - Section 5 - Purpose of this instrument

Item 2 repeals section 5 and substitutes a new purpose, providing that the instrument provides for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of sheepmeat and goatmeat to the EU and UK. The revised purpose reflects that the instrument now administers separate quotas for the EU and the UK.

Item 3 – Section 6 (definition of access amount)

Item 3 repeals the definition of ‘access amount’ and substitutes a new definition that provides that access amount means:

- a) for the EU and a quota year—the total carcase equivalent weight of eligible meat for the EU that may, under the import tariff quota for CN code 0204 that is specified for Australia in the Annex to Commission Implementing Regulation (EU) No 1354/2011, be exported from Australia to the EU in the quota year at a reduced tariff rate; or
- b) for the UK and a quota year—15,349,000 kilograms.

The definition includes a note that the Regulation mentioned in paragraph (a) could in 2020 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:

- i. sets out, or provides a method for calculating, the tariff rate quota for the importation of goods into a country; and
- ii. 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).

The tariff rate for particular products can be checked through the EU customs website:

https://ec.europa.eu/taxation_customs/dds2/taric/taric_consultation.jsp?Lang=en

Paragraph (a) of the definition references the EU regulation as the access amount for the EU will differ between the current 2020 quota year and future quota years. The EU will amend its regulation to reference to new quota volume following the split which makes it appropriate to reference the regulation. Paragraph (b) references the specific volume for the UK, reflecting that the UK has confirmed the volume of the tariff rate quota for 2021 onwards but has not yet made its regulations. The volume can be viewed on the UK government website:

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/762822/UKs_Goods_Schedule_at_the_WTO.pdf

The new definition consolidates the definitions of ‘access amount’ and ‘Australian tariff rate quota’ (repealed in item 4) into a single definition, and provides explanation of how the access amount is determined for each, the EU and UK quotas; the definition regarding the EU is substantially the same as the repealed definitions.

Item 4 – Section 6 (definition of Australian tariff rate quota)

Item 4 repeals the definition of ‘Australian tariff rate quota’. This is a consequential amendment to adjust the definition of ‘access amount’ to be applicable to both quota destinations. The definition of ‘Australian tariff rate quota’ was specific to the EU so has been moved to paragraph (a) of the ‘access amount’ definition.

Item 5 – Section 6 (paragraph (a) of the definition of carcase equivalent weight)

Item 5 omits “eligible” from the definition of ‘carcase equivalent weight’. As all uses of ‘carcase equivalent weight’ in the instrument are with reference to eligible meat, it is not necessary to include reference to “eligible” meat in the definition.

Item 6 – Section 6 (definition of consignment)

Item 6 omits “eligible meat” from the definition of ‘consignment’. As all uses of ‘consignment’ in the instrument being are reference to eligible meat, it is not necessary to also include “eligible meat” in the definition of ‘consignment’.

Item 7 – Section 6 (definition of eligible meat)

Item 7 inserts “for a quota destination” after “eligible meat” to make clear that the definition of ‘eligible meat’ is being changed to be destination-specific. This change is necessary to allow both the EU and the UK quotas to operate within the same set of administrative rules.

Item 8 – Section 6 (paragraph (d) of the definition of eligible meat)

Item 8 omits “EU” and substitutes in “quota destination” in paragraph (d) of the definition of ‘eligible meat’ to make clear that, in conjunction with the amendment in item 7, the definition of ‘eligible meat’ is being changed to be destination-specific. This change is necessary to allow both the EU and the UK quotas to operate within the same set of administrative rules.

Item 9 – Section 6 (definition of EU)

Item 9 omits “during any UK withdrawal transition period” and substitutes in “in relation to the quota year starting on 1 January 2020” for the definition of ‘EU’. This ensures the instrument can operate correctly during the remainder of the 2020 quota year, in which the UK will remain considered part of the EU for the purposes of the tariff rate quota. This also ensures the UK will not be considered part of the EU for the 2021 quota year onwards, aligning with the fact that the UK transition from the EU ends on 31 December 2020, and so the EU and UK quotas can correctly operate separately from 1 January 2021.

Item 10 – Section 6 (definition of exporter)

Item 10 omits “to the EU” from the definition of ‘exporter’ so the definition is not destination-specific and so can apply for either the EU or UK quotas. The meat export licence specifies the type of meat the holder can export – it does not stipulate destinations.

Item 11 – Section 6

Item 11 inserts a definition of ‘quota destination’ to mean the EU or the UK. This ensures rules referencing a quota destination can appropriately be applied to either the EU or the UK.

The item inserts a definition of ‘UK’ to mean the United Kingdom.

Item 12 – Section 6 (definition of UK withdrawal transition period)

Item 12 repeals the definition of ‘UK withdrawal transition period’. This is a consequential amendment to the removal of the term under item 9.

Item 13 – Part 2 (heading)

Item 13 repeals the heading of part 2 and substitutes ‘Part 2 – Use of access amounts’. This reflects that the definition of ‘Australian tariff rate quota’ has been removed from the instrument as part of the consolidation of the definition under ‘access amount’, specified in item 3.

Item 14 – Section 7

Item 14 omits all words after “the export” in section 7 and substitutes in “of eligible meat to a quota destination within the access amount for the quota destination and a quota year”. This amends section 7 to reflect that the purpose of Part 2 has changed to now cater for more than one tariff rate quota and destination.

Item 15 – Section 8

Item 15 inserts “for a quota destination” after “exporter’s tariff rate quota entitlement” in section 8 to ensure the section can apply to either the EU or UK quota.

Item 16 – Section 8

Item 16 omits “allocated or transferred to the exporter in relation to the quota year” from section 8 and substitutes in “for the quota destination and quota year allocated or transferred to the exporter” to ensure the section can apply to either the EU or UK quota.

Item 17 – Paragraph 8(a)

Item 17 inserts “for the quota destination and quota year” after “entitlement” in paragraph 8(a) to ensure the paragraph can apply to either the EU or UK quota.

Item 18 – Paragraph 8(b)

Item 18 repeals paragraph 8(b) and substitutes in “(b) amounts of the exporter’s tariff rate quota entitlement for the quota destination and quota year cancelled under section 14,15,16 or 18;”. This ensures the paragraph can apply to either the EU or UK quota.

Item 19 – Paragraphs 8(c) and (d)

Item 19 omits “in the quota year” from paragraphs 8(c) and (d) and substitutes in “for the quota destination and quota year” to ensure the paragraphs can apply to either the EU or UK quota.

Item 20 – Subsection 9(1)

Item 20 omits “under subsection 10(1) for a quota year” from subsection 9(1) and substitutes in “for a quota destination and a quota year under subsection 10(1)” to ensure the subsection can apply to either the EU or UK quota.

Item 21 – Subsection 9(2)

Item 21 inserts “for the quota destination and quota year” after “entitlement” in subsection 9(2) to ensure the subsection can apply to either the EU or UK quota.

Item 22 – Subsection 10(1)

Item 22 omits “to be allocated to each applicant under section 9 for a quota year” from subsection 10(1) and substitutes in “for a quota destination and a quota year to be allocated to each applicant under section 9” to ensure the subsection can apply to either the EU or UK quota.

Item 23 – Subsection 10(1) (method statement, step 2)

Item 23 inserts “quota destination and” after “for the” in step 2 of the method statement to ensure the method can apply to either the EU or UK quota.

Item 24 – Subsection 10(1) (method statement, paragraph (b) of step 4)

Item 24 inserts “quota destination and” after “for the” in paragraph (b) of step 4 of the method statement to ensure the method can apply to either the EU or UK quota.

Item 25 – Subsection 10(1) (method statement, step 6)

Item 25 inserts “quota destination and” after “for the” in step 6 of the method statement to ensure the method can apply to either the EU or UK quota.

Item 26 – Paragraph 10(2)(a)

Item 26 omits “under this section for the quota year” from paragraph 10(2)(a) and substitutes in “for the quota destination and quota year under this section” to ensure the written notice must be provided for both the EU and UK quotas.

Item 27 – Section 11

Item 27 repeals section 11 and substitutes a new section that is substantially the same as the repealed section, except that it contains the necessary references to the quota destination to allow the penalty amounts to be calculated for either the EU or UK quotas.

The item states that for the penalty amount:

- 1) For the purposes of step 2 of the method statement in subsection 10(1), an applicant is subject to a penalty for a quota destination and a quota year if the applicant’s certified exports for the quota destination and the previous quota year (as worked out under

subsection (2)) are less than 90% of the applicant's annual entitlement for the quota destination and the previous quota year (as worked out under subsection (3)).

- 2) The applicant's certified exports for the quota destination and the previous quota year are the sum of:
 - a) the amounts stated in certificates (if any) issued to the applicant under section 19, before the end of 30 November in the previous quota year, for export of consignments to the quota destination in the previous quota year; and
 - b) the entitlement-based amounts stated in certificates (if any) issued to the applicant under section 20, before the end of 30 November in the previous quota year, for export of consignments to the quota destination in the previous quota year.The note to subsection 11(2) provides that the amount stated in a certificate is disregarded if the certificate is cancelled (see subsection 23(4)). See also section 24 for the effect of annotations of certificates.
- 3) The applicant's annual entitlement for the quota destination and the previous quota year is the total of the amounts of tariff rate quota entitlement for the quota destination and previous quota year allocated or transferred to the applicant under sections 10, 13 and 17, reduced by the sum of:
 - a) amounts (if any) of tariff rate quota entitlement for the quota destination and the previous quota year transferred by the applicant under section 13; and
 - b) amounts (if any) of the applicant's tariff rate quota entitlement for the quota destination and the previous quota year cancelled under section 14, 15 or 16.
- 4) If the applicant is subject to a penalty, the applicant's penalty amount for the quota destination and the quota year is half the amount by which the applicant's annual entitlement for the quota destination and the previous quota year exceeds the applicant's certified exports for the quota destination and the previous quota year.

Item 28 – Section 12 (definition of AA)

Item 28 inserts “the quota destination and” after “access amount for” in the definition of ‘AA’ in section 12 to ensure the formula in section 12 can be applied to either the EU or UK quota.

Item 29 – Section 12 (definition of applicant's accredited exports)

Item 29 inserts “for the quota destination” after “eligible meat” in the definition of ‘applicant's accredited exports’ in section 12 to ensure the formula in section 12 can be applied to either the EU or UK quota. The reference to EU-accredited establishments remains applicable to the UK.

Item 30 – Section 12 (at the end of the definition of applicant's quota exports)

Item 30 adds “for export of consignments to the quota destination” to the end of the definition of ‘applicant's quota exports’ in section 12 to ensure the formula in section 12 can be applied to either the EU or UK quota.

Item 31 – Section 12 (definition of total accredited exports)

Item 31 inserts “for the quota destination” after “eligible meat” in the definition of ‘total accredited exports’ in section 12 to ensure the formula in section 12 can be applied to either

the EU or UK quota. The reference to EU-accredited establishments remains applicable to the UK.

Item 32 – Section 13 (at the end of the heading)

Item 32 adds “before 1 November” at the end of the heading to section 13. This creates consistency across the headings for sections 13, 14 and 15.

Item 33 – Subsections 13(1) and 14(1)

Item 33 inserts “for a quota destination and the quota year” after “entitlement” for subsections 13(1) and 14(1). This ensures transfers arrangements (section 13) and return of entitlement arrangements (section 14) can be accessed by exporters for either the EU or UK quota as required.

Item 34 – Paragraph 15(1)(a)

Item 34 inserts “for a quota destination and the quota year” after “entitlement” for paragraph 15(1)(a) to ensure that exporters must provide the Secretary a notice under subsection 15(1) in relation to whichever quota destinations apply to them with regard to paragraph 15(1)(a) (the EU, the UK, or both).

Item 35 – Paragraph 15(1)(b)

Item 35 repeals paragraph 15(1)(b) and substitutes a paragraph that is substantially the same as the repealed paragraph, except that it contains the necessary references to allow the paragraph to apply to either the EU or UK quota as required.

The paragraph states that an exporter must, before 1 November in a quota year, give the Secretary a notice if the balance of the exporter’s tariff rate quota entitlement for a quota destination and the quota year 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 for the quota destination and quota year.

This ensures that exporters can apply for an additional entitlement for any quota destinations for which they had an entitlement during the quota year. Equally, it means that if they held an entitlement for one quota destination, but not the other, they could not apply for an entitlement for the other quota destination.

Item 36 – Section 16

Item 36 inserts “in relation to the balance of the exporter’s tariff rate quota entitlement for a quota destination and the quota year” after “in a quota year” in section 16. This ensure that the section can be applied to entitlements for a quota destination, should the circumstance be applicable to an exporter.

Item 37 – Section 16

Item 37 inserts “for the quota destination and quota year” after “entitlement” in section 16 to ensure that the section can cancel an entitlement for the quota destination if the circumstance in item 36 were applicable.

Item 38 – Subsection 17(1)

Item 38 inserts “for a quota destination and the quota year” after “entitlement” in subsection 17(1) to ensure the Secretary can determine additional entitlement for either of the quota destinations.

Item 39 – Paragraph 17(1)(a)

Item 39 omits “cancelled in the quota year” from paragraph 17(1)(a) and substitutes in “for the quota destination and quota year cancelled” to ensure the paragraph is applicable to either quota destination.

Item 40 – Paragraph 17(2)(a)

Item 40 omits “under this section for the quota year” from paragraph 17(2)(a) and substitutes in “for the quota destination and quota year under this section” to ensure the written notice must be provided for whichever quota destination is applicable.

Item 41 – Subsection 18(1)

Item 41 inserts “for a quota destination and the quota year” after “entitlement” in subsection 18(1) to ensure that exporters are able to return entitlement for either the EU or UK quotas.

Item 42 – Subsection 19(1)

Item 42 repeals subsection 19(1) and substitutes a subsection that is substantially the same as the repealed subsection, except that it contains the necessary references to allow an exporter to apply for a tariff rate quota certificate for either quota destination.

The subsection states that at any time before the Secretary allocates amounts under section 17 in relation to a quota destination and a quota year (additional allocations after 1 November), an exporter may apply to the Secretary for a tariff rate quota certificate for the export of a consignment of eligible meat to the quota destination in the quota year within the access amount for the quota destination and the quota year.

The purpose of the provision is to set out the considerations for whether to issue a tariff rate quota certificate prior to additional allocations being made under section 17, as compared to the considerations under section 20 (tariff rate quota certificates after additional allocations).

Item 43 – Subsection 19(2)

Item 43 inserts “the quota destination and” after “entitlement for” in subsection 19(2) to ensure the Secretary gives consideration to the entitlement relevant to the quota destination for which the certificate is being applied for.

Item 44 – Paragraph 19(4)(b)

Item 44 omits “goods” in paragraph 19(4)(b) and substitutes in “consignment” to align the terminology used in the paragraph with that of subsection 19(1).

Item 45 – Subsection 19(5)

Item 45 inserts “to a quota destination” after “eligible meat” in subsection 19(5) to ensure the period of effect of certificates applies to either quota destination.

Item 46 – Paragraph 19(5)(b)

Item 46 omits “EU” from paragraph 19(5)(b) and substitutes “quota destination” to ensure the time at which a certificate ceases to have effect can be applied to the relevant quota destination.

Item 47 – Subsection 20(1)

Item 47 repeals subsection 20(1) and substitutes a subsection that is substantially the same as the repealed subsection, except that it contains the necessary references to allow an exporter to apply for a tariff rate quota certificate for either quota destination.

The subsection states that at any time between when the Secretary allocates amounts under section 17 in relation to a quota destination and a quota year (additional allocations after 1 November) and the end of the quota year, an exporter may apply to the Secretary for a tariff rate quota certificate for the export of a consignment of eligible meat to the quota destination in the quota year within the access amount for the quota destination and the quota year.

The purpose of the provision is to set out the considerations for whether to issue a tariff rate quota certificate after additional allocations have been made under section 17, as compared to the considerations under section 19 (tariff rate quota certificates before additional allocations).

Item 48 – Subsection 20(3)

Item 48 omits “to subsection (6)” in subsection 20(3) and substitutes “to subsection (7)” to correct an error in referencing the wrong subsection.

Item 49 – Paragraph 20(3)(a)

Item 49 inserts “for the quota destination and quota year” after “entitlement” in paragraph 20(3)(a) to ensure the paragraph can be applied to either the EU or UK quota.

Item 50 – Paragraph 20(3)(b)

Item 50 inserts “for the quota destination and quota year” after “amount” in paragraph 20(3)(b) to ensure the paragraph can be applied to either the EU or UK quota.

Item 51 – Subsection 20(6)

Item 51 repeals subsection 20(6) and substitutes a subsection that is substantially the same as the repealed subsection, except that it contains the necessary references to ensure the amounts considered in determining the uncommitted access amount are for the relevant quota destination and quota year.

The subsection states that the uncommitted access amount, for a quota destination and a quota year at a particular time, is the sum of:

- a) the amount (if any) that remained unallocated after the Secretary allocated amounts for the quota destination and quota year under section 17; and
- b) any amounts of tariff rate quota entitlement for the quota destination and quota year cancelled under section 18 before that time;

reduced in accordance with paragraph 20(5)(b) for certificates issued to applicants under this section before that time.

Item 52 – Paragraph 20(7)(b)

Item 52 omits “goods” in paragraph 20(7)(b) and substitutes “consignment” to align the terminology used in the paragraph with that of subsection 20(1).

Item 53 – Subsection 20(8)

Item 53 inserts “to a quota destination” after “eligible meat” in subsection 20(8) to ensure the period of effect of certificates applies to either quota destination.

Item 54 – Subsection 20(8)

Item 54 omits “EU” from paragraph 20(8) and substitutes “quota destination” to ensure the time at which a certificate ceases to have effect can be applied to the relevant quota destination.

Item 55 – Subsection 21(1)

Item 55 omits “of eligible meat” from subsection 21(1) to simplify the subsection. Due to all applications under sections 19 and 20 already needing to be in relation to a consignment of ‘eligible meat’, it is not necessary to include the reference in this subsection.

Item 56 – Subsection 23(1)

Item 56 omits “EU” from paragraph 23(1) and substitutes “to a quota destination” to ensure the cancellation can be applied to certificates for either the EU or UK quota.

Item 57 – Paragraph 23(1)(a)

Item 57 omits “EU” from paragraph 23(1)(a) and substitutes “quota destination” to ensure the paragraph can apply to either quota destination.

Item 58 – Subsection 23(2)

Item 58 omits “to the EU” from subsection 23(2) and substitutes “to a quota destination” to ensure the cancellation process may be applied to certificates for either the EU or UK quota.

Item 59 – Paragraph 23(2)(a)

Item 59 omits “EU” from paragraph 23(2)(a) and substitutes “quota destination” to ensure the paragraph can apply to either quota destination.

Item 60 – Subparagraph 23(2)(b)(iv)

Item 60 omits “goods” from subparagraph 23(2)(b)(iv) and substitutes “consignment” to align the terminology used in the subparagraph with that of sections 19 and 20.

Item 61 – Paragraph 24(1)(a)

Item 61 omits “an appropriate EU authority annotates a tariff rate quota certificate” from paragraph 24(1)(a) and substitutes “a quota destination authority annotates a tariff rate quota certificate for export of a consignment to the quota destination”. This ensure the paragraph can be applied for either the EU or UK quotas.

Item 62 – Subsection 24(4)

Item 62 repeals subsection 24(4) and substitutes a subsection that is substantially the same as the repealed subsection, except that it contains the necessary references to ensure the amounts considered are for the relevant quota destination and quota year.

The item states that an annotation of a certificate issued under section 20 affects the applicant’s entitlement-based amount (if any) for the quota destination and quota year before it affects the uncommitted access amount for the quota destination and quota year.

Item 63 – Subsection 25(1)

Item 63 omits “eligible meat” from subsection 25(1) and substitutes “mutton, lamb or goatmeat”. This is a consequential amendment to the change in definition of ‘eligible meat’ which is now destination specific. In conjunction with the amendment under item 64 it ensures the intent of the section in determining what records are eligible for transfer is maintained. The reference to EU-accredited establishments remains applicable to the UK

Item 64 – At the end of subsection 25(1)

Item 64 omits “under the Australian tariff rate quota” from the end of subsection 25(1) and substitutes “for which a certificate was issued under section 19 or 20”. This is a consequential amendment to the change to repeal the definition of ‘Australian tariff rate quota’. By referencing certificates issued under section 19 or 20 this ensures the exception is able to apply to both the EU or UK quotas.

Item 65 – Subsection 32(1)

Item 65 inserts “for a quota destination and a quota year” in subsection 32(1) after “section 20 to the uncommitted access amount”. This is a consequential amendment to align with the changes in section 20 and ensures reconsiderations under subsection 32(1) can apply to either quota destination.

Item 66 – Subsection 32(2)

Item 66 inserts “for a quota destination and a quota year” after “entitlement” in subsection 32(2). This is a consequential amendment to align with the changes in sections 19 and 20, and ensures reconsiderations under subsection 32(2) can apply to either quota destination.

Item 67 – Subsection 34(1)

Item 67 repeals subsection 34(1) and substitutes two new subsections:

- 1) The Secretary may arrange for the use, under the Secretary’s control, of computer programs for any purposes for which the Secretary may, or must, under this instrument:
 - a) make a decision; or
 - b) exercise any power or comply with any obligation; or
 - c) do anything else related to making a decision referred to in paragraph (a), or related to exercising a power or complying with an obligation referred to in paragraph (b).
- 1A) However, subsection (1) does not apply in relation to:
 - a) making a decision for which an application for reconsideration may be made under section 29; or
 - b) reconsidering such a decision under subsection 30(1).

This amendment is to resolve possible uncertainty with regard to which decisions in the instrument are not appropriate to be made automatically by computer by explicitly listing those decisions that cannot be made automatically under section 34. This reflects that the decisions under section 29 and reconsideration of such decisions under section 30 may require discretion to be applied which cannot be achieved through automatic decision-making.

Item 68 – Subsection 34(3)

Item 68 repeals subsection 34(3) and substitutes a new subsection stating that the Secretary is taken to have:

- a) made a decision; or
- b) exercised a power or complied with an obligation; or
- c) done something else related to the making of a decision or exercise of a power or compliance with an obligation;

that was made, exercised, complied with or done by the operation of a computer program under an arrangement made under subsection (1).

This amendment is a consequential amendment to align with the changes to subsection 34(1), to resolve possible uncertainty with regard to which decisions in the instrument are not appropriate to be made automatically by computer program.

Item 69 – Subsection 34(4)

Item 69 omits “subsection (3)” from subsection 34(4) and substitutes “paragraph (3)(a)”. This is a consequential amendment to correct the reference to align with the substituted subsection 34(3).

Item 70 – Subsection 37(1)

Item 70 repeals subsection 37(1) and substitutes a new subsection that states that the instrument applies:

- a) in relation to exports of eligible meat to the EU in the quota year starting on 1 January 2020 and later quota years; and
- b) in relation to exports of eligible meat to the UK in the quota year starting on 1 January 2021 and later quota years.

The subsection includes a note stating that in relation to the quota year starting on 1 January 2020, ‘EU’ is defined to include the UK and directs the reader to see section 6.

This ensures that the 2020 quota year can continue to operate as a single quota that includes the UK, reflecting that the end of the UK transition period and the end of the 2020 quota year coincide (31 December 2020). This also ensures that consignments intended for arrival in the 2021 quota year can be administered under the respective EU or UK quota.

Item 71 – Sections 40 and 41

Item 71 repeals sections 40 and 41 and substitutes new sections 40 to 43.

Section 40 details applications for tariff rate quota entitlements for the 2021 quota year. The section states that for the quota year starting on 1 January 2021, section 9 applies as if:

- a) the reference to the quota destination in subsection 9(1) were a reference to both the EU and the UK; and
- b) the reference in subsection 9(2) to an amount of tariff rate quota entitlement for the quota destination and quota year were a reference to amounts of tariff rate quota entitlement for the EU and quota year and the UK and quota year.

In conjunction with sections 41 and 42 this ensures that the 2021 entitlements will be allocated in the same proportion of EU and UK quota across all exporters and to the same volume of quota as they would have gotten if the quotas had not been split. This was determined as the most equitable approach across all exporters, in consultation with the industry.

Section 41 details how to determine initial allocations for the 2021 quota year. The section states that for the quota year starting on 1 January 2021, subsection 10(1) is taken to have been replaced by subsection (2) of this section.

Subsection 41(2) states that the Secretary must determine the amount of tariff rate quota entitlement for the EU and the UK and a quota year to be allocated to each applicant under section 9, using the method statement.

The inputs and formula set out in section 42 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 42), the resultant calculation is based on each exporters' all-quota exports and accredited exports (explained in section 42) 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 use of minimum allocations (applying to steps 2 and 3) is to avoid allocating commercially unviable amounts.
- The apportionment between the EU and UK in step 4 reflects the proportional split of the total quota volume between the EU and UK. Applying the split at this stage ensures all exporters receive the same proportion of EU and UK quota, determined as the most equitable approach to split the quota volume across all exporters.
- The necessity of rounding (in step 5) is to allocate to the nearest kilogram without exceeding the access amount for the tariff rate quotas.

Section 42 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 41, the formula is the following:

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

Where:

'applicant's accredited exports' is the carcase equivalent weight of all the applicant's exports of EU-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 all-quota exports' is 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.

'CAA' means the sum of the access amount for the EU and the quota year, and the access amount for the UK and the quota year.

'total accredited exports' is the carcase equivalent weight of all applicants' exports of EU-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 all-quota exports' is the total amount of applicant's all-quota exports for all applicants.

Subsection 42(2) provides that in subsection 42(1) 'EU-eligible meat' means eligible meat for the EU. The inclusion of this definition is to ensure this is not misread as meaning exports *to* the EU, rather than just a statement on eligibility.

Subsection 42(3) provides that in using the formula in subsection (1), a reference to certificates issued under section 19 or 20 in the performance period for the quota year is taken to include a reference to certificates issued under section 15 or 16 of the old Order in the period starting on 1 November 2019 and ending on 31 December 2019. This ensures all relevant certificates issued within the performance period can be included to correctly determine an applicant's all-quota exports.

Section 43 provides that Part 6 of the Order is repealed at the start of 1 January 2022.

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) Amendment (Brexit Transition Period) Order 2020

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 Amendment Order is to amend the *Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quotas) Order 2016* (the Order). The Amendment Order permits the Secretary to adjust tariff rate quota administration in the Order to cater for the United Kingdom ending its Brexit transition period on 31 December 2020 and the consequential requirement to create separate tariff rate quotas for each the European Union and the United Kingdom for Sheepmeat and Goatmeat, and makes other consequential amendments.

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.

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