

EXPLANATORY STATEMENT

Issued by the authority of the Secretary of the Department of Agriculture, Fisheries and Forestry

Export Control Act 2020

Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022

Legislative Authority

The *Export Control Act 2020* (the Act) sets out the overarching legislative framework for the regulation of exported goods, including food and agricultural products, from Australian territory. Section 432 of the Act relevantly provides that the Secretary of the Department of Agriculture, Fisheries and Forestry (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 allows the rules to 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 give 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 sunseting. 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.

Purpose

The purpose of the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022* (the Amendment Rules) is to amend the *Export Control (Tariff Rate Quotas—General) Rules 2021* (the General Rules) and the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (the Sheepmeat and Goatmeat Rules) to provide for tariff rate quotas (TRQs) for the export of certain goods from Australia to the United Kingdom (UK) or India, to prepare for the anticipated entry into force of the Australia-UK Free Trade Agreement (A-UKFTA) and the India-Australia Economic Cooperation and Trade Agreement (IA ECTA).

Background

The Australian Government administers the TRQ system which allows for a variety of agricultural products to have reduced tariffs applied at the point of import to several countries.

The A-UKFTA was signed by Australia in Adelaide on 17 December 2021 and by the UK in London on 16 December 2021. Under the A-UKFTA, tariffs will be eliminated on over 99% of Australian goods exports to the UK. It will also introduce ten new TRQs for a number of commodities at 0% tariff.

On 17 November 2022, the Joint Standing Committee on Treaties (JSCOT) handed down its *Report 201: Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland*. The report stated that the JSCOT supported the agreement and recommended that binding treaty action be taken. On 22 November 2022, the A-UKFTA passed the Australian Parliament.

The A-UKFTA will enter into force after Australia and the UK confirm with each other in writing that they have completed their respective domestic requirements. A date is yet to be confirmed.

The IA ECTA was signed by Australia in Melbourne on 2 April 2022 and by India in New Delhi on 2 April 2022. Under the IA ECTA, tariffs on 85% of Australia's exports to India will be eliminated and high tariffs on a further 5% of goods will be phased down. It will also introduce five new TRQs for a number of commodities.

On 18 November 2022, the JSCOT handed down its *Report 202: Australia-India Economic Cooperation and Trade Agreement*. The report stated that the JSCOT supported the agreement and recommended that binding treaty action be taken. On 22 November 2022, the IA ECTA passed the Australian Parliament.

The IA ECTA is expected to enter into force on 29 December 2022.

Impact and Effect

The Amendment Rules enable the department to properly administer TRQs for the export of certain goods from Australia to the UK and India, under the A-UKFTA and IA ECTA respectively. The specific goods are in relation to the meat, dairy, grain, sugar, horticulture, almond and cotton commodities.

Schedule 1 to the Amendment Rules amends the General Rules and the Sheepmeat and Goatmeat Rules to provide for TRQs for the export of goods from Australia to the UK.

Schedule 2 to the Amendment Rules amends the General Rules to provide for TRQs for the export of goods from Australia to India.

Consultation

The department has consulted with the Department of Foreign Affairs and Trade in relation to the implementation of the A-UKFTA and IA ECTA.

The department has also undertaken targeted consultation with industry stakeholders, including exporters that will obtain, or would be able to obtain, TRQ entitlements. Industry consultative committees were held in relation to the meat, dairy, grain, sugar, horticulture, almond and cotton commodities during June to July 2022. The department also released a targeted exposure draft of the proposed amendments for each commodity to the relevant industry representative bodies. The industry representative bodies comprise of the following:

- Meat (Australian Meat Industry Council, JBS Australia, Teys Australia);
- Dairy (Australian Dairy Producers);
- Grain (Australian Grain Exporters Association, Australian Grain Exporters Council, Australian Oilseed Federation, Grains Australia Limited, Grain Trade Australia, Pulses Australia, SunRice Group);
- Sugar (Australian Sugar Milling Council, Queensland Sugar Limited, Wilmar Sugar);
- Horticulture (Apple and Pear Australia, Citrus Australia);
- Almond (Almond Board of Australia, Australian Nut Industry Council); and
- Cotton (Australian Cotton Shippers Association, Cotton Australia).

The Office of Impact Analysis, formerly known as the Office of Best Practice Regulation (OBPR), has advised that a Regulation Impact Statement is not required for these amendments (ref: OBPR22-02258).

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 Legislation Amendment (Tariff Rate Quotas) Rules 2022*

Section 1 – Name

This section provides that the name of the instrument is the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022* (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 explains that the table relates only to the provisions of the Amendment Rules as originally made. It will 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 will 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—General) Rules 2021* (the General Rules) (see Schedules 1 and 2 below) and the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* (the Sheepmeat and Goatmeat Rules) (see Schedule 1 below).

Schedule 1 – Amendments relating to the Australia-UK Free Trade Agreement

Division 2 of Part 4 of Chapter 8 of the *Export Control Act 2020* (the Act) relates to tariff rate quota systems. Subsection 264(1) 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.

The items in Schedule 1 are made for the purposes of subsection 264(1) of the Act.

A number of the below amendments to the General Rules and the Sheepmeat and Goatmeat Rules prescribe rules that refer to an agreement between Australia and another country. Specifically, item [2] of Schedule 1 inserts a new definition in section 6 of the General Rules for the ***Australia-UK Free Trade Agreement***, which is defined as the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, as in force for Australia from time to time.

Paragraph 432(3)(h) of the Act provides that, despite subsection 14(2) of the *Legislation Act 2003* (the Legislation Act), the rules may make provision for or in relation to any matter contained in an agreement between Australia and another country or a body (for example, the European Union (EU)) that sets out, or provides a method for calculating, the TRQ for the importation of a kind of goods into a country covered by the agreement from Australian territory.

The Australia-UK Free Trade Agreement (A-UKFTA) is an agreement between Australia and the United Kingdom (UK) that sets out, and provides a method for calculating, the TRQ for the importation of a kind of goods into the UK from Australian territory. The agreement is publicly available in the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

Export Control (Tariff Rate Quotas—General) Rules 2021

The purpose of the General Rules, as stated in section 5 of the General Rules, is to provide for, and in relation to, the establishment and administration of a system of TRQs for the export of goods.

For completeness, the existing General Rules and a number of the below amendments prescribe rules that refer to relevant regulations of the EU and the UK. Specifically, section 6 of the General Rules provides definitions for the following:

- ***EU Tariff Quota Regulation*** means the Commission Implementing Regulation (EU) No 2020/761, as in force from time to time. The note to this definition directs the reader's attention to the fact that, in 2021, this Regulation could be viewed on the EUR-Lex website at <https://eur-lex.europa.eu>; and
- ***UK Tariff Quota Regulations*** means the *Customs (Tariff Quotas) (EU Exit) Regulations 2020* (UK), as in force from time to time. The note to this definition

directs the reader's attention to the fact that, in 2021, this Regulation could be viewed on the UK legislation website at <https://legislation.gov.uk>.

Paragraph 432(3)(g) of the Act provides that, despite subsection 14(2) of the Legislation Act, 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 TRQ 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 Tariff Quota Regulation and UK Tariff Quota Regulations set out, and provide a method for calculating, the TRQ for the importation of a kind of goods into the EU and UK respectively. These 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. As noted above, these documents were publicly available in 2021 on the EUR-Lex website and UK legislation website respectively.

Item [1] – Section 6 (definition of *annual application day*)

Section 6 of the General Rules provides definitions for various terms used throughout the General Rules, including the definition of *annual application day*.

This item repeals and substitutes the definition of *annual application day* in section 6. The substituted definition provides that *annual application day*, for a quota type and a quota year, means the day specified under Chapter 3 to be the annual application day for that quota type and quota year.

This amendment is consequential to the amendments made by item [8] of Schedule 1, which inserts new Parts 5 and 6 of Chapter 2 of the General Rules. These amendments provide for the performance-based method and production method, which use an *annual application day* for the purposes of determining when an application for an allocation of an amount of tariff rate quota entitlement (TRQ entitlement) can be made.

Item [2] – Section 6

Section 6 of the General Rules provides definitions for various terms used throughout the General Rules.

This item inserts the new definitions of *annual nomination day*, *Australia-UK Free Trade Agreement*, *eligible producer*, *past production amount*, *past production period*, *performance-based access amount*, *performance-based method* and *production method* in section 6.

The signpost definition of ***annual nomination day*** draws the reader's attention to new section 52K. This amendment is consequential to the amendments made by item [8] of Schedule 1 which inserts new section 52K.

The ***Australia-UK Free Trade Agreement*** means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, as in force for Australia from time to time. The note following this definition explains that this agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website and provides the address for the AustLII website.

The signpost definitions of ***eligible producer***, ***past production amount*** and ***past production period***, each draw the reader's attention to new section 52K. These amendments are consequential to the amendments made by item [8] of Schedule 1 which inserts new section 52K.

The signpost definition of ***performance-based access amount*** draws the reader's attention to new section 52B. This amendment is consequential to the amendments made by item [8] of Schedule 1 which inserts new section 52B.

The ***performance-based method*** is defined as the method set out in new Part 5 of Chapter 2 of the General Rules. This amendment is consequential to the amendments made by item [8] of Schedule 1 which inserts new Part 5 of Chapter 2.

The ***production method*** means the method set out in new Part 6 of Chapter 2 of the General Rules. This amendment is consequential to the amendments made by item [8] of Schedule 1 which inserts new Part 6 of Chapter 2.

Item [3] – Section 6 (definition of *UK buffalo meat*)

Section 6 of the General Rules provides definitions for various terms used throughout the General Rules, including ***UK buffalo meat***.

This item repeals the definition of ***UK buffalo meat*** in section 6. This amendment is consequential to the amendments made by item [6] of Schedule 1 which inserts a new definition for ***UK WTO buffalo meat*** in section 6.

Item [4] – Section 6

Section 6 of the General Rules provides definitions for various terms used throughout the General Rules.

This item inserts the signpost definitions of ***UK FTA beef***, ***UK FTA dairy goods***, ***UK FTA grain goods*** and ***UK FTA sugar goods***.

The signpost definition of *UK FTA beef* directs the reader's attention to new section 89AA. This amendment is consequential to the amendments made by item [9] of Schedule 1 which inserts new section 89AA.

The signpost definition of *UK FTA dairy goods* directs the reader's attention to new subsection 89AJ(1). This amendment is consequential to the amendments made by item [9] of Schedule 1 which inserts new section 89AJ.

The signpost definition of *UK FTA grain goods* directs the reader's attention to new subsection 89AN(1). This amendment is consequential to the amendments made by item [9] of Schedule 1 which inserts new section 89AN.

The signpost definition of *UK FTA sugar goods* directs the reader's attention to new section 89AT. This amendment is consequential to the amendments made by item [9] of Schedule 1 which inserts new section 89AT.

Item [5] – Section 6 (definition of *UK high quality beef*)

Section 6 of the General Rules provides definitions for various terms used throughout the General Rules, including *UK high quality beef*.

This item repeals the definition of *UK high quality beef*. This amendment is consequential to the amendments made by item [6] of Schedule 1 which inserts a new definition for *UK WTO high quality meat* in section 6.

Item [6] – Section 6

Section 6 of the General Rules provides definitions for various terms used throughout the General Rules.

This item inserts the signpost definitions of *UK WTO buffalo meat*, *UK WTO high quality beef*, *unallocated performance-based access amount*, *uncommitted performance-based access amount*, *uncommitted unrestricted access amount* and *unrestricted access amount*.

The signpost definition of *UK WTO buffalo meat* directs the reader's attention to new section 89A. This amendment is consequential to the amendments made by item [9] of Schedule 1 which inserts new section 89A.

The signpost definition of *UK WTO high quality beef* directs the reader's attention to new section 89E. This amendment is consequential to the amendments made by item [9] of Schedule 1 which inserts new section 89E.

The signpost definitions of *unallocated performance-based access amount*, *uncommitted performance-based access amount*, *uncommitted unrestricted access amount* and *unrestricted access amount*, each draw the reader's attention to new section 52B. These amendments are consequential to the amendments made by item [8] of Schedule 1 which inserts new section 52B.

Item [7] – Section 27 (definition of *annual application day*)

This item repeals the definition of *annual application day* in section 27 of the General Rules. This amendment is consequential to the insertion of a new definition of *annual application day*, made by item [1] of Schedule 1.

Item [8] – At the end of Chapter 2

Chapter 2 of the General Rules provides for the methods for determining TRQ entitlements and issuing tariff rate quota certificates (TRQ certificates). This item inserts new Parts 5 and 6 into Chapter 2.

New Part 5 of Chapter 2

New Part 5 of Chapter 2 of the General Rules provides for a new method of determining TRQ entitlement, known as the performance-based method. The performance-based method provides for TRQ entitlement to be allocated proportionately across all applicants (where the total weight of eligible past exports exceeds the performance-based access amount), or to be allocated based on each applicant's past use of their TRQ entitlement (where the total weight of eligible past exports is less than the performance-based access amount). Any unallocated access amounts are then allocated under a method specified in Chapter 3.

New Division 1 of Part 5 of Chapter 2

New Division 1 of Part 5 of Chapter 2 of the General Rules sets out the preliminary matters for new Part 5, including the application of the performance-based method and various definitions.

Section 52A Application of this Part

New section 52A provides for the application of new Part 5 of Chapter 2 of the General Rules. New section 52A provides that if a provision of Chapter 3 provides that the performance-based method applies for the purposes of issuing a TRQ certificate in relation to a consignment of a quota type for export in a quota year, then new Part 5 of Chapter 2 applies for the purposes of issuing a TRQ certificate in relation to such a consignment and determining TRQ entitlements for that quota type and quota year.

Section 52B Definitions

New section 52B provides the definitions of *performance-based access amount*, *unallocated performance-based access amount*, *uncommitted performance-based access amount*, *uncommitted unrestricted access amount* and *unrestricted access amount*, which are used in new Part 5 of Chapter 2.

The *performance-based access amount*, for a quota type and a quota year, means the amount specified under Chapter 3 of the General Rules to be the performance-based access amount for that quota type in relation to the quota year.

The signpost definition of *unallocated performance-based access amount* draws the reader's attention to step 3 of the method statement in new subsection 52D(2).

The *uncommitted performance-based access amount*, for a quota type and a quota year at a particular time, is the difference between the performance-based access amount for that quota type and quota year, and the total weight for which TRQ certificates have been issued from the performance-based access amount in relation to consignments of that quota type for export in that quota year. The note following this definition explains that if a TRQ certificate in relation to a consignment is revoked, the certificate is taken never to have been issued and refers the reader to subsection 119(5) of the General Rules.

The *uncommitted unrestricted access amount*, for a quota type and a quota year at a particular time, is the difference between the unrestricted access amount for that quota type and quota year, and the total weight for which TRQ certificates have been issued from the unrestricted access amount in relation to consignments of that quota type for export in that quota year. The note following this definition explains that if a TRQ certificate in relation to a consignment is revoked, the certificate is taken never to have been issued and refers the reader to subsection 119(5) of the General Rules.

The *unrestricted access amount*, for a quota type and a quota year, means the amount worked out under step 5 of the method statement in new subsection 52D(2).

New Division 2 of Part 5 of Chapter 2

New Division 2 of Part 5 of Chapter 2 of the General Rules provides for the allocation of quota under the performance-based method.

Section 52C Application for tariff rate quota entitlement

New section 52C provides for applications for TRQ entitlement, including who may apply, when to apply and requirements for the application.

New subsection 52C(1) provides that an eligible person for a quota type may apply to the Secretary for an allocation of an amount of TRQ entitlement from the performance-based access amount for the quota type and a quota year.

New subsection 52C(2) provides that the application must be made on or before the annual application day for the quota type and quota year.

New subsection 52C(3) requires the application to be made in a manner approved, in writing, by the Secretary, and if the Secretary has approved a form for making the application:

- include the information required by the form; and
- be accompanied by any documents required by the form.

The note following new subsection 52C(3) alerts the reader that a person may commit an offence if the person makes a false or misleading statement in an application or provides false or misleading information or documents and refers the reader to sections 136.1, 137.1 and 137.2 of the *Criminal Code*.

New subsection 52C(4) provides that the Secretary may accept any information or document previously given to the Secretary in connection with an application made under the General Rules as satisfying any requirement to give that information or document under new subsection 52C(3).

New subsection 52C(5) provides that an application is taken not to have been made if the application does not comply with the requirements referred to in new subsection 52C(3) for the application.

Section 52D Allocation of tariff rate quota entitlement from the performance-based access amount

New section 52D provides for the allocation of TRQ entitlement from the performance-based access amount.

New subsection 52D(1) requires the Secretary, as soon as practicable after the annual application day for a quota type and a quota year, to allocate to applicants under new section 52C amounts of TRQ entitlement from the performance-based access amount for that quota type and quota year in accordance with new section 52D.

New subsection 52D(2) sets out the method statement that is used to work out the amount of TRQ entitlement to be allocated to an applicant for the quota type and quota year from the performance-based access amount. The method statement provides for the following:

- Under step 1, the total weight of the applicant's eligible past exports for the quota type and quota year is determined, for each applicant.

- The total weight of all eligible past exports by all applicants for the quota type and quota year is calculated under step 2.
- The next stage involves a comparison of the step 2 amount against the performance-based access amount, with either step 3 or 4 applying.
- Step 3 applies if the step 2 amount is less than or equal to the performance-based access amount. In such circumstances, the amount of TRQ entitlement to be allocated to an applicant is the amount of the applicant's eligible past exports. Any unallocated TRQ entitlement from the performance-based access amount is then known as the ***unallocated performance-based access amount***.
- Step 4 applies if the step 2 amount is greater than the performance-based access amount. In such circumstances, the amount of TRQ entitlement to be allocated to an applicant is the amount that reflects the applicant's eligible past exports as a proportion of all eligible past exports using the formula in new subsection 52D(3).
- Depending on whether step 3 or 4 of the method statement is applied, then either the formula in new subsection 52D(4) or (5) is used to work out the unrestricted access amount for the quota type and quota year under step 5. The unrestricted access amount represents the balance of the annual access amount after allocations have been made under the performance-based method.

The note following new subsection 52D(2) explains that the TRQ entitlement to be allocated from the unrestricted access amount for a quota type is determined using a method specified for the quota type by a provision of Chapter 3 of the General Rules.

New subsection 52D(3) sets out the following formula to be applied for the purposes of step 4 of the method statement in new subsection 52D(2):

$$\frac{\text{Applicant's eligible past exports}}{\text{All eligible past exports}} \times \text{Performance-based access amount}$$

When applying the formula in new subsection 52D(3), the following terms are relevant:

- ***All eligible past exports*** is the total weight of all eligible past exports by all applicants for the quota type and quota year.
- ***Applicant's eligible past exports*** is the total weight of the applicant's eligible past exports for the quota type and quota year.
- ***Performance-based access amount*** is the performance-based access amount for the quota type and quota year.

Where step 3 of the method statement in new subsection 52D(2) has been applied, then new subsection 52D(4) sets out the following formula to be applied for the purposes of paragraph (a) of step 5 of the method statement:

$$\left(\frac{\text{Annual access amount} - \text{Performance-based access amount}}{\text{Performance-based access amount}} \right) + \text{Unallocated performance-based access amount}$$

When applying the formula in new subsection 52D(4), the following terms are relevant:

- **Annual access amount** is the annual access amount for the quota type and quota year.
- **Performance-based access amount** is the performance-based access amount for the quota type and quota year.
- **Unallocated performance-based access amount** is the unallocated performance-based access amount for the quota type and quota year.

Where step 4 of the method statement in new subsection 52D(2) has been applied, then new subsection 52D(5) sets out the following formula to be applied for the purposes of paragraph (b) of step 5 of the method statement:

$$\text{Annual access amount} - \text{Performance-based access amount}$$

When applying the formula in new subsection 52D(5), the following terms are relevant:

- **Annual access amount** is the annual access amount for the quota type and quota year.
- **Performance-based access amount** is the performance-based access amount for the quota type and quota year.

This method statement enables the consistent application of the process each time that the calculations are made. This also ensures transparency, by allowing applicants to be aware of the exact process for determining an allocation of an amount of TRQ entitlement under the performance-based method.

New Division 3 of Part 5 of Chapter 2

New Division 3 of Part 5 of Chapter 2 of the General Rules provides for TRQ certificates issued under the performance-based method.

Section 52E Applications for tariff rate quota certificates

New section 52E provides that a person who intends to export a consignment of a quota type in a quota year may apply to the Secretary under new section 52E for a TRQ certificate for the consignment.

The note following new section 52E refers the reader to section 114 of the General Rules for requirements and other matters relating to applications.

Section 52F Applications to be dealt with in order of receipt

New section 52F requires the Secretary to deal with applications under new section 52E in the order in which the applications are received by the Secretary.

The note following new section 52F explains that subsection 114(8) of the General Rules deals with when an application is taken to be received by the Secretary.

Section 52G Issuing tariff rate quota certificates

New section 52G provides for the issuing of TRQ certificates. New subsection 52G(1) provides that new section 52G applies in relation to an application under new section 52E for a TRQ certificate in relation to a consignment of a quota type for export in a quota year.

New subsection 52G(2) requires the Secretary, subject to section 115 of the General Rules, to issue a TRQ certificate to the applicant in relation to the consignment if, at the time the Secretary deals with the application, the uncommitted performance-based access amount for the quota type and quota year is greater than zero.

The note following new subsection 52G(2) explains that section 115 of the General Rules deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

New subsection 52G(3) provides that the TRQ certificate must be issued for the lesser of the weight of the consignment applied for or the uncommitted performance-based access amount at the time the Secretary deals with the application.

New Division 4 of Part 5 of Chapter 2

New Division 4 of Part 5 of Chapter 2 of the General Rules provides for the transfer of TRQ entitlement under the performance-based method.

Section 52H Transfer of tariff rate quota entitlement

New section 52H provides for the transfer of TRQ entitlement. New subsection 52H(1) provides that a person (the **transferor**) who has an amount of TRQ entitlement for a quota type and a quota year may, at any time before the end of the quota year, transfer all or part of that amount to an eligible person (the **transferee**) for the quota type.

New subsection 52H(2) requires the transferor to give the Secretary a notice setting out the name of the transferor, name of the transferee and the amount of the TRQ entitlement to be transferred.

New subsection 52H(3) requires the notice to be:

- Given in the approved manner (if any) and approved form (if any), or, if there is no approved manner and no approved form, in writing; and
- Accompanied by any information or documents required by the Secretary.

New subsection 52H(4) provides that the amount is transferred in accordance with a notice under new subsection 52H(2) if the Secretary receives such a notice.

New Part 6 of Chapter 2

New Part 6 of Chapter 2 of the General Rules provides for a new method of determining TRQ entitlement, known as the production method. The production method provides for TRQ entitlement to be allocated proportionately across all applicants, after considering the production amount of a quota type produced by all eligible producers.

New Division 1 of Part 6 of Chapter 2

New Division 1 of Part 6 of Chapter 2 of the General Rules sets out the preliminary matters for new Part 6, including the application of the production method and various definitions.

Section 52J Application of this Part

New section 52J provides for the application of new Part 6 of Chapter 2 of the General Rules. New section 52J provides that if a provision of Chapter 3 provides that the production method applies for the purposes of issuing a TRQ certificate in relation to a consignment of a quota type for export in a quota year, then new Part 6 of Chapter 2 applies for the purposes of issuing a TRQ certificate in relation to such a consignment and determining TRQ entitlements for that quota type and quota year.

Section 52K Definitions

New section 52K provides the definitions of **annual nomination day**, **eligible producer**, **past production amount** and **past production period**, which are used in new Part 6 of Chapter 2.

The **annual nomination day**, for a quota type and a quota year, means the day specified under Chapter 3 of the General Rules to be the annual nomination day for that quota type and quota year.

The **eligible producer**, for a quota type, means a person that is specified under Chapter 3 to be an eligible producer for the quota type.

The **past production amount**, for a quota type and a past production period, means the total weight of the quota type produced by an eligible producer over the past production period.

The **past production period**, for a quota type, means the period that is specified under Chapter 3 of the General Rules to be the past production period for the quota type.

New Division 2 of Part 6 of Chapter 2

New Division 2 of Part 6 of Chapter 2 of the General Rules provides for the allocation of quota under the production method.

Section 52L Application for tariff rate quota entitlement

New section 52L provides for applications for TRQ entitlement including who may apply, when to apply and requirements for the application.

New subsection 52L(1) allows the Secretary to invite eligible persons to apply to the Secretary to be allocated an amount of TRQ entitlement for a quota type and a quota year. If the Secretary has invited applications from eligible persons under new subsection 52L(1), an eligible person may apply under new subsection 52L(2) to be allocated an amount of TRQ entitlement for a quota type and quota year.

New subsection 52L(3) provides that the application must be made on or before the annual application day for the quota type and quota year.

New subsection 52L(4) requires the application to be made in a manner approved, in writing, by the Secretary and if the Secretary has approved a form for making the application:

- include the information required by the form; and
- be accompanied by any documents required by the form.

The note following new subsection 52L(4) alerts the reader that a person may commit an offence if the person makes a false or misleading statement in an application or provides false or misleading information or documents, and refers the reader to sections 136.1, 137.1 and 137.2 of the *Criminal Code*.

New subsection 52L(5) provides that the Secretary may accept any information or document previously given to the Secretary in connection with an application made under the General Rules as satisfying any requirement to give that information or document under new subsection 52L(4).

New subsection 52L(6) provides that an application is taken not to have been made if the application does not comply with the requirements referred to in new subsection 52L(4) for the application.

Section 52M Allocation of tariff rate quota entitlement

New section 52M provides for the allocation of TRQ entitlement under the production method.

New subsection 52M(1) requires the Secretary, as soon as practicable after the annual application day for a quota type and quota year, to allocate to applicants under new section 52L amounts of TRQ entitlement for that quota type and quota year in accordance with new section 52M.

New subsection 52M(2) sets out the method statement that is used to work out the amount of TRQ entitlement to be allocated to an applicant for the quota type and quota year under the production method. The method statement provides for the following:

- Under step 1, the Secretary must request, in writing, information from each eligible producer for the quota type, about the eligible producer's past production amount for the quota type for the past production period and the percentage of the past production amount that was allocated by the eligible producer to each eligible person. This information must be provided by the eligible producer on or before the annual nomination day for the quota type and quota year.
- Under step 2, eligible producers are disregarded from steps 3 to 7 if they do not provide the requested information on or before the annual nomination day for the quota type and quota year, or if the eligible producer provides information that the eligible producer's past production amount for the quota type for the past production period is nil.
- Step 3 is used to calculate the sum of past production amounts. That is, after the annual nomination day for the quota type and quota year, the past production amounts provided by each eligible producer under paragraph (a) of step 1 are summed.
- Under step 4, each eligible producer's proportion of the sum of past production amounts is calculated. For each eligible producer, the calculation involves taking the production amount provided by the eligible producer under paragraph (a) of step 1 and dividing it by the amount worked out under step 3 (sum of past production amounts).
- Step 5 is used to calculate the amount that is referable to each eligible producer. That is, for each eligible producer, the eligible producer's proportion calculated under step 4 is multiplied by the annual access amount for the quota type and quota year.
- Under step 6, the amount that each eligible producer allocates to each eligible person is calculated. For each eligible person that has made an application for the quota type and quota year, the amount is worked out by multiplying the step 5 amount for the eligible producer by the percentage of the past production amount that was allocated by the eligible producer to the eligible person (under paragraph (b) of step 1).
- Step 7 is used to determine the amount of TRQ entitlement to be allocated to an eligible person that made an application for the quota type and quota year. This amount is the sum of the amounts worked out under step 6 for the eligible person for all eligible producers that allocate amounts to that eligible person.

This method statement enables the consistent application of the process each time that the calculations are made. This also ensures transparency, by allowing applicants to be aware of

the exact process for determining an allocation of an amount of TRQ entitlement under the production method.

New Division 3 of Part 6 of Chapter 2

New Division 3 of Part 6 of Chapter 2 of the General Rules provides for TRQ certificates issued under the production method.

Section 52N Applications for tariff rate quota certificates

New section 52N provides that a person who intends to export a consignment of a quota type in a quota year may apply to the Secretary under new section 52N for a TRQ certificate for the consignment.

The note following new section 52N refers the reader to section 114 of the General Rules for requirements and other matters relating to applications.

Section 52P Applications to be dealt with in order of receipt

New section 52P requires the Secretary to deal with applications under new section 52P in the order in which the applications are received by the Secretary.

The note following new section 52P explains that subsection 114(8) of the General Rules deals with when an application is taken to be received by the Secretary.

Section 52Q Issuing tariff rate quota certificates

New section 52Q provides for the issuing of TRQ certificates. New subsection 52Q(1) provides that new section 52Q applies in relation to an application under new section 52N for a TRQ certificate in relation to a consignment of a quota type for export in a quota year.

New subsection 52Q(2) requires the Secretary, subject to section 115 of the General Rules, to issue a TRQ certificate to the applicant in relation to the consignment if, at the time the Secretary deals with the application, the uncommitted annual access amount for the quota type and quota year is greater than zero.

The note following new subsection 52Q(2) explains that section 115 of the General Rules deals with when the Secretary may decide not to issue a certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

New subsection 52Q(3) provides that the TRQ certificate must be issued for the lesser of the weight of the consignment applied for and the uncommitted annual access amount at the time the Secretary deals with the application.

New Division 4 of Part 6 of Chapter 2

New Division 4 of Part 6 of Chapter 2 of the General Rules provides for the transfer of TRQ entitlement under the production method.

Section 52R Transfer of tariff rate quota entitlement

New section 52R provides for the transfer of TRQ entitlement. New subsection 52R(1) provides that a person (the **transferor**) who has an amount of TRQ entitlement for a quota type and a quota year may, at any time before the end of the quota year, transfer all or part of that amount to an eligible person (the **transferee**) for the quota type.

New subsection 52R(2) requires the transferor to give the Secretary a notice setting out the name of the transferor, name of the transferee and the amount of the TRQ entitlement to be transferred.

New subsection 52R(3) requires the notice to be:

- Given in the approved manner (if any) and approved form (if any) or if there is no approved manner and no approved form, in writing; and
- Accompanied by any information or documents required by the Secretary.

New subsection 52R(4) provides that the amount is transferred in accordance with the notice under new subsection 52R(2) if the Secretary receives such a notice.

Item [9] – Before Division 1 of Part 3A of Chapter 3

Part 3A of Chapter 3 of the General Rules provides for exports to the UK, where the exports are covered by TRQs. This item inserts new Divisions 1A, 1B, 1C and 1D before Division 1 of Part 3A of Chapter 3.

New Division 1A of Part 3A of Chapter 3

New Division 1A of Part 3A of Chapter 3 of the General Rules relates to UK FTA beef for export to the UK.

Section 89AA UK FTA beef

New section 89AA provides the definition of **UK FTA beef**, which is defined as meat, internal organs or preparations of bovine animals that may, under the A-UKFTA, be exported from Australia to the UK.

Section 89AB Quota year

New subsection 89AB(1) provides that a quota year for UK FTA beef for export to the UK is a period of 12 months beginning on 1 January.

New subsection 89AB(2) provides that for the purposes of new Division 1A of Part 3A of Chapter 3, the *initial quota year* is the quota year in which the A-UKFTA comes into force.

Section 89AC Method for issuing tariff rate quota certificates

New subsection 89AC(1) provides that, subject to new subsection 89AC(2), the performance-based method applies for the purposes of issuing a TRQ certificate from the performance-based access amount in relation to a consignment of UK FTA beef for export to the UK. The note following new subsection 89AC(1) explains that the performance-based method is set out in new Part 5 of Chapter 2 of the General Rules (as inserted by item [8] of Schedule 1).

New Part 5 of Chapter 2 of the General Rules provides for a new method of determining TRQ entitlement, known as the performance-based method. The performance-based method provides for TRQ entitlement to be allocated proportionately across all applicants (where the total weight of eligible past exports exceeds the performance-based access amount), or to be allocated based on each applicant's past use of their TRQ entitlement (where the total weight of eligible past exports is less than the performance-based access amount). Any unallocated access amounts are then allocated under a method specified in Chapter 3 (discussed below).

New section 52G sets out the circumstances in which the Secretary must issue a TRQ certificate under the performance-based method. This is subject to section 115 of the General Rules deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

New subsection 89AC(2) provides that, for the purposes of applying the performance-based method for the initial quota year and the quota year following the initial quota year:

- Disregard the requirement that an eligible person must make an application to the Secretary for an allocation of an amount of TRQ entitlement from the performance-based access amount; and
- Apply new section 52D as if a reference to an applicant were a reference to an eligible person; and
- Apply step 4 of the method statement even if the step 2 amount is less than or equal to the performance-based access amount.

During the initial quota year and the quota year following the initial quota year, there will be a transitional period to facilitate the efficient allocation of TRQ entitlement for UK FTA beef for export to the UK. When read with new paragraph 89AG(1)(a) below, during the transition period, an eligible person is an export licence holder who received an allocation of an amount of TRQ entitlement for the UK WTO high quality beef quota during a certain period. Such eligible persons will not need to apply for the allocation of an amount of TRQ entitlement under the UK FTA beef quota, and the TRQ entitlements will be allocated proportionately over the transition period.

New subsection 89AC(3) provides that, subject to subsection 89AC(4), the first come, first served method applies for the purposes of issuing a TRQ certificate from the unrestricted access amount in relation to a consignment of UK FTA beef for export to the UK. The note following new subsection 89AC(3) explains that the first come, first served method is set out in Part 1 of Chapter 2 of the General Rules.

Under Part 1 of Chapter 2, the Secretary must deal with applications for TRQ certificates in the order in which the applications are received. Subject to section 115, the Secretary must issue a TRQ certificate if, at the time of dealing with the application, the uncommitted annual or quarterly access amount (as relevant) for the quota type and the quota year is greater than zero. Section 115 of the General Rules deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

New subsection 89AC(4) provides that, for the purposes of applying the first come, first served method to the unrestricted access amount in a quota year, a reference to the uncommitted annual access amount in subsection 11(2) and paragraph 11(3)(b) of the General Rules is treated as a reference to the uncommitted unrestricted access amount.

This modification to the first come, first served method in Part 1 of Chapter 2 of the General Rules recognises that part of the annual access amount in relation to UK FTA beef for export to the UK is allocated under the performance-based method. Therefore, only the uncommitted portion of the unrestricted access amount (which represents the balance of the annual access amount after allocations have been made under the performance-based method) is available when issuing TRQ certificates under section 11.

Section 89AD Annual access amount

The annual access amount represents the total amount of quota that is available for all exporters to use, for a quota type and quota year.

New section 89AD provides that the annual access amount for UK FTA beef for export to the UK in relation to a quota year is the weight of UK FTA beef that may, under the A-UKFTA, be exported from Australia to the UK in a quota year at a reduced tariff rate.

Section 89AE Performance-based access amount

The performance-based access amount represents the amount of quota that is available for exporters to use, for a quota type and quota year, under the performance-based method.

New section 89AE provides that the performance-based access amount for UK FTA beef for export to the UK in relation to a quota year is:

- For the initial quota year and the quota year following the initial quota year—50% of the annual access amount; and
- For any other quota year – the annual access amount.

During the initial quota year and the quota year following the initial quota year, there will be a transitional period to encourage new exporters to enter the market for the export of UK FTA beef to the UK. For this reason, only 50% of the annual access amount will be allocated under the performance-based method during the transitional period. This will revert to 100% of the annual access amount at the end of the transitional period.

Section 89AF Annual application day

Under new subsection 52C(2) of the General Rules (as inserted by item [8] of Schedule 1), applications for the allocation of TRQ entitlement must be made on or before the annual application day for the quota type and quota year. This provides a latest date by which information must be provided, so that allocations can be made in a timely manner.

New section 89AF provides that the annual application day for UK FTA beef for export to the UK for a quota year is:

- For the initial quota year and the quota year following the initial quota year – the day specified by the Secretary; and
- For a later quota year – 16 November in the calendar year immediately before the quota year.

Section 89AG Eligible person

Under new subsection 52C(1) of the General Rules (as inserted by item [8] of Schedule 1), an eligible person may apply to the Secretary for an allocation of an amount of TRQ entitlement for a quota type and quota year, under the performance-based method.

New subsection 89AG(1) provides for when a person is an eligible person for the export of UK FTA beef to the UK in relation to the performance-based access amount.

For the initial quota year and the quota year following the initial quota year, an eligible person is a person who:

- Received an allocation of an amount of TRQ entitlement for UK WTO high quality beef for export to the UK in the period beginning on 1 July 2021 and ending on 30 June 2022; and
- Holds an export licence allowing the holder to export UK FTA beef to the UK.

For any other quota year, an eligible person is a person who:

- Exported a consignment of UK FTA beef during the period beginning on the 1 November that is 14 months before the start of the quota year and ending on 31 October of the calendar year immediately before the quota year; and
- Holds an export licence allowing the holder to export UK FTA beef to the UK.

During the initial quota year and the quota year following the initial quota year, there will be a transitional period to facilitate the efficient allocation of TRQ entitlement for UK FTA beef for export to the UK. When read with new subsection 89AC(2) above, a modified approach to issuing TRQ certificates under the performance-based method will apply during the transition period.

New subsection 89AG(2) provides for when a person is an eligible person for the export of UK FTA beef to the UK in relation to the unrestricted access amount. An eligible person is a person who:

- Holds an export licence allowing the holder to export UK FTA beef to the UK; and
- If the person has a TRQ entitlement for UK FTA beef under the performance-based method, then the person has been issued TRQ certificates in relation to at least 80% of that entitlement.

This provision allows a person who has been allocated a TRQ entitlement for UK FTA beef under the performance-based method to access the first come, first served portion of the quota in certain circumstances. Such circumstances are where the person has been issued TRQ certificates in relation to at least 80% of their TRQ entitlement under the performance-based method. This allows new exporters to access the UK FTA beef quota under the first come, first served method, while ensuring that any unused quota can be utilised by other exporters who are close to exhausting their TRQ entitlement under the performance-based method.

Section 89AH Eligible past exports—performance-based access amount

Under the performance-based method, the eligible past exports for an eligible person is used to calculate allocations of TRQ entitlement, as an exporter's past history of exports is relevant to determining the amount of quota that they are likely to be able to use.

New subsection 89AH(1) provides that, subject to new subsection 89AH(2), a consignment is an eligible past export for UK FTA beef for export to the UK in relation to a quota year if:

- It is a consignment of UK FTA beef for export to the UK; and
- A TRQ certificate was issued in relation to the consignment in the period beginning on the 1 November that is 14 months before the start of the quota year and ending on 31 October of the calendar year before the quota year starts.

New subsection 89AH(2) provides that, for the initial quota year and the quota year following the initial quota year, a reference to eligible past exports in the performance-based method is treated as a reference to the amount of TRQ entitlement that was allocated to the applicant for UK WTO high quality beef for export to the UK in the quota year beginning on 1 July 2021.

New Division 1B of Part 3A of Chapter 3

New Division 1B of Part 3A of Chapter 3 of the General Rules relates to UK FTA dairy goods for export to the UK.

Section 89AJ UK FTA dairy goods

New subsection 89AJ(1) provides the definition of **UK FTA dairy goods**, which means goods of any of the following kinds:

- Butter;
- Cheese and curd;
- Milk, cream, yoghurt and whey.

New subsection 89AJ(2) defines each of the terms **butter, cheese and curd, milk, cream, yoghurt, and whey** for the purposes of new Division 1B of Part 3A of Chapter 3, as follows:

- **Butter** means butter of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.
- **Cheese and curd** means cheese and curd of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.
- **Milk, cream, yoghurt and whey** means milk, cream, yoghurt and whey of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.

Section 89AK Quota year

New subsection 89AK(1) provides that a quota year for a kind of FTA dairy goods for export to the UK is a period of 12 months beginning on 1 January.

New subsection 89AK(2) provides that for the purposes of new Division 1B of Part 3A of Chapter 3, the **initial quota year** is the quota year in which the A-UKFTA comes into force.

Section 89AL Method for issuing tariff rate quota certificates

New section 89AL provides that the first come, first served method applies for the purposes of issuing a TRQ certificate in relation to a consignment of a kind of UK FTA dairy goods for export to the UK in the initial quota year or a later quota year. The note following new section 89AL explains that the first come, first served method is set out in Part 1 of Chapter 2 of the General Rules.

Under Part 1 of Chapter 2, the Secretary must deal with applications for TRQ certificates in the order in which the applications are received. Subject to section 115, the Secretary must issue a TRQ certificate if, at the time of dealing with the application, the uncommitted annual or quarterly access amount (as relevant) for the quota type and the quota year is greater than zero. Section 115 of the General Rules deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

Section 89AM Annual access amount

The annual access amount represents the total amount of quota that is available for all exporters to use, for a quota type and quota year.

New section 89AM provides that the annual access amount for a kind of UK FTA dairy goods for export to the UK in relation to a quota year is the weight of those goods that may, under the A-UKFTA, be exported from Australia to the UK in the quota year at a reduced tariff rate.

New Division 1C of Part 3A of Chapter 3

New Division 1C of Part 3A of Chapter 3 of the General Rules relates to UK FTA grain goods for export to the UK.

Section 89AN UK FTA grain goods

New subsection 89AN(1) provides the definition of **UK FTA grain goods**, which means goods of any of the following kinds:

- Barley;
- Broken rice;
- Long grained rice;
- Wheat and meslin.

New subsection 89AN(2) defines each of the terms **barley**, **broken rice**, **long grained rice** and **wheat and meslin** for the purposes of new Division 1C of Part 3A of Chapter 3, as follows:

- **Barley** means barley of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.
- **Broken rice** means broken rice of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.
- **Long grained rice** means long grained rice of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.
- **Wheat and meslin** means wheat and meslin of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.

Section 89AP Quota year

New subsection 89AP(1) provides that a quota year for a kind of UK FTA grain goods for export to the UK is a period of 12 months beginning on 1 January.

New subsection 89AP(2) provides that for the purposes of new Division 1C of Part 3A of Chapter 3, the **initial quota year** is the quota year in which the A-UKFTA comes into force.

Section 89AQ Quarter of a quota year

New section 89AQ provides that a quarter of a quota year for a kind of UK FTA grain goods for export to the UK is a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October. A quarter of a quota year is relevant for determining the quarterly access amount under subsection 7(1) of the General Rules.

Section 89AR Method for issuing tariff rate quota certificates

New section 89AR provides that the first come, first served method applies for the purposes of issuing a TRQ certificate in relation to a consignment of a kind of UK FTA grain goods for export to the UK in the initial quota year or a later quota year. The note following new section 89AR explains that the first come, first served method is set out in Part 1 of Chapter 2 of the General Rules.

Under Part 1 of Chapter 2, the Secretary must deal with applications for TRQ certificates in the order in which the applications are received. Subject to section 115, the Secretary must issue a TRQ certificate if, at the time of dealing with the application, the uncommitted annual or quarterly access amount (as relevant) for the quota type and the quota year is greater than zero. Section 115 of the General Rules deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who

applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

Section 89AS Access amounts

The annual access amount represents the total amount of quota that is available for all exporters to use, for a quota type and quota year.

New subsection 89AS(1) provides that the annual access amount for a kind of UK FTA grain goods for export to the UK in relation to a quota year is the weight of those goods that may, under the A-UKFTA, be exported from Australia to the UK in the quota year at a reduced tariff rate.

New subsection 89AS(2) provides that there is a quarterly access amount for barley and wheat and meslin for export to the UK. Under subsection 7(1) of the General Rules, subject to subsection 7(4), the quarterly access amount for a quota type and a quarter of a quota year is the annual access amount for that quota type and quota year divided by 4. Subsection 7(4) of the General Rules provides that if, at the end of the first, second or third quarter of a quota year, the uncommitted quarterly access amount for that quarter is greater than zero, the quarterly access amount for the next quarter of the quota year is increased by that uncommitted quarterly access amount.

New Division 1D of Part 3A of Chapter 3

New Division 1D of Part 3A of Chapter 3 of the General Rules relates to UK FTA sugar goods for export to the UK.

Section 89AT UK FTA sugar goods

New section 89AT provides the definition of **UK FTA sugar goods**, which means sugar of a kind that may, under the A-UKFTA, be exported from Australia to the UK at a reduced tariff rate.

Section 89AU Quota year

New subsection 89AU(1) provides that a quota year for a kind of UK FTA sugar goods for export to the UK is a period of 12 months beginning on 1 October.

New subsection 89AU(2) provides that for the purposes of new Division 1D of Part 3A of Chapter 3, the **initial quota year** is the quota year in which the A-UKFTA comes into force.

Section 89AV Method for issuing tariff rate quota certificates

New section 89AV provides that the production method applies for the purposes of issuing a TRQ certificate in relation to a consignment of a kind of UK FTA sugar goods for export to the UK in the initial quota year or a later quota year. The note following new section 89AV explains that the production method is set out in new Part 6 of Chapter 2 of the General Rules (as inserted by item [8] of Schedule 1).

New Part 6 of Chapter 2 of the General Rules provides for a new method of determining TRQ entitlement, known as the production method. The production method provides for TRQ entitlement to be allocated proportionately across all applicants, after considering the production amount of a quota type produced by all eligible producers. New section 52Q sets out the circumstances in which the Secretary must issue a TRQ certificate. This is subject to section 115 of the General Rules which deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

Section 89AW Annual application and annual nomination days

New section 89AW provides for the annual application day and annual nomination day for UK FTA sugar goods.

Under new subsection 52L(3) of the General Rules (as inserted by item [8] of Schedule 1), applications for the allocation of TRQ entitlement must be made on or before the annual application day for the quota type and quota year. This provides a latest date by which information must be provided, so that allocations can be made in a timely manner.

New subsection 89AW(1) provides that the annual application day for UK FTA sugar goods for export to the UK for a quota year is:

- For the initial quota year—the day specified by the Secretary; and
- For a later quota year—15 August in the calendar year in which the quota year starts.

Under step 1 of the method statement in new subsection 52M(2) of the General Rules (as inserted by item [8] of Schedule 1), each eligible producer for a quota type must provide certain information to the Secretary on or before the annual nomination day for the quota type and quota year. This provides a latest date by which information must be provided, so that calculations under the production method can be made in a timely manner.

New subsection 89AW(2) provides that the annual nomination day for UK FTA sugar goods for export to the UK for a quota year is:

- For the initial quota year—the day specified by the Secretary; and

- For a later quota year—15 August in the calendar year in which the quota year starts.

Section 89AX Annual access amount

The annual access amount represents the total amount of quota that is available for all exporters to use, for a quota type and quota year.

New section 89AX provides that the annual access amount for UK FTA sugar goods for export to the UK in relation to a quota year is the weight of those goods that may, under the A-UKFTA, be exported from Australia to the UK in the quota year at a reduced tariff rate.

Section 89AY Eligible person and eligible producer

Under new subsection 52L(2) of the General Rules (as inserted by item [8] of Schedule 1), an eligible person may apply to the Secretary for an allocation of an amount of TRQ entitlement for that quota type and a quota year, under the production method.

New subsection 89AY(1) provides that all persons are an eligible person for UK FTA sugar goods for export to the UK.

Under step 1 of the method statement in new subsection 52M(2) of the General Rules (as inserted by item [8] of Schedule 1), each eligible producer for a quota type must provide certain information to the Secretary in relation to a quota type and quota year, under the production method.

New subsection 89AX(2) provides that an eligible producer for UK FTA sugar goods for export to the UK is a person who mills sugar.

Section 89AZ Past production period

Under the production method, the past production period for an eligible producer is used to calculate allocations of TRQ entitlement, as the producer's past history of production is relevant to determining the amount of the quota type that they are likely to be able to produce.

New section 89AZ provides that the past production period for UK FTA sugar goods for export to the UK for a quota year is the period beginning on 1 July that is 27 months before the start of the quota year and ending on 30 June of the calendar year in which the quota year starts.

Item [10] – Division 1 of Part 3A of Chapter 3 (heading)

Division 1 of Part 3A of Chapter 3 of the General Rules deals with UK buffalo meat for export to the UK. This item inserts “WTO” after “UK” in the heading of Division 1 of Part 3A of Chapter 3.

This amendment is consequential to the amendments made to section 89A by item [11] of Schedule 1, which replaces the definition of *UK buffalo meat*, with the new definition of *UK WTO buffalo meat*.

Item [11] – Section 89A

This item repeals and substitutes section 89A of the General Rules. New section 89A provides the definition of *UK WTO buffalo meat*, which means boneless buffalo meat of a kind that may, under the UK Tariff Quota Regulations, be exported from Australia to the UK under quota number 05.4001.

This is a technical amendment, as the substantive meaning of the new definition of *UK WTO buffalo meat* is identical to the previous definition of *UK buffalo meat*. This amendment is intended to provide clarity for readers, and to assist in differentiating the UK WTO buffalo meat quota under the UK Tariff Quota Regulations, from the UK FTA beef quota under the A-UKFTA (see new Division 1A of Part 3A of Chapter 3, as inserted by item [9] of Schedule 1).

Item [12] – Section 89B

Section 89B of the General Rules provides for the quota year in relation to UK buffalo meat. This item inserts “WTO” after “UK” in section 89B.

This amendment is consequential to the amendment made to section 89A by item [11] of Schedule 1, which replaces the definition of *UK buffalo meat*, with the new definition of *UK WTO buffalo meat*.

Item [13] – Section 89C

Section 89C of the General Rules provides the method for issuing TRQ certificates in relation to UK buffalo meat. This item inserts “WTO” after “UK” in section 89C.

This amendment is consequential to the amendment made to section 89A by item [11] of Schedule 1, which replaces the definition of *UK buffalo meat*, with the new definition of *UK WTO buffalo meat*.

Item [14] – Section 89D

Section 89D of the General Rules provides for the annual access amount in relation to UK buffalo meat. This item inserts “WTO” after the first and second occurring “UK” in section 89D.

This amendment is consequential to the amendment made to section 89A by item [11] of Schedule 1, which replaces the definition of *UK buffalo meat*, with the new definition of *UK WTO buffalo meat*.

Item [15] – Division 2 of Part 3A of Chapter 3 (heading)

Division 2 of Part 3A of Chapter 3 of the General Rules deals with UK high quality beef for export to the UK. This item inserts “WTO” after “UK” in the heading of Division 2 of Part 3A of Chapter 3.

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [16] – Section 89E

This item repeals and substitutes section 89E of the General Rules. New section 89E provides the definition of *UK WTO high quality beef*, which means meat of a kind that may, under the UK Tariff Quota Regulations, be exported from Australia to the UK under quota number 05.4451.

This is a technical amendment, as the substantive meaning of the new definition of *UK WTO high quality beef* is identical to the previous definition of *UK high quality beef*. This amendment is intended to provide clarity for readers, and to assist in differentiating the UK WTO high quality beef quota under the UK Tariff Quota Regulations, from the UK FTA beef quota under the A-UKFTA (see new Division 1A of Part 3A of Chapter 3, as inserted by item [9] of Schedule 1).

Item [17] – Section 89F

Section 89F of the General Rules provides for the quota year in relation to UK high quality beef. This item inserts “WTO” after “UK” in section 89F.

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Items [18] to [20] – Subsection 89G(1), paragraph 89G(2)(b) and subsection 89G(7)

Section 89G of the General Rules provides the method for issuing TRQ certificates in relation to UK high quality beef. This item inserts “WTO” after “UK” in subsection 89G(1), paragraph 89G(2)(b) and subsection 89G(7).

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [21] and [22] – Section 89H and paragraph 89H(b)

Section 89H of the General Rules provides for the annual access amount in relation to UK high quality beef. Item [21] omits “for UK” and substitutes “for UK WTO” in section 89H. Item [22] omits “of UK” and substitutes “of UK WTO” in paragraph 89H(b).

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [23] – Subsections 89J(1) and (2)

Section 89J of the General Rules provides for application and reclamation days in relation to UK high quality beef. This item inserts “WTO” after “UK” in subsections 89J(1) and (2).

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [24] – Section 89K

Section 89K of the General Rules provides for an eligible person in relation to UK high quality beef. This item inserts “WTO” after “UK” wherever occurring) in section 89K.

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [25] – Section 89L

Section 89L of the General Rules provides for eligible past exports in relation to UK high quality beef. This item omits “for UK” and substitutes “for UK WTO” wherever it occurs in section 89L.

This amendment consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [26] – Section 89M

Section 89M of the General Rules provides for the minimum quota allocation in relation to UK high quality beef. This item inserts “WTO” after “UK” in section 89M.

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [27] – Subsections 89N(1), (2) and (3)

Section 89N of the General Rules provides for penalties in relation to UK high quality beef. This item inserts “WTO” after “UK” in subsections 89N(1), (2) and (3).

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [28] – Section 89P

Section 89P of the General Rules provides for the maximum transfer percentage in relation to UK high quality beef. This item inserts “WTO” after “UK” in section 89P.

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [29] – Subsections 89Q(1) and (2)

Section 89Q of the General Rules provides for new entrant access amounts in relation to UK high quality beef. This item inserts “WTO” after “UK” in subsections 89Q(1) and (2).

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of *UK high quality beef*, with the new definition of *UK WTO high quality beef*.

Item [30] – Before section 129

Part 2 of Chapter 7 of the General Rules contains transitional provisions relating to the *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021*.

This item inserts new section 129A before section 129 of the General Rules. New section 129A provides the following new definitions for Part 2 of Chapter 7:

- ***UK buffalo meat*** has the meaning given by section 6 as in force immediately before the commencement of Schedule 1 to the Amendment Rules.
- ***UK high quality beef*** has the meaning given by section 6 as in force immediately before the commencement of Schedule 1 to the Amendment Rules.

This amendment is consequential to the amendments made to sections 89A and 89E by items [11] and [16] of Schedule 1, which replace the definitions of ***UK buffalo meat*** and ***UK high quality beef***, with the new definitions of ***UK WTO buffalo meat*** and ***UK WTO high quality beef***, respectively. This item preserves the meaning of definitions of ***UK buffalo meat*** and ***UK high quality beef*** as they applied under the transitional provisions relating to the *Export Control (Tariff Rate Quotas) Amendment (Brexit) Order 2021*, prior to the commencement of Schedule 1 to the Amendment Rules.

Items [31] to [33] – Paragraph 135(1)(b), subsection 135(11) and paragraph 135(11)(b)

Section 135 of the General Rules provides for the calculation for past eligible exports for EU high quality beef and UK high quality beef for export to the EU and UK respectively, in each of the quota years beginning on 1 July 2021, 1 July 2022 and 1 July 2023. In particular, subsection 135(11) provides for the calculation of a person’s past eligible exports for UK high quality beef for export to the UK in the quota year beginning on 1 July 2023.

Item [31] inserts “and UK WTO high quality beef” after “UK high quality beef” in paragraph 135(1)(b). Item [32] omits the first occurring “UK high quality beef” and substitutes “UK WTO high quality beef” in subsection 135(11). Item [33] inserts “and UK WTO high quality beef” after “UK high quality beef” in paragraph 135(11)(b).

This amendment is consequential to the amendments made to section 89E by item [16] of Schedule 1, which replaces the definition of ***UK high quality beef***, with the new definition of ***UK WTO high quality beef***.

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

The purpose of the Sheepmeat and Goatmeat Rules is to provide for, and in relation to, the establishment and administration of a system of TRQs for the export of sheepmeat and goatmeat to the EU and the UK.

For completeness, the existing Sheepmeat and Goatmeat Rules and a number of the below amendments prescribe rules that refer to relevant regulations of the EU and the UK. Specifically, section 6 of the Sheepmeat and Goatmeat Rules provides definitions for the following:

- ***EU Regulation*** means Commission Implementing Regulation (EU) 2020/1988, as in force from time to time. The note to this definition directs the reader's attention to the fact that, in 2021, this Regulation could be viewed on the EUR-Lex website at <https://eur-lex.europa.eu>; and
- ***UK Regulations*** means the *Customs (Tariff Quotas) (EU Exit) Regulations 2020* (UK), as in force from time to time. The note to this definition directs the reader's attention to the fact that, in 2021, this Regulation could be viewed on the UK legislation website at <https://legislation.gov.uk>.

Paragraph 432(3)(g) of the Act provides that, despite subsection 14(2) of the Legislation Act, 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 TRQ 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 set out, and provide a method for calculating, the TRQ for the importation of a kind of goods into the EU and UK respectively. These 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. As noted above, these documents were publicly available in 2021 on the EUR-Lex website and UK legislation website respectively.

Item [34] – Section 6 (definition of *access amount*)

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of various 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. The substituted definition provides that ***access amount*** means:

- For EU-eligible meat – the EU-access amount; or
- For UK FTA-eligible meat – the UK FTA-access amount; or
- For UK WTO-eligible meat – the UK WTO-access amount.

This amendment assists readers to understand how a reference to *access amount* in the Sheepmeat and Goatmeat Rules differs depending on the quota type for export. This amendment is consequential to the amendments made by items [37] and [39] of Schedule 1, which insert the definitions of *EU-access amount*, *UK FTA-access amount* and *UK WTO-access amount* in section 6.

Item [35] – Section 6

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

This item inserts the definition of *Australia-UK Free Trade Agreement* in section 6. The *Australia-UK Free Trade Agreement* means the Free Trade Agreement between Australia and the United Kingdom of Great Britain and Northern Ireland, done on 16 and 17 December 2021, as in force for Australia from time to time. The note following this definition explains that this agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website and provides the address for the AustLII website.

Item [36] – Section 6 (definition of *eligible meat*)

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

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

- EU-eligible meat; or
- UK FTA-eligible meat; or
- UK WTO-eligible meat.

This amendment assists readers to understand how a reference to *eligible meat* in the Sheepmeat and Goatmeat Rules differs depending on the quota type for export. This amendment is consequential to the amendments made by items [37] and [39] of Schedule 1, which inserts the definitions of *EU-eligible meat*, *UK FTA-eligible meat* and *UK WTO-eligible meat* in section 6.

Item [37] – Section 6

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

This item inserts the definitions of *EU-access amount* and *EU-eligible meat* in section 6.

The *EU-access amount* means:

- For the quota year beginning on 1 January 2022 – 5,851,000 kilograms; or
- For another quota year – the total weight of EU-eligible meat that may, under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the 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.

The term *EU-eligible meat* is defined as sheepmeat and goatmeat of the kind described under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the EU Regulation.

This is a technical amendment, as the substantive meaning of the new definitions of *EU-access amount* and *EU-eligible meat* are identical to the previous paragraphs (a) and (b) of the definition of *access amount*, and paragraph (a) of the definition of *eligible meat*. This amendment is intended to provide clarity for readers, and to assist in differentiating between different kinds of eligible meat for export to the EU and the UK.

Item [38] – Section 6 (definition of *quota destination*)

Section 6 of the Sheepmeat and Goatmeat Rules provides definitions of various terms used throughout the Sheepmeat and Goatmeat Rules, including *quota destination*.

This item repeals the definition of *quota destination* in section 6. This amendment is consequential to the amendments made by item [39] of Schedule 1 which inserts a new definition for *quota type* in section 6.

Item [39] – Section 6

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

This item inserts the definitions of *quota type*, *relevant destination authority*, *relevant weight*, *UK FTA-access amount*, *UK FTA-eligible meat*, *UK WTO-access amount* and *UK WTO-eligible meat* in section 6.

The term *quota type* is defined as a kind of eligible meat for export to a particular destination. Previously, the term *quota destination* was used to differentiate between exports to the UK and the EU. As a result of the amendments made by Schedule 1 to the Sheepmeat and Goatmeat Rules, it is necessary to differentiate between kinds of eligible meat for export to the UK, that is, *UK FTA-eligible meat* and *UK WTO-eligible meat*. The insertion of the term *quota type* is intended to assist readers to distinguish between different kinds of eligible meat for export to different destinations.

The **relevant destination authority**, for a kind of goods for export to a particular destination, means the authority or body that is responsible for regulating the importation of that kind of goods into that destination. This amendment is consequential to the repeal of the definition of **quota destination** in section 6 (as amended by item [38] of Schedule 1), as previously, the Sheepmeat and Goatmeat Rules referred to a quota destination authority.

The **relevant weight** is defined as:

- For EU-eligible meat and UK WTO-eligible meat—the carcase equivalent weight; or
- For UK FTA-eligible meat—the actual weight of the UK FTA-eligible meat.

Together with the amendments made to section 12 of the Sheepmeat and Goatmeat Rules by items [48]-[52] of Schedule 1, this provides that the actual weight of UK FTA-eligible meat is used for the purposes of working out the initial allocation of an amount of TRQ entitlement. This also ensures that the carcase equivalent weight continues to be used for the purposes of working out the initial allocation of an amount of TRQ entitlement in relation to EU-eligible meat and UK WTO-eligible meat.

The **UK FTA-access amount** means the total weight of UK FTA-eligible meat that may, under the A-UKFTA, be exported from Australia to the UK in the quota year at a reduced tariff rate.

The term **UK FTA-eligible meat** is defined as sheepmeat of a kind that may, under the A-UKFTA, be exported from Australia to the UK in the quota year at a reduced tariff rate.

The **UK WTO-access amount** means:

- For the quota year beginning on 1 January 2022 – 13,335,000 kilograms; or
- For another quota year – the total weight of UK WTO eligible meat that may, as set out in the Quota Table within the meaning of the 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.

The term **UK WTO-eligible meat** means 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 is a technical amendment, as the substantive meaning of the new definitions of **UK WTO-access amount** and **UK WTO-eligible meat** are identical to the previous paragraphs (c) and (d) of the definition of **access amount**, and paragraph (b) of the definition of **eligible meat**. This amendment is intended to provide clarity for readers, and to assist in differentiating between different kinds of eligible meat for export to the EU and the UK.

Item [40] – Section 7

Section 7 of the Sheepmeat and Goatmeat Rules sets out the purpose of Part 2 of the Sheepmeat and Goatmeat Rules. This item omits “eligible meat to a quota destination within the access amount for the quota destination and a quota year” and substitutes “a quota type within the access amount for the quota type and a quota year” in section 7.

This amendment is consequential to the amendments made to section 6 by items [34], [36], [38] and [39] of Schedule 1, which provide for new definitions of *access amount*, *eligible meat* and *quota type*, and repeal the definition of *quota destination*.

Item [41] – Section 8

Section 8 of the Sheepmeat and Goatmeat Rules provides for how the balance of an exporter’s TRQ entitlement, at a time in a quota year, is calculated. This item omits the word “destination” wherever it occurs and substitutes the word “type” in section 8.

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [42] – Subsections 9(1) and (2)

Section 9 of the Sheepmeat and Goatmeat Rules provides for how an application for a TRQ entitlement is made to the Secretary. This item omits the word “destination” and substitutes the word “type” in subsections 9(1) and (2).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [43] – Subsection 10(1)

Subsection 10(1) of the Sheepmeat and Goatmeat Rules provides for how the initial allocation of TRQ entitlement is determined by the Secretary.

This item amends subsection 10(1) to omit the words “quota destination and a quota year to be allocated to each applicant under section 9, using the following method statement” and substitutes the following:

- “quota type and a quota year to be allocated to each applicant under section 9, using:
- (a) if the tariff rate quota entitlement being determined is for UK FTA eligible meat—the method statement set out in subsection (1A) of this section; or
 - (b) if the tariff rate quota entitlement being determined is for EU eligible meat or UK WTO eligible meat—the following method statement.”

This amendment is consequential to the amendments made to section 6 by items [37] to [39] of Schedule 1, which provide for new definitions of *EU-eligible meat*, *quota type*, *UK FTA-eligible meat* and *UK WTO-eligible meat*, and repeal the definition of *quota destination*.

Item [44] – Subsection 10(1) (method statement)

Subsection 10(1) of the Sheepmeat and Goatmeat Rules provides for how the initial allocation of TRQ entitlement is determined by the Secretary. This item omits the word “destination” wherever it occurs and substitutes the word “type” in the method statement in subsection 10(1).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [45] – After subsection 10(1)

Subsection 10(1) of the Sheepmeat and Goatmeat Rules provides for how the initial allocation of TRQ entitlement is determined by the Secretary. This item inserts new subsection 10(1A) after subsection 10(1).

New subsection 10(1A) provides the method statement for determining the TRQ entitlement for UK FTA-eligible meat, for the purposes of new paragraph 10(1)(a) (as inserted by item [43] of Schedule 1). The method statement provides for the following:

- Under step 1, the formula in section 12 of the Sheepmeat and Goatmeat Rules is used to work out the step 1 amount for each applicant. Section 12 is used to work out the initial allocation, by using each applicant’s quota exports and accredited exports to produce proportional allocations.
- Step 2 applies where the step 1 amount for an applicant is less than 12,000 kilograms. In such cases, the amount is excluded, and the applicant is excluded and is not allocated an amount of TRQ entitlement for the quota type and quota year under section 10. This step is used to set a minimum allocation to avoid allocating amounts that are commercially unviable, given that a standard single shipment of sheepmeat is 12,000 kilograms.
- Under step 3, the total of the amounts that are excluded at step 2 is determined, and then distributed among the applicants who are not excluded at step 2, by using the formula in section 12 of the Sheepmeat and Goatmeat Rules (with certain modifications to the formula to reflect the total of the amounts excluded and the applicants who were not excluded). The distributed amounts are added to the step 1

amount for such applicants, in order to reach the applicant's step 3 amount. This step is used to produce proportional allocations of the amounts that are excluded at step 2.

- Step 4 is used to round all of the step 3 amounts to the nearest kilogram, with 0.5 of a kilogram to be rounded up. If, after this, the sum of the amounts exceeds the access amount for the quota type and quota year, then all the amounts are rounded down to the nearest kilogram. This step is used to enable allocations to the nearest kilogram, without exceeding the relevant access amount.
- Step 5 explains the amount of TRQ entitlement allocated for the quota type to an applicant not excluded at step 2. The amount of TRQ entitlement is the step 3 amount, rounded in accordance with step 4.

This method statement enables the consistent application of the process each time that the calculations are made. This also ensures transparency, by allowing applicants to be aware of the exact process for determining an allocation of an amount of TRQ entitlement for UK FTA-eligible meat under the Sheepmeat and Goatmeat Rules.

Item [46] – Paragraph 10(2)(a)

Subsection 10(2) of the Sheepmeat and Goatmeat Rules provides for when the Secretary must notify the applicants of an initial allocation of TRQ entitlement under section 10. This item omits the word “destination” and substitutes the word “type” in paragraph 10(2)(a).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [47] – Subsections 11(1) to (4)

Section 11 of the Sheepmeat and Goatmeat Rules provides for a process of determining whether a penalty should be applied to an applicant's initial allocation of TRQ entitlement under section 10, and if so, what the amount should be. This item omits the word “destination” wherever it occurs and substitutes the word “type” in subsections 11(1) to (4).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Items [48] to [52] – Section 12, section 12 (definition of *AA*), section 12 (definition of *applicant's accredited exports*), section 12 (definition of *applicant's quota exports*) and section 12 (definition of *total accredited exports*)

Section 12 of the Sheepmeat and Goatmeat Rules sets out the formula used in the method statement in subsection 10(1) for calculating the initial allocation of TRQ entitlement.

Item [48] omits the words “statement in subsection 10(1)” and substitutes the words “statements in subsections 10(1) and (1A)” in section 12.

Item [49] omits the word “destination” and substitutes the word “type” in the definition of *AA* in section 12.

Item [50] omits the words “carcase equivalent weight of all the applicant’s exports of eligible meat for the quota destination” and substitutes the words “relevant weight of all the applicant’s exports for the quota type” in the definition of *applicant’s accredited exports* in section 12.

Item [51] omits the words “year for export of consignments to the quota destination” and substitutes the words “type and quota year” in the definition of *applicant’s quota exports* in section 12.

Item [52] omits the words “carcase equivalent weight of all applicants’ exports of eligible meat for the quota destination” and substitutes the words “relevant weight of all applicants’ exports for the quota type” in the definition of *total accredited exports* in section 12.

These amendments are consequential to the amendments made to section 6 by items [36], [38] and [39] of Schedule 1, which provide for new definitions of *eligible meat*, *quota type* and *relevant weight* and repeal the definition of *quota destination*.

Item [53] – Subsection 13(1)

Section 13 of the Sheepmeat and Goatmeat Rules provides for the transfer of TRQ entitlement before 1 November in a quota year. This item omits the word “destination” and substitutes the word “type” in subsection 13(1).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [54] – Subsection 14(1)

Section 14 of the Sheepmeat and Goatmeat Rules provides for the return of TRQ entitlement before 1 November in a quota year. This item omits the word “destination” and substitutes the word “type” in subsection 14(1).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [55] – Paragraphs 15(1)(a) and (b)

Subsection 15(1) of the Sheepmeat and Goatmeat Rules sets out the circumstances in which an exporter must, before 1 November in a quota year, give the Secretary a notice under section 15. This item omits the word “destination” wherever it occurs and substitutes the word “type” in paragraphs 15(1)(a) and (b).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [56] – Section 16

Section 16 of the Sheepmeat and Goatmeat Rules provides for the revocation of TRQ entitlement for a failure to give a notice to the Secretary under paragraph 15(1)(a). This item omits the word “destination” wherever it occurs and substitutes the word “type” in section 16.

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [57] – Subsection 17(1)

Subsection 17(1) of the Sheepmeat and Goatmeat Rules provides for how the additional allocation of TRQ entitlement is determined by the Secretary. This item omits the word “destination” wherever it occurs and substitutes the word “type” in subsection 17(1).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [58] – Paragraph 17(2)(a)

Subsection 17(2) of the Sheepmeat and Goatmeat Rules provides for when the Secretary must notify the applicants of an additional allocation of TRQ entitlement. This item omits the word “destination” and substitutes the word “type” in paragraph 17(2)(a).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Item [59] – Subsection 18(1)

Section 18 of the Sheepmeat and Goatmeat Rules provides for the return of TRQ entitlement on or after 1 November in a quota year. This item omits the word “destination” and substitutes the word “type” in subsection 18(1).

This amendment is consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for the new definition of *quota type*, and repeal the definition of *quota destination*.

Items [60]-[63] – Subsection 19(1), subsection 19(2), paragraph 19(3)(a) and subsection 19(5)

Section 19 of the Sheepmeat and Goatmeat Rules provides for applications for TRQ certificates before additional allocations are made after 1 November in a quota year.

Item [60] repeals existing subsection 19(1) (not including the note) and substitutes new subsection 19(1). New subsection 19(1) provides that at any time before the Secretary allocates amounts under section 17 in relation to a quota type and a quota year (additional allocations after 1 November), an exporter may apply to the Secretary for a TRQ certificate for the export of a consignment of the quota type in the quota year within the access amount for the quota type and the quota year.

Item [61] omits the word “destination” and substitutes the word “type” in subsection 19(2).

Item [62] omits the words “carcase equivalent” and substitutes the word “relevant” in paragraph 19(3)(a).

Item [63] repeals and substitutes subsection 19(5). New subsection 19(5) provides that a TRQ certificate issued under section 19 in relation to a consignment of a quota type for export to a destination in a quota year has no effect before the start of the quota year to which the TRQ certificate relates and that the TRQ certificate ceases to have effect if the consignment is not accepted by the relevant destination authority before the end of the quota year.

These amendments are consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for new definitions of *quota type*, *relevant destination authority* and *relevant weight* and repeal the definition of *quota destination*.

Item [64] to [68] – Subsection 20(1), paragraphs 20(3)(a) and (b), paragraph 20(4)(a), subsection 20(6) and subsection 20(8)

Section 20 of the Sheepmeat and Goatmeat Rules provides for applications for TRQ certificates after additional allocations are made after 1 November in a quota year.

Item [64] repeals existing subsection 20(1) (not including the note) and substitutes new subsection 20(1). New subsection 20(1) provides that at any time between when the Secretary allocates amounts under section 17 in relation to a quota type 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 TRQ certificate for the export of the quota type in the quota year within the access amount for the quota type and the quota year.

Item [65] omits the word “destination” and substitutes the word “type” in paragraphs 20(3)(a) and (b).

Item [66] omits the words “carcase equivalent” and substitutes the word “relevant” in paragraph 20(4)(a).

Item [67] omits the word “destination” wherever it occurs and substitutes the word “type” in subsection 20(6).

Item [68] repeals and substitutes subsection 20(8). New subsection 20(8) provides that a TRQ certificate issued under section 20 in relation to a consignment of a quota type for export to a destination in a quota year ceases to have effect if the consignment is not accepted by the relevant destination authority before the end of the quota year.

These amendments are consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for new definitions of *quota type*, *relevant destination authority* and *relevant weight* and repeal the definition of *quota destination*.

Items [69] to [70] – Subsection 23(1) and paragraph 23(1)(a)

Subsection 23(1) of the Sheepmeat and Goatmeat Rules provides for the revocation of a TRQ certificate, on request from the person to whom the TRQ certificate is issued.

Item [69] omits the words “for the export of a consignment of eligible meat to a quota destination” and substitutes the words “in relation to a consignment of a quota type for export to a destination” in subsection 23(1).

Item [70] repeals existing paragraph 23(1)(a) and substitutes new paragraph 23(1)(a). New paragraph 23(1)(a) has the effect that the Secretary must revoke a TRQ certificate issued under section 19 or 20 if the certificate has not been accepted by the relevant destination authority and the circumstances set out in paragraphs 23(1)(b) and (c) exist.

These amendments are consequential to the amendments made to section 6 by items [36], [38] and [39] of Schedule 1, which provide for new definitions of *eligible meat*, *quota type* and *relevant destination authority* and repeal the definition of *quota destination*.

Items [71] and [72] – Subsection 23(2) and paragraph 23(2)(a)

Subsection 23(2) of the Sheepmeat and Goatmeat Rules provides for the revocation of a TRQ certificate, on the Secretary’s own initiative.

Item [71] omits the words “for the export of a consignment of eligible meat to a quota destination” and substitutes the words “in relation to a consignment of a quota type for export to a destination” in subsection 23(2).

Item [72] repeals existing paragraph 23(2)(a) and substitutes new paragraph 23(2)(a). New paragraph 23(2)(a) has the effect that the Secretary may revoke a TRQ certificate issued under section 19 or 20 if the certificate has not been accepted by the relevant destination authority and the circumstances set out in paragraph 23(2)(b) exist.

These amendments are consequential to the amendments made to section 6 by items [36], [38] and [39] of Schedule 1, which provide for new definitions of *eligible meat*, *quota type* and *relevant destination authority* and repeal the definition of *quota destination*.

Items [73] and [74] – Paragraph 24(1)(a) and subsection 24(4)

Section 24 of the Sheepmeat and Goatmeat Rules provides for the annotation of a TRQ certificate.

Item [73] omits “quota destination authority annotates a tariff rate quota certificate for export of a consignment to the quota destination” and substitutes “relevant destination authority annotates a tariff rate quota certificate” in paragraph 24(1)(a).

Item [74] omits “destination” wherever it occurs and substitutes “type” in subsection 24(4).

These amendments are consequential to the amendments made to section 6 by items [38] and [39] of Schedule 1, which provide for new definitions of *quota type* and *relevant destination authority* and repeal the definition of *quota destination*.

Items [75] and [76] – Subsection 25(1) and paragraph 25(2)(c)

Section 25 of the Sheepmeat and Goatmeat Rules provides for the transfer of export records.

Item [75] omits “carcase equivalent” and substitutes “relevant” in subsection 25(1). Item [76] omits “carcase equivalent” and substitutes “relevant” in paragraph 25(2)(c).

These amendments are consequential to the amendments made to section 6 by item [39] of Schedule 1, which provides for the new definition of *relevant weight*.

Item [77] – Section 27

Section 27 of the Sheepmeat and Goatmeat Rules sets out the purpose of Part 3 of the Sheepmeat and Goatmeat Rules, which relates to the all third countries quota. This item omits “eligible meat” and substitutes “EU-eligible meat” in section 27.

This amendment is consequential to the amendments made to section 6 by items [36] and [37] of Schedule 1, which provide for new definitions of *eligible meat* and *EU-eligible meat*.

Item [78] – Subsections 28(1) and (6)

Section 28 of the Sheepmeat and Goatmeat Rules provides for TRQ certificates under the all third countries quota. This item omits “eligible meat” and substitutes “EU-eligible meat” in subsections 28(1) and (6).

This amendment is consequential to the amendments made to section 6 by items [36] and [37] of Schedule 1, which provide for new definitions of *eligible meat* and *EU-eligible meat*.

Items [79] to [82] – Subsection 30(2), paragraph 30(3)(a) and paragraph 30(3)(b)

Section 30 of the Sheepmeat and Goatmeat Rules provides for the modification of powers of the Secretary or an internal reviewer and the Administrative Appeals Tribunal, in relation to the review of decisions.

Item [79] omits “for export of a consignment of eligible meat to a quota destination” and substitutes “in relation to a consignment of a quota type for export to a destination” in subsection 30(2). Item [80] omits “that quota destination” and substitutes “that destination” in subsection 30(2).

Item [81] omits “eligible meat for export to a quota destination” and substitutes “a quota type for export to a destination” in paragraph 30(3)(a).

Item [82] omits “that quota destination” and substitutes “that destination” in paragraph 30(3)(b).

These amendments are consequential to the amendments made to section 6 by items [36], [38] and [39] of Schedule 1, which provide for new definitions of *eligible meat* and *quota type*, and repeal the definition of *quota destination*.

Item [83] – At the end of Part 6

Part 6 of the Sheepmeat and Goatmeat Rules provides for application and transitional provisions. This item inserts new Division 4 of Part 6, which provides for transitional provisions relating to the Amendment Rules.

New section 52 provides for the application of the amendments made by the Amendment Rules to the 2022 and 2023 quota year. This has the effect that the Sheepmeat and Goatmeat Rules as in force immediately before the commencement of the Amendment Rules continue to apply in relation to:

- Allocations of TRQ entitlement for the following quota types and the quota years beginning on 1 January 2022 and 1 January 2023:
 - Sheepmeat and goatmeat of the kind described under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the EU Regulation; and
 - Sheepmeat and goatmeat of the kind that may, under the UK Regulations, be exported from Australia to the UK under quota number 05.2012, 05.2105 or 05.2106; and
- TRQ certificates for export of a consignment of those quota types in those quota years.

Schedule 2 – Amendments relating to the India-Australia Economic Cooperation and Trade Agreement

Division 2 of Part 4 of Chapter 8 of the *Export Control Act 2020* (the Act) relates to TRQ systems. Subsection 264(1) 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 TRQs for the export of goods.

The items in Schedule 2 are made for the purposes of subsection 264(1) of the Act.

A number of the below amendments to the General Rules prescribe rules that refer to an agreement between Australia and another country. Specifically, item [1] of Schedule 2 inserts a new definition in section 6 of the General Rules for the ***India-Australia Economic Cooperation and Trade Agreement***, which is defined as the Agreement between Australia and India for Economic Cooperation and Trade, done on 2 April 2022, as in force for Australia from time to time.

Paragraph 432(3)(h) of the Act provides that, despite subsection 14(2) of the Legislation Act, the rules may make provision for or in relation to any matter contained in an agreement between Australia and another country or a body (for example, the EU) that sets out, or provides a method for calculating, the TRQ for the importation of a kind of goods into a country covered by the agreement from Australian territory.

The India-Australia Economic Cooperation and Trade Agreement (IA ECTA) is an agreement between Australia and India that sets out, and provides a method for calculating, the TRQ for the importation of a kind of goods into India from Australian territory. The agreement is publicly available in the Australian Treaties Library on the AustLII website at <http://www.austlii.edu.au>.

Export Control (Tariff Rate Quotas—General) Rules 2021

Item [1] – Section 6

Section 6 of the General Rules provides definitions of various terms.

This item inserts the definition for ***India-Australia Economic Cooperation and Trade Agreement*** in section 6 of the General Rules. ***India-Australia Economic Cooperation and Trade Agreement*** means the Agreement between Australia and India for Economic Cooperation and Trade, done on 2 April 2022, as in force for Australia from time to time. The note following the definition for this term directs the reader to the Australian Treaties Library on the AustLII website and alerts the reader that the Agreement could be viewed on that website in 2022.

This item also inserts a signpost definition for **India quota goods** in section 6 of the General Rules, to draw the reader's attention to new subsection 74A(1). This is consequential to the amendment made by item [2] of Schedule 2, which inserts new subsection 74A(1).

Item [2] – After Part 1 of Chapter 3

Chapter 3 of the General Rules relates to exports covered by TRQs. This item adds a new Part 1A into Chapter 3. New Part 1A relates to exports to India.

Section 74A India quota goods

New section 74A provides the definition for **India quota goods**. New subsection 74A(1) defines **India quota goods** as goods of any of the following kinds:

- Almonds;
- Cotton;
- Lentils;
- Oranges and mandarins;
- Pears.

New subsection 74A(2) defines each of the terms **almonds, cotton, lentils, oranges and mandarins** and **pears** for the purposes of new Part 1A of Chapter 3, as follows:

- **Almonds** means almonds (in shell and shelled) of a kind that may, under the IA ECTA, be exported from Australia to India at a reduced tariff rate.
- **Cotton** means cotton (other than Indian cotton) of all staple lengths of a kind that may, under the IA ECTA, be exported from Australia to India at a reduced tariff rate.
- **Lentils** means lentils of a kind that may, under the IA ECTA, be exported from Australia to India at a reduced tariff rate.
- **Oranges and mandarins** means oranges and mandarins (including tangerines and satsumas) of a kind that may, under the IA ECTA, be exported from Australia to India at a reduced tariff rate.
- **Pears** means pears of a kind that may, under the IA ECTA, be exported from Australia to India at a reduced tariff rate.

Section 74B Quota year

New subsection 74B(1) provides that a quota year for a kind of India quota goods for export to India is a period of 12 months beginning on 1 January.

New subsection 74B(2) provides, for the purposes of new Part 1A of Chapter 3, the **initial quota year** is the quota year in which the IA ECTA comes into force.

Section 74C Quarter of a quota year

New section 74C provides that a quarter of a quota year for India quota goods for export to India is a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October. A quarter of a quota year is relevant for determining the quarterly access amount under subsection 7(1) of the General Rules.

Section 74D Method for issuing tariff rate quota certificates

New section 74D provides for the method for issuing TRQ certificates.

New subsection 74D(1) sets out the method for issuing TRQ certificates in relation to a consignment of a kind of India quota goods (other than a consignment of cotton) for export to India in the initial quota year or a later quota year. The relevant method is the first come, first served method, which is set out in Part 1 of Chapter 2 of the General Rules.

Under Part 1 of Chapter 2, the Secretary must deal with applications for TRQ certificates in the order in which the applications are received. Subject to section 115, the Secretary must issue a TRQ certificate if, at the time of dealing with the application, the uncommitted annual or quarterly access amount (as relevant) for the quota type and the quota year is greater than zero. Section 115 of the General Rules deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

New subsection 74D(2) sets out, subject to new subsections 74D(3) and (4), the method for issuing TRQ certificates in relation to a consignment of cotton for export to India in the initial quota year or a later quota year. The relevant method is the allocation method, which is set out in Part 3 of Chapter 2 of the General Rules.

Under Part 3 of Chapter 2, TRQ entitlements are allocated to exporters for a given quota type (in this case, cotton for export to India) for a given quota year, at the start of the quota year. Section 36 sets out the circumstances in which the Secretary must issue a TRQ certificate. This is subject to section 115 of the General Rules which deals with when the Secretary may decide not to issue a TRQ certificate. Section 120 of the General Rules provides that a decision not to issue a TRQ certificate under subsection 115(2) is a reviewable decision. This allows the person who applied for the certificate to seek review of the decision, under the framework set out in Part 2 of Chapter 11 of the Act.

New subsection 74D(3) provides the formula for working out an applicant's initial individual entitlement for cotton for export to India for the initial quota year and the quota year following the initial quota year.

The formula is as follows:

$$\frac{\text{Standard access amount}}{\text{Standard access amount}} \times 0.5 \times \frac{\text{Applicant's global past exports}}{\text{All global past exports}} + \frac{\text{Standard access amount}}{\text{Standard access amount}} \times 0.5 \times \frac{\text{Applicant's eligible past exports}}{\text{All eligible past exports}}$$

When applying the formula, the following terms are relevant:

- **All eligible past exports** is the total weight of all eligible past exports by all applicants for cotton for export to India for the quota year;
- **All global past exports** is the total weight of consignments of cotton exported to all foreign countries (including to India) by all applicants during the period beginning on the 1 November that is 26 months before the start of the quota year and ending on 31 October of the calendar year before the quota year starts;
- **Applicant's eligible past exports** is the total weight of the applicant's eligible past exports for cotton for export to India for the quota year;
- **Applicant's global past exports** is the total weight of consignments of cotton exported to all foreign countries (including to India) by the applicant during the period beginning on the 1 November that is 26 months before the start of the quota year and ending on 31 October of the calendar year before the quota year starts; and
- **Standard access amount** is the standard access amount for cotton for export to India for the quota year.

This formula is to be used instead of the formula provided for in subsection 32(1) of the General Rules, for the initial calculation of TRQ entitlement. Subsections 32(1) to (6) are used to determine the proportional distribution of the standard access amount based on the applicant's eligible past exports and all eligible past exports, and limiting exporters to an allocation that matches the amount they applied for. Once the calculation in subsections 32(1) to (6) is complete (and the entire standard access amount has been allocated), then penalties (if any) are applied and the penalty amounts are redistributed to those exporters that have not reached the amount they applied for, and were not penalised. This stage is encompassed in subsections 32(7) to (10). Following this, if all non-penalised applicants have reached the amount they applied for and there is an amount of the standard access amount remaining, that amount can be redistributed across those applicants who were penalised. This stage is encompassed in subsections 32(11) to (14).

New subsection 74D(4) provides that paragraph 33(2)(a) of the General Rules is to be disregarded, for the purposes of determining whether an applicant has an allocation penalty for cotton in a quota year. Paragraph 33(2)(a) provides for circumstances in which an allocation penalty applies to a person, which is determined by whether the person's TRQ entitlement for the quota type and the previous quota year is less than the penalty individual threshold for the quota type and the previous quota year.

Section 74E Access amounts

The annual access amount represents the total amount of quota that is available for all exporters to use, for a quota type and quota year.

New subsection 74E(1) provides that the annual access amount for a kind of India quota goods for export to India in relation to a quota year is the weight of goods of that kind that may, under the IA ECTA, be exported from Australia to India in the quota year at a reduced tariff rate.

New subsection 74E(2) provides that there is a quarterly access amount for lentils for export to India. Under subsection 7(1) of the General Rules, subject to subsection 7(4), the quarterly access amount for a quota type and a quarter of a quota year is the annual access amount for that quota type and quota year divided by 4. Subsection 7(4) of the General Rules provides that if, at the end of the first, second or third quarter of a quota year, the uncommitted quarterly access amount for that quarter is greater than zero, the quarterly access amount for the next quarter of the quota year is increased by that uncommitted quarterly access amount.

Section 74F Application and reclamation days for cotton

New section 74F provides for annual application day and annual reclamation day for cotton.

Under subsection 29(3) of the General Rules, applications for the allocation of TRQ entitlement must be made on or before the annual application day for the quota type and quota year. This provides a latest date by which information must be provided, so that allocations can be made in a timely manner.

New subsection 74F(1) provides that the annual application day for cotton for export to India for a quota year is:

- For the initial quota year and the quota year following the initial quota year—the day specified by the Secretary; and
- For a later quota year—15 November in the calendar year immediately before the quota year.

Under subsection 39(1) of the General Rules, the reclamation day is the date by which certain information must be provided regarding an exporter's decision to return an amount of TRQ entitlement or to request additional allocations of TRQ entitlement.

New subsection 74F(2) provides that the reclamation day for cotton for export to India for a quota year is:

- For the initial quota year and the quota year following the initial quota year—the day specified by the Secretary; and
- For a later quota year—31 July in the quota year.

Section 74G Eligible person for cotton

Under subsection 29(1) of the General Rules, an eligible person for a quota type may apply to the Secretary for an allocation of an amount of TRQ entitlement for that quota type and a quota year, under the allocation method.

New section 74G provides that all persons are an eligible person for cotton for export to India.

Section 74H Eligible past exports for cotton

Under the allocation method, the eligible past exports for an eligible person is used to calculate allocations of TRQ entitlement, as an exporter's past history of exports is relevant to determining the amount of quota that they are likely to be able to use.

New section 74H sets out when a consignment is an eligible past export for cotton for export to India. New subsection 74H(1) provides that, in relation to the initial quota year or either of the next 2 quota years, an eligible past export for cotton for export to India is a consignment of cotton exported to India in the period beginning on the 1 November that is 26 months before the start of the quota year, and ending on 31 October of the calendar year before the quota year starts.

New subsection 74H(2) provides that, in relation to a quota year other than a quota year to which new subsection 74H(1) applies, an eligible past export for cotton for export to India is a consignment of cotton exported to India, where a TRQ certificate was issued in relation to the consignment in the period beginning on the 1 November that is 26 months before the start of the quota year, and ending on 31 October of the calendar year before the quota year starts.

Section 74J Minimum quota allocation for cotton

New section 74J provides that the minimum quota allocation for cotton for export to India in relation to a quota year is 500 tonnes. The minimum quota allocation is considered to be the amount under which the allocation would generally not be useful for commercial purposes.

Section 74K Penalties for cotton

New section 74K provides for the application of penalties for cotton for export to India.

New subsection 74K(1) provides that the required usage percentage for cotton for export to India is 90 per cent. The required usage percentage is relevant to the formula that is used in section 33 of the General Rules for the application of an allocation penalty for unused TRQ entitlement in relation to a previous quota year.

New subsection 74K(2) provides that the penalty pool threshold for cotton for export to India in relation to a quota year is 45,000 tonnes. This is relevant to paragraph 33(2)(b) of the General Rules, which provides for circumstances in which an allocation penalty applies to a person, which is determined by whether the uncommitted annual access amount for the quota type and the previous quota year, less any amounts of TRQ entitlement for the previous quota year that were returned to the Secretary after the reclamation day for the previous quota year, is greater than the penalty pool threshold for the quota type and the previous quota year.

A note following new section 74K explains that there is no penalty individual threshold for cotton. The note refers the reader to new subsection 74D(4), which provides that paragraph 33(2)(a) of the General Rules is to be disregarded when determining whether an applicant has an allocation penalty (discussed above).

Section 74L Maximum transfer percentage for cotton

New section 74L provides that the maximum transfer percentage for cotton for export to India is 50%. The maximum transfer percentage is relevant to subsection 29(2) of the General Rules, to determine when a person is not eligible to apply for an allocation of TRQ entitlement. This is in circumstances where the person transferred one or more amounts of TRQ entitlement for the quota type and quota year, and the total of the amounts transferred was more than the amount worked out in the formula under subsection 29(2).

Section 74M New entrant amounts for cotton

New subsection 74M(1) provides that the new entrant access amount for cotton for export to India in relation to a quota year is 5% of the weight of cotton that may, under the IA ECTA, be exported from Australia to India in the quota year at a reduced tariff rate. The new entrant access amount is the amount that is made available in a quota year for new entrants to access, providing a pathway for new exporters to enter the export market for the quota type.

New subsection 74M(2) provides that the new entrant access cap for cotton for export to India in relation to a quota year is 500 tonnes. The new entrant access cap is the maximum amount of the new entrant access amount that a single new entrant can access in a given quota year.

Statement of Compatibility with Human Rights

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

Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022

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 Legislation Amendment (Tariff Rate Quotas) Rules 2022* (the Amendment Rules) is to amend the *Export Control (Tariff Rate Quotas—General) Rules 2021* and the *Export Control (Tariff Rate Quotas—Sheepmeat and Goatmeat Export to the European Union and United Kingdom) Rules 2021* to provide for tariff rate quotas (TRQs) for the export of certain goods from Australia to the United Kingdom (UK) and India, to prepare for the anticipated entry into force of the Australia-UK Free Trade Agreement (A-UKFTA) and the India-Australia Economic Cooperation and Trade Agreement (IA ECTA).

The Amendment Rules enable the department to properly administer TRQs for the export of certain goods from Australia to the UK and India, under the A-UKFTA and IA ECTA respectively. The specific goods are in relation to the meat, dairy, grain, sugar, horticulture, almond and cotton commodities.

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, Fisheries and Forestry