

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Agriculture, Water and the Environment

Export Control Act 2020

Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021

Legislative Authority

The *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021* (the Amendment Rules) are made by the Secretary of the Department of Agriculture, Water and the Environment (the department) under section 432 of the *Export Control Act 2020* (the Act).

Section 432 of the Act relevantly provides that the Secretary of the Department of Agriculture, Water and the Environment (the Secretary) may, by legislative instrument, make rules prescribing matters required or permitted by the Act, or that are necessary or convenient to be prescribed for carrying out or giving effect to the Act.

Section 264 of the Act relevantly provides that the rules may make provision for, and in relation to, the establishment and administration of a system, or systems, of tariff rate quotas (TRQs) for the export of goods.

Under section 289 of the Act, the Minister may, by legislative instrument, issue directions to the Secretary about the performance of the Secretary's functions or the exercise of the Secretary's powers in making rules under section 432 of the Act. Directions made by the Minister to the Secretary are legislative instruments but are not subject to disallowance or sunset. At the time of commencement, a Ministerial direction has not been made under section 289 of the Act for the purposes of rules relating to TRQs for the export of goods.

Purpose

The purpose of the Amendment Rules is to amend the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (Sheepmeat and Goatmeat Rules) to facilitate revised splits of TRQs between Australia and the United Kingdom (UK) and Australia and the European Union (EU) resulting from the UK's withdrawal from the EU.

Background

TRQs can be administered by an authority in either the importing country or exporting country. The Australian Government administers the sheepmeat and goatmeat TRQs for the EU and UK, which includes issuing certification so that Australian exports can enter the EU and UK under more favourable tariff rates.

The Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 I/01) (the Withdrawal Agreement), which entered into force at 11pm (Greenwich Mean Time) on 31 January 2020, established the terms of the UK's withdrawal from the EU, in accordance with Article 50 of the Treaty of the EU. As a consequence of the UK's withdrawal from the EU, Australia's TRQs to the EU have been split between the EU and UK.

Clause 6 of the *Regulation (EU) 2019/216 of the European Parliament and of the Council of 30 January 2019 on the apportionment of tariff rate quotas included in the WTO schedule of the Union following the withdrawal of the United Kingdom from the Union, and amending Council Regulation (EC) No 32/2000* (EU Regulation 2019/216) provided that to ensure legal certainty and the continuous smooth operation of imports under the TRQs to the EU and UK, it was necessary for the EU to be able to proceed unilaterally to the apportionment of the TRQs. The methodology for this apportionment was set out in Article 1(1) of EU Regulation 2019/216 (see also explanation of the methodology at clause 7). In summary, the methodology provided that the total volume of a given TRQ would not be changed, so that EU-27 volume equals EU-28 volume minus the UK volume.

Article 1(2) of EU Regulation 2019/216 provided that after taking into account the methodology at Article 1(1), the EU's portion of TRQs for agricultural products is set out in Part A of the Annex. Order number 092012 provides that for "meat of sheep or goats, fresh, chilled or frozen" the total EU-28 quantity was 19,186 tonnes with the EU-27's apportionment being 3,837 tonnes, meaning that the UK's apportionment was the balance which was 15,349 tonnes.

In late 2020, the Australian Government reached agreement with the UK and the EU on modifying how TRQs were to be apportioned between the two destinations but these modified TRQs did not take effect at the end of the transition period for the UK's withdrawal from the EU, which ended on 31 December 2020.

The Agreement in the form of an exchange of letters between the European Union and the Commonwealth of Australia pursuant to Article XXVIII of the General Agreement on Tariffs and Trade (GATT) 1994 relating to the modification of concessions on all the tariff-rate quotas included in the EU Schedule CLXXV as a consequence of the United Kingdom's withdrawal from the European Union, dated 26 February 2021, provides that for TRQs

relating to meat of sheep or goats that is fresh, chilled or frozen, the EU volume of the Australian country specific part will be adjusted to 5,851 tonnes. At the time of commencement, revised access amounts have been implemented in UK regulations for the 2022 quota year but amendments to the EU regulations are pending. It is necessary to amend the Sheepmeat and Goatmeat Rules to facilitate the revised splits of TRQs between Australia and the EU and Australia and the UK for the 2022 quota year.

Impact and Effect

Revised access amounts are anticipated to be implemented in EU and UK legislation soon and the Amendment Rules facilitate the revised splits of TRQs between Australia and the EU and Australia and the UK for the 2022 quota year.

The Office of Best Practice Regulation (OBPR) confirmed that a Regulation Impact Statement is not required (ref: OBPR21-01196).

Consultation

The department has undertaken consultation with the Department of Foreign Affairs and Trade. The department has also consulted with exporters that will obtain, or would be able to obtain, TRQ entitlements. In addition, the department has consulted with the Australian Meat Industry Council's Quota Consultation Committee and Meat and Livestock Australia.

Details and Operation

Details of the Amendment Regulations are set out in Attachment A.

The Amendment Regulations are a legislative instrument for the purposes of the *Legislation Act 2003*.

The Amendment Regulations commence on the day after registration.

Other

The Amendment Regulations are 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.

Details of the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021*

Section 1 – Name

This section provides that the name of the instrument is the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021* (the Amendment Rules).

Section 2 – Commencement

This section provides that the Amendment Rules commence on the day after the instrument is registered on the Federal Register of Legislation. The note below the table provides that the table relates only to the provisions of the Amendment Rules as originally made. It would not be amended to deal with later amendments of the Amendment Rules. The purpose of this note is to clarify that the commencement of any subsequent amendments would not be reflected in this table.

Subsection 2(2) provides that any information in column 3 of the table is not part of the Amendment Rules. This clarifies that information may be inserted in column 3 of the table, or information in it may be edited, in any published version of the Amendment Rules.

Section 3 – Authority

This section provides that the Amendment Regulations are made under the *Export Control Act 2020* (the Act).

Section 4 – Schedules

This section provides for the amendment or repeal of instruments as set out in a Schedule to the Amendment Rules. This enables the amendment of the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (see Schedule 1 below).

Schedule 1 – Amendments

Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021

Item [1] – Section 6 (definition of *access amount*)

Section 6 of the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (Sheepmeat and Goatmeat Rules) provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules, including the definition of ***access amount***.

This item repeals and substitutes the definition of ***access amount*** in section 6 of the Sheepmeat and Goatmeat Rules. The substituted definition provides that ***access amount*** means:

- for the European Union (EU) and the quota year beginning on 1 January 2022—5,851,000 kilograms; or
- for the EU and another quota year—the total weight of eligible meat for the EU that may, under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the Commission implementing Regulation (EU) 2020/1988 (EU Regulation), be exported from Australia to the EU in the quota year at the in-quota customs duty rate set out for those order numbers; or
- for the United Kingdom (UK) and the quota year beginning on 1 January 2022—13,335,000 kilograms; or
- for the UK and another quota year—the total weight of eligible meat for the UK that may, as set out in the Quota Table within the meaning of the *Customs (Tariff Quotas) (EU Exit) Regulations 2020* (UK) (UK Regulations), be exported from Australia to the UK in the quota year at the quota duty rate for quota numbers 05.2012, 05.2105 and 05.2106 in the Quota Table.

Item [2] – Section 6

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules.

This item inserts the definition of ***all third countries quota*** in section 6 of the Sheepmeat and Goatmeat Rules. ***All third countries quota*** means the annual EU import tariff quota, under order numbers 09.2178, 09.2179 and 09.2016 in Annex I to the EU Regulation, for export of sheepmeat and goatmeat from all third countries (except the UK) to the EU.

This amendment is consequential to the amendment made by item 7 of Schedule 1 to the Amendment Rules (definition of ***EU Regulation***). The EU Regulation, in relation to order

numbers 09.2178, 09.2179 and 09.2016, does not refer to erga omnes and instead refers to ‘all third countries’.

Item [3] – Section 6 (definition of *carcase equivalent weight*)

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules, including the definition of *carcase equivalent weight*.

The description of the products in the existing definition of *carcase equivalent weight* do not align with Article 31(2)(a)–(c) in the EU Regulation and the existing definition contains division equations as opposed to the EU Regulation and the Quota Table, within the meaning of the UK Regulations, using multiplication by coefficients. The UK coefficients are the same as those listed for the products in Article 31(2)(a)–(c) in the EU Regulation but they are reached by reference to the relevant commodity codes in the Quota Table.

This item repeals and substitutes the definition of *carcase equivalent weight* in section 6 of the Sheepmeat and Goatmeat Rules. The substituted definition provides that *carcase equivalent weight* means:

- for boneless lamb and boneless meat from a goat up to one year old—its weight multiplied by 1.67; or
- for boneless mutton, boneless sheep and boneless meat from a goat over one year old—its weight multiplied by 1.81; or
- for bone-in meat—its weight.

This substituted definition reflects the method for calculating the relevant weights under the EU Regulation and the UK Regulations.

Item [4] – Section 6 (definition of *eligible meat*)

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules, including the definition of *eligible meat*.

The description of the products in the existing definition of eligible meat do not align with the description of the products under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the EU Regulation and they also do not align with the description of the products under the quota numbers 05.2012, 05.2105 or 05.2106 in the UK Regulations.

This item repeals and substitutes the definition of *eligible meat* in section 6 of the Sheepmeat and Goatmeat Rules. The substituted definition provides that *eligible meat* means:

- for the EU—sheepmeat and goatmeat of the kind described under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the EU Regulation; or

- for the UK—sheepmeat and goatmeat of a kind that may, under the UK Regulations, be exported from Australia to the UK under quota number 05.2012, 05.2105 or 05.2106.

This substituted definition of *eligible meat* links to the sheepmeat and goatmeat product descriptions that correspond to the order numbers and quota numbers in the EU Regulation and UK Regulations, respectively.

Item [5] – Section 6 (definition of *erga omnes tariff rate quota*)

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules, including the definition of *erga omnes tariff rate quota*. The definition currently provides that *erga omnes tariff rate quota* means the annual European Union import tariff quota for CN code 0204 that is referred to as *erga omnes* in the Annex to the Commission Implementing Regulation (EU) 1354/2011, as in force from time to time.

This item repeals the definition of *erga omnes tariff rate quota* in section 6 of the Sheepmeat and Goatmeat Rules.

This amendment is consequential to the amendment made by item 7 of Schedule 1 to the Amendment Rules (definition of *EU Regulation*). The EU Regulation, in relation to order numbers 09.2178, 09.2179 and 09.2016, does not refer to *erga omnes* and instead refers to ‘all third countries’. As a result, the definition *all third countries quota* has been inserted by item 2 of Schedule 1 to the Amendment Rules.

Item [6] – Section 6 (definition of *EU*)

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules, including the definition of *EU*. Currently, the definition provides that *EU* means the European Union and includes the United Kingdom in relation to the quota year starting on 1 January 2020.

This item omits all of the words after ‘Union’ in the definition of *EU* in section 6 of the Sheepmeat and Goatmeat Rules. The UK has not been a member state of the EU since the *Agreement on the withdrawal of the United Kingdom of Great Britain and Northern Ireland from the European Union and the European Atomic Energy Community (2019/C 384 1/01)* entered into force at 11pm GMT on 31 January 2020.

Item [7] – Section 6

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of terms used throughout the Sheepmeat and Goatmeat Rules.

This item inserts the definitions of **EU Regulation** and **UK Regulations** in section 6 of the Sheepmeat and Goatmeat Rules.

EU Regulation means Commission implementing Regulation (EU) 2020/1988, as in force from time to time. The note following the definition of **EU Regulation** explains that in 2021, the Regulation could be viewed on the EUR-Lex website at <https://eur-lex.europa.eu>.

UK Regulations means The *Customs (Tariff Quotas) (EU Exit) Regulations 2020* (UK), as in force from time to time. The note following the definition of **UK Regulations** explains that in 2021, the Regulations could be viewed on the UK legislation website at <https://legislation.gov.uk>.

Paragraph 432(3)(g) of the *Export Control Act 2020* provides that, despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in any instrument or writing, as in force or existing from time to time, that:

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

The EU Regulation and UK Regulations sets out, and provides a method for calculating, the tariff rate quota for the importation of a kind of goods into the EU and UK respectively. The EU Regulation and UK Regulations are also made by an authority or body that is responsible for regulating the importation of goods of that kind into the EU and UK, being the European Parliament and UK Parliament respectively.

These documents are also publicly available on the EUR-Lex website and UK legislation website respectively.

Item [8] – Part 3 (heading)

Part 3 of the Sheepmeat and Goatmeat Rules currently provides for a system of tariff rate quotas for the export from Australia to the EU of eligible meat under the erga omnes tariff rate quota. The heading of Part 3 is currently “Part 3—Erga omnes tariff rate quota”.

This item omits “Erga omnes tariff rate” and substitutes “All third countries” in the heading of Part 3 of the Sheepmeat and Goatmeat Rules. This amendment is consequential to the amendment made by item 7 of Schedule 1 to the Amendment Rules (definition of **EU Regulation**).

Item [9] – Section 27

Section 27 of the Sheepmeat and Goatmeat Rules provides the purpose of Part 3 of the Sheepmeat and Goatmeat Rules. This item omits “erga omnes tariff rate” and substitutes “all third countries” in section 27 of the Sheepmeat and Goatmeat Rules. This amendment is consequential to the amendment made by item 7 of Schedule 1 to the Amendment Rules (definition of *EU Regulation*).

Item [10] – Section 28 (heading)

This item omits “erga omnes tariff rate” and substitutes “all third countries” in the heading of section 28 of the Sheepmeat and Goatmeat Rules. This amendment is consequential to the amendment made by item 7 of Schedule 1 to the Amendment Rules (definition of *EU Regulation*).

Item [11] – Subsection 28(1)

Section 28 of the Sheepmeat and Goatmeat Rules currently provides for tariff rate quota certificates for an erga omnes tariff rate quota.

This item omits “erga omnes tariff rate” and substitutes “all third countries” in subsection 28(1) of the Sheepmeat and Goatmeat Rules. This amendment is consequential to the amendment made by item 7 of Schedule 1 to the Amendment Rules (definition of *EU Regulation*).

Item [12] – At the end of the instrument

This item adds new Division 3 of Part 6 (Transitional provisions relating to the Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021), at the end of the Sheepmeat and Goatmeat Rules. This item also inserts new sections 49, 50 and 51 as part of new Division 3 of Part 6 of the Sheepmeat and Goatmeat Rules.

New section 49 provides that the amendments made to the Sheepmeat and Goatmeat Rules by the Amendment Rules do not apply to the 2020 or 2021 quota year. Specifically, section 49 provides that the Sheepmeat and Goatmeat Rules as in force immediately before the commencement of the Amendment Rules continues to apply to allocations of tariff rate quota entitlement for a quota destination and the quota years beginning on 1 January 2020 and 1 January 2021, and to tariff rate quota certificates for export of a consignment to a quota destination in those quota years.

New section 50 provides for determining an initial allocation for the 2022 quota year. New subsection 50(1) provides that section 50 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 2022.

New subsection 50(2) provides that in using the method statement in subsection 10(1) of the Sheepmeat and Goatmeat Rules, the following process applies:

- 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 reference to the step 3 amount as a reference to the step 1 amount; and
- disregard paragraph (a) of step 7.

New section 51 provides that Division 3 of Part 6 of the Sheepmeat and Goatmeat Rules is repealed at the start of 1 January 2023.

Statement of Compatibility with Human Rights

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

Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021

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 (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Amendment (2021 Measures No. 1) Rules 2021* (the Amendment Rules) is to amend the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (Sheepmeat and Goatmeat Rules) to facilitate revised splits of tariff rate quotas (TRQs) between Australia and the United Kingdom (UK) and Australia and the European Union (EU) resulting from the UK's withdrawal from the EU at 11pm (Greenwich Mean Time) on 31 January 2020.

The Amendment Rules amend a number of existing definitions in the Sheepmeat and Goatmeat Rules and add a number of new definitions. The Amendment Rules also make amendments that are consequential to the amended and new definitions and insert transitional provisions.

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.

Andrew Edgar Francis Metcalfe AO
Secretary of the Department of Agriculture, Water and the Environment