



Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022

I, Andrew Edgar Francis Metcalfe AO, Secretary of the Department of Agriculture, Fisheries and Forestry, make the following rules.

Dated 19 December 2022

A E F Metcalfe

Andrew Edgar Francis Metcalfe AO
Secretary of the Department of Agriculture, Fisheries and Forestry

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1 Name

This instrument is the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	22 December 2022

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the *Export Control Act 2020*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.

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

Export Control (Tariff Rate Quotas—General) Rules 2021

1 Section 6 (definition of *annual application day*)

Repeal the definition, substitute:

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.

2 Section 6

Insert:

annual nomination day: see section 52K.

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.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

eligible producer: see section 52K.

past production amount: see section 52K.

past production period: see section 52K.

performance-based access amount: see section 52B.

performance-based method means the method set out in Part 5 of Chapter 2.

production method means the method set out in Part 6 of Chapter 2.

3 Section 6 (definition of *UK buffalo meat*)

Repeal the definition.

4 Section 6

Insert:

UK FTA beef: see section 89AA.

UK FTA dairy goods: see subsection 89AJ(1).

UK FTA grain goods: see subsection 89AN(1).

UK FTA sugar goods: see section 89AT.

5 Section 6 (definition of *UK high quality beef*)

Repeal the definition.

6 Section 6

Insert:

UK WTO buffalo meat: see section 89A.

UK WTO high quality beef: see section 89E.

unallocated performance-based access amount: see section 52B.

uncommitted performance-based access amount: see section 52B.

uncommitted unrestricted access amount: see section 52B.

unrestricted access amount: see section 52B.

7 Section 27 (definition of *annual application day*)

Repeal the definition.

8 At the end of Chapter 2

Add:

Part 5—Performance-based method

Division 1—Preliminary

52A Application of this Part

If a provision of Chapter 3 provides that the performance-based method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of a quota type for export in a quota year, then this Part applies for the purposes of:

- (a) issuing a tariff rate quota certificate in relation to such a consignment; and
- (b) determining tariff rate quota entitlements for that quota type and quota year.

52B Definitions

In this instrument:

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

unallocated performance-based access amount: see step 3 of the method statement in subsection 52D(2).

uncommitted performance-based access amount: the uncommitted performance-based access amount for a quota type and a quota year at a particular time is the difference between:

- (a) the performance-based access amount for that quota type and quota year; and
- (b) the total weight for which tariff rate quota certificates have been issued from the performance-based access amount in relation to consignments of that quota type for export in that quota year.

Note: If a tariff rate quota certificate in relation to a consignment is revoked, the certificate is taken never to have been issued (see subsection 119(5)).

uncommitted unrestricted access amount: the uncommitted unrestricted access amount for a quota type and a quota year at a particular time is the difference between:

- (a) the unrestricted access amount for that quota type and quota year; and
- (b) the total weight for which tariff rate quota certificates have been issued from the unrestricted access amount in relation to consignments of that quota type for export in that quota year.

Note: If a tariff rate quota certificate in relation to a consignment is revoked, the certificate is taken never to have been issued (see subsection 119(5)).

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

Division 2—Allocation of quota

52C Application for tariff rate quota entitlement

Who may apply

- (1) An eligible person for a quota type may apply to the Secretary for an allocation of an amount of tariff rate quota entitlement from the performance-based access amount for the quota type and a quota year.

When to apply

- (2) The application must be made on or before the annual application day for the quota type and quota year.

Requirements for application

- (3) The application must:
 - (a) be made in a manner approved, in writing, by the Secretary; and
 - (b) if the Secretary has approved a form for making the application:
 - (i) include the information required by the form; and
 - (ii) be accompanied by any documents required by the form.

Note: 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 (see sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

- (4) The Secretary may accept any information or document previously given to the Secretary in connection with an application made under this instrument as satisfying any requirement to give that information or document under subsection (3).
- (5) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (3) for the application.

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

- (1) The Secretary must, as soon as practicable after the annual application day for a quota type and a quota year, allocate to applicants under section 52C amounts of tariff rate quota entitlement from the performance-based access amount for that quota type and quota year in accordance with this section.

- (2) The amount of tariff rate quota entitlement to be allocated to an applicant for the quota type and quota year from the performance-based access amount is the amount worked out using the following method statement.

Method statement

Step 1. For each applicant, determine the total weight of the applicant’s eligible past exports for the quota type and quota year.

Step 2. Using the step 1 amounts, calculate the total weight of all eligible past exports by all applicants for the quota type and quota year.

Step 3. If the step 2 amount is less than or equal to the performance-based access amount, the amount of tariff rate quota entitlement to be allocated to an applicant is the amount of the applicant’s eligible past exports. Any unallocated tariff rate quota entitlement from the performance-based access amount is the unallocated performance-based access amount (the ***unallocated performance-based access amount***).

Step 4. If the step 2 amount is greater than the performance-based access amount, the amount of tariff rate quota entitlement to be allocated to an applicant is an amount that reflects the applicant’s eligible past exports as a proportion of all eligible past exports using the formula in subsection (3).

Step 5. Calculate the unrestricted access amount for the quota type and quota year using:

(a) if step 3 applied—the formula in subsection (4); and

(b) if step 4 applied—the formula in subsection (5).

Note: The amount of tariff rate quota 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.

- (3) For the purposes of step 4 of the method statement in subsection (2), the formula is:

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

where:

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.

- (4) For the purposes of paragraph (a) of step 5 of the method statement in subsection (2), the formula is:

$$\left(\begin{array}{c} \text{Annual access} \\ \text{amount} \end{array} - \begin{array}{c} \text{Performance-based} \\ \text{access amount} \end{array} \right) + \begin{array}{c} \text{Unallocated performance-based} \\ \text{access amount} \end{array}$$

where:

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.

- (5) For the purposes of paragraph (b) of step 5 of the method statement in subsection (2), the formula is:

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

where:

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.

Division 3—Tariff rate quota certificates

52E Applications for tariff rate quota certificates

A person who intends to export a consignment of a quota type in a quota year may apply to the Secretary under this section for a tariff rate quota certificate for the consignment.

Note: See section 114 for requirements and other matters relating to applications.

52F Applications to be dealt with in order of receipt

The Secretary must deal with applications under section 52E in the order in which the applications are received by the Secretary.

Note: Subsection 114(8) deals with when an application is taken to be received by the Secretary.

52G Issuing tariff rate quota certificates

Application of this section

- (1) This section applies in relation to an application under section 52E for a tariff rate quota certificate in relation to a consignment of a quota type for export in a quota year.

When Secretary must issue certificate

- (2) Subject to section 115, the Secretary must issue a tariff rate quota 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.

Note: Section 115 deals with when the Secretary may decide not to issue a certificate.

- (3) The certificate must be issued for the lesser of:
- (a) the weight of the consignment applied for; and
 - (b) the uncommitted performance-based access amount at the time the Secretary deals with the application.

Division 4—Transfer of quota

52H Transfer of tariff rate quota entitlement

- (1) A person (the *transferor*) who has an amount of tariff rate quota 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.
- (2) The transferor must give the Secretary a notice setting out:
- (a) the name of the transferor;
 - (b) the name of the transferee;
 - (c) the amount of the entitlement to be transferred.
- (3) The notice must be:
- (a) given:
 - (i) in the approved manner (if any) and approved form (if any); or
 - (ii) if there is no approved manner and no approved form—in writing; and
 - (b) accompanied by any information or documents required by the Secretary.
- (4) If the Secretary receives a notice under subsection (2), the amount is transferred in accordance with the notice.

Part 6—Production method

Division 1—Preliminary

52J Application of this Part

If a provision of Chapter 3 provides that the production method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of a quota type for export in a quota year, then this Part applies for the purposes of:

- (a) issuing a tariff rate quota certificate in relation to such a consignment; and
- (b) determining tariff rate quota entitlements for that quota type and quota year.

52K Definitions

In this instrument:

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

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

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.

past production period, for a quota type, means the period that is specified under Chapter 3 to be the past production period for the quota type.

Division 2—Allocation of quota

52L Application for tariff rate quota entitlement

Who may apply

- (1) The Secretary may invite eligible persons to apply to the Secretary to be allocated an amount of tariff rate quota entitlement for a quota type and a quota year.
- (2) If the Secretary does so, an eligible person may apply to the Secretary to be allocated an amount of tariff rate quota entitlement for the quota type and quota year.

When to apply

- (3) The application must be made on or before the annual application day for the quota type and quota year.

Requirements for application

- (4) The application must:
 - (a) be made in a manner approved, in writing, by the Secretary; and
 - (b) if the Secretary has approved a form for making the application:
 - (i) include the information required by the form; and
 - (ii) be accompanied by any documents required by the form.

Note: 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 (see sections 136.1, 137.1 and 137.2 of the *Criminal Code*).

- (5) The Secretary may accept any information or document previously given to the Secretary in connection with an application made under this instrument as satisfying any requirement to give that information or document under subsection (4).
- (6) An application is taken not to have been made if the application does not comply with the requirements referred to in subsection (4) for the application.

52M Allocation of tariff rate quota entitlement

- (1) The Secretary must, as soon as practicable after the annual application day for a quota type and a quota year, allocate to applicants under section 52L amounts of tariff rate quota entitlement for that quota type and quota year in accordance with this section.

- (2) The amount of tariff rate quota entitlement to be allocated to an applicant for the quota type and quota year is the amount worked out using the following method statement.

Method statement

- Step 1. The Secretary must request, in writing, each eligible producer for the quota type to provide the following information on or before the annual nomination day for the quota type and quota year:
- (a) the eligible producer's past production amount for the quota type for the past production period;
 - (b) the percentage of that past production amount that was allocated by the eligible producer to each eligible person.
- Step 2. Disregard an eligible producer from the following steps if the eligible producer:
- (a) does not provide the requested information on or before the annual nomination day for the quota type and quota year; or
 - (b) provides information that the eligible producer's past production amount for the quota type for the past production period is nil.
- Step 3. After the annual nomination day for the quota type and quota year, sum the amounts provided under paragraph (a) of step 1.
- Step 4. For each eligible producer, divide the amount provided by the eligible producer under paragraph (a) of step 1 by the amount worked out under step 3.
- Step 5. For each eligible producer, multiply:
- (a) the eligible producer's proportion calculated under step 4; by
 - (b) the annual access amount for the quota type and quota year.
- Step 6. For each eligible person that has made an application for the quota type and quota year, identify the amount that each eligible producer will allocate to the eligible person for the quota year by multiplying:
- (a) the step 5 amount for the eligible producer; by
 - (b) the percentage of the past production amount that was allocated by the eligible producer to the eligible person (see paragraph (b) of step 1).
- Step 7. The amount of tariff rate quota entitlement to be allocated to an eligible person that made an application for the quota type and quota year is the sum of the amounts worked out under step 6 for the eligible person for all eligible producers that will allocate amounts to that eligible person.

Division 3—Tariff rate quota certificates

52N Applications for tariff rate quota certificates

A person who intends to export a consignment of a quota type in a quota year may apply to the Secretary under this section for a tariff rate quota certificate for the consignment.

Note: See section 114 for requirements and other matters relating to applications.

52P Applications to be dealt with in order of receipt

The Secretary must deal with applications under section 52N in the order in which the applications are received by the Secretary.

Note: Subsection 114(8) deals with when an application is taken to be received by the Secretary.

52Q Issuing tariff rate quota certificates

Application of this section

- (1) This section applies in relation to an application under section 52N for a tariff rate quota certificate in relation to a consignment of a quota type for export in a quota year.

When Secretary must issue certificate

- (2) Subject to section 115, the Secretary must issue a tariff rate quota 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.

Note: Section 115 deals with when the Secretary may decide not to issue a certificate.

- (3) The certificate must be issued for the lesser of:
 - (a) the weight of the consignment applied for; and
 - (b) the uncommitted annual access amount at the time the Secretary deals with the application.

Division 4—Transfer of quota

52R Transfer of tariff rate quota entitlement

- (1) A person (the *transferor*) who has an amount of tariff rate quota 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.
- (2) The transferor must give the Secretary a notice setting out:
 - (a) the name of the transferor;
 - (b) the name of the transferee;
 - (c) the amount of the entitlement to be transferred.
- (3) The notice must be:
 - (a) given:

-
- (i) in the approved manner (if any) and approved form (if any); or
 - (ii) if there is no approved manner and no approved form—in writing; and
- (b) accompanied by any information or documents required by the Secretary.
- (4) If the Secretary receives a notice under subsection (2), the amount is transferred in accordance with the notice.

9 Before Division 1 of Part 3A of Chapter 3

Insert:

Division 1A—UK FTA beef

89AA UK FTA beef

UK FTA beef is meat, internal organs or preparations of bovine animals that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom.

89AB Quota year

- (1) A quota year for UK FTA beef for export to the United Kingdom is a period of 12 months beginning on 1 January.
- (2) For the purposes of this Division, the *initial quota year* is the quota year in which the Australia-UK Free Trade Agreement comes into force.

89AC Method for issuing tariff rate quota certificates

Issuing tariff rate quota certificates from performance-based access amount

- (1) Subject to subsection (2), the performance-based method applies for the purposes of issuing a tariff rate quota certificate from the performance-based access amount in relation to a consignment of UK FTA beef for export to the United Kingdom.

Note: The performance-based method is set out in Part 5 of Chapter 2.

- (2) For the purposes of applying the performance-based method for the initial quota year and the quota year following the initial quota year:
 - (a) disregard the requirement that an eligible person must make an application to the Secretary for an allocation of an amount of tariff rate quota entitlement from the performance-based access amount; and
 - (b) apply section 52D as if a reference to an applicant were a reference to an eligible person; and
 - (c) apply step 4 of the method statement even if the step 2 amount is less than or equal to the performance-based access amount.

Issuing tariff rate quota certificates from unrestricted access amount

- (3) Subject to subsection (4), the first come, first served method applies for the purposes of issuing a tariff rate quota certificate from the unrestricted access amount in relation to a consignment of UK FTA beef for export to the United Kingdom.

Note: The first come, first served method is set out in Part 1 of Chapter 2.

- (4) For the purposes of applying the first come, first served method to the unrestricted access amount in a quota year, treat a reference to the uncommitted annual access amount in subsection 11(2) and paragraph 11(3)(b) as a reference to the uncommitted unrestricted access amount.

89AD Annual access amount

The annual access amount for UK FTA beef for export to the United Kingdom in relation to a quota year is the weight of UK FTA beef that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom in the quota year at a reduced tariff rate.

89AE Performance-based access amount

The performance-based access amount for UK FTA beef for export to the United Kingdom in relation to a quota year is:

- (a) for the initial quota year and the quota year following the initial quota year—50% of the annual access amount; and
- (b) for any other quota year—the annual access amount.

89AF Annual application day

The annual application day for UK FTA beef for export to the United Kingdom for a quota year is:

- (a) for the initial quota year and the quota year following the initial quota year—the day specified by the Secretary; and
- (b) for a later quota year—16 November in the calendar year immediately before the quota year.

89AG Eligible person

Eligible person for performance-based access amount

- (1) A person is an eligible person for the export of UK FTA beef to the United Kingdom in relation to the performance-based access amount if:
- (a) for the initial quota year and the quota year following the initial quota year—the person:
 - (i) received an allocation of an amount of tariff rate quota entitlement for UK WTO high quality beef for export to the United Kingdom in the period beginning on 1 July 2021 and ending on 30 June 2022; and
 - (ii) holds an export licence allowing the holder to export UK FTA beef to the United Kingdom; or
 - (b) for any other quota year—the person:
 - (i) 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
 - (ii) holds an export licence allowing the holder to export UK FTA beef to the United Kingdom.

Eligible person for unrestricted access amount

- (2) A person is an eligible person for the export of UK FTA beef to the United Kingdom in relation to the unrestricted access amount if:
 - (a) the person holds an export licence allowing the holder to export UK FTA beef to the United Kingdom; and
 - (b) if the person has a tariff rate quota entitlement for UK FTA beef under the performance-based method—the person has been issued tariff rate quota certificates in relation to at least 80% of that entitlement.

89AH Eligible past exports—performance-based access amount

- (1) Subject to subsection (2), a consignment is an eligible past export for UK FTA beef for export to the United Kingdom in relation to a quota year if:
 - (a) it is a consignment of UK FTA beef exported to the United Kingdom; and
 - (b) a tariff rate quota certificate was issued in relation to the consignment in the period:
 - (i) beginning on the 1 November that is 14 months before the start of the quota year; and
 - (ii) ending on 31 October of the calendar year before the quota year starts.
- (2) For the initial quota year and the quota year following the initial quota year, treat a reference to eligible past export in the performance-based method as a reference to the amount of tariff rate quota entitlement that was allocated to the applicant for UK WTO high quality beef for export to the United Kingdom in the quota year beginning on 1 July 2021.

Division 1B—UK FTA dairy goods**89AJ UK FTA dairy goods**

- (1) *UK FTA dairy goods* are goods of any of the following kinds:
 - (a) butter;
 - (b) cheese and curd;
 - (c) milk, cream, yoghurt and whey.

- (2) For the purposes of this Division:

butter means butter of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

cheese and curd means cheese and curd of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

milk, cream, yoghurt and whey means milk, cream, yoghurt and whey of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

89AK Quota year

- (1) A quota year for a kind of UK FTA dairy goods for export to the United Kingdom is a period of 12 months beginning on 1 January.

- (2) For the purposes of this Division, the *initial quota year* is the quota year in which the Australia-UK Free Trade Agreement comes into force.

89AL Method for issuing tariff rate quota certificates

The first come, first served method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of a kind of UK FTA dairy goods for export to the United Kingdom in the initial quota year or a later quota year.

Note: The first come, first served method is set out in Part 1 of Chapter 2.

89AM Annual access amount

The annual access amount for a kind of UK FTA dairy goods for export to the United Kingdom in relation to a quota year is the weight of those goods that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom in the quota year at a reduced tariff rate.

Division 1C—UK FTA grain goods

89AN UK FTA grain goods

- (1) *UK FTA grain goods* are goods of any of the following kinds:
- (a) barley;
 - (b) broken rice;
 - (c) long grained rice;
 - (d) wheat and meslin.

- (2) For the purposes of this Division:

barley means barley of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

broken rice means broken rice of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

long grained rice means long grained rice of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

wheat and meslin means wheat and meslin of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

89AP Quota year

- (1) A quota year for a kind of UK FTA grain goods for export to the United Kingdom is a period of 12 months beginning on 1 January.
- (2) For the purposes of this Division, the *initial quota year* is the quota year in which the Australia-UK Free Trade Agreement comes into force.

89AQ Quarter of a quota year

A quarter of a quota year for a kind of UK FTA grain goods for export to the United Kingdom is a period of 3 months beginning on 1 January, 1 April, 1 July and 1 October.

89AR Method for issuing tariff rate quota certificates

The first come, first served method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of a kind of UK FTA grain goods for export to the United Kingdom in the initial quota year or a later quota year.

Note: The first come, first served method is set out in Part 1 of Chapter 2.

89AS Access amounts*Annual access amount*

- (1) The annual access amount for a kind of UK FTA grain goods for export to the United Kingdom in relation to a quota year is the weight of those goods that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom in the quota year at a reduced tariff rate.

Quarterly access amount for barley and wheat and meslin

- (2) There is a quarterly access amount for barley and wheat and meslin for export to the United Kingdom.

Division 1D—UK FTA sugar goods**89AT UK FTA sugar goods**

UK FTA sugar goods is sugar of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom at a reduced tariff rate.

89AU Quota year

- (1) A quota year for a kind of UK FTA sugar goods for export to the United Kingdom is a period of 12 months beginning on 1 October.
- (2) For the purposes of this Division, the *initial quota year* is the quota year in which the Australia-UK Free Trade Agreement comes into force.

89AV Method for issuing tariff rate quota certificates

The production method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of a kind of UK FTA sugar goods for export to the United Kingdom in the initial quota year or a later quota year.

Note: The production method is set out in Part 6 of Chapter 2.

89AW Annual application and annual nomination days

- (1) The annual application day for UK FTA sugar goods for export to the United Kingdom for a quota year is:
 - (a) for the initial quota year—the day specified by the Secretary; and
 - (b) for a later quota year—15 August in the calendar year in which the quota year starts.
- (2) The annual nomination day for UK FTA sugar goods for export to the United Kingdom for a quota year is:
 - (a) for the initial quota year—the day specified by the Secretary; and
 - (b) for a later quota year—15 August in the calendar year in which the quota year starts.

89AX Annual access amount

The annual access amount for UK FTA sugar goods for export to the United Kingdom in relation to a quota year is the weight of UK FTA sugar goods that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the United Kingdom in the quota year at a reduced tariff rate.

89AY Eligible person and eligible producer

- (1) All persons are an eligible person for UK FTA sugar goods for export to the United Kingdom.
- (2) An eligible producer for UK FTA sugar goods for export to the United Kingdom is a person who mills sugar.

89AZ Past production period

The past production period for UK FTA sugar goods for export to the United Kingdom for a quota year is the period:

- (a) beginning on the 1 July that is 27 months before the start of the quota year; and
- (b) ending on 30 June of the calendar year in which the quota year starts.

10 Division 1 of Part 3A of Chapter 3 (heading)

After “UK”, insert “WTO”.

11 Section 89A

Repeal the section, substitute:

89A UK WTO buffalo meat

UK WTO buffalo meat is boneless buffalo meat of a kind that may, under the UK Tariff Quota Regulations, be exported from Australia to the United Kingdom under quota number 05.4001.

12 Section 89B

After “UK”, insert “WTO”.

13 Section 89C

After “UK”, insert “WTO”.

14 Section 89D

After “UK” (first and second occurring), insert “WTO”.

15 Division 2 of Part 3A of Chapter 3 (heading)

After “UK”, insert “WTO”.

16 Section 89E

Repeal the section, substitute:

89E UK WTO high quality beef

UK WTO high quality beef is meat of a kind that may, under the UK Tariff Quota Regulations, be exported from Australia to the United Kingdom under quota number 05.4451.

17 Section 89F

After “UK”, insert “WTO”.

18 Subsection 89G(1)

After “UK”, insert “WTO”.

19 Paragraph 89G(2)(b)

After “UK”, insert “WTO”.

20 Subsection 89G(7)

After “UK”, insert “WTO”.

21 Section 89H

Omit “for UK”, substitute “for UK WTO”.

22 Paragraph 89H(b)

Omit “of UK”, substitute “of UK WTO”.

23 Subsections 89J(1) and (2)

After “UK”, insert “WTO”.

24 Section 89K

After “UK” (wherever occurring), insert “WTO”.

25 Section 89L

After “UK” (wherever occurring), insert “WTO”.

26 Section 89M

After “UK”, insert “WTO”.

27 Subsections 89N(1), (2) and (3)

After “UK”, insert “WTO”.

28 Section 89P

After “UK”, insert “WTO”.

29 Subsections 89Q(1) and (2)

After “UK”, insert “WTO”.

30 Before section 129

Insert:

129A Definitions for this Part

In this Part:

UK buffalo meat has the meaning given by section 6 as in force immediately before the commencement of Schedule 1 to the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022*.

UK high quality beef has the meaning given by section 6 as in force immediately before the commencement of Schedule 1 to the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022*.

31 Paragraph 135(1)(b)

After “UK high quality beef”, insert “and UK WTO high quality beef”.

32 Subsection 135(11)

Omit “UK high quality beef” (first occurring), substitute “UK WTO high quality beef”.

33 Paragraph 135(11)(b)

After “UK high quality beef”, insert “and UK WTO high quality beef”.

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

34 Section 6 (definition of access amount)

Repeal the definition, substitute:

access amount means:

- (a) for EU-eligible meat—the EU-access amount; or
- (b) for UK FTA-eligible meat—the UK FTA-access amount; or
- (c) for UK WTO-eligible meat—the UK WTO-access amount.

35 Section 6

Insert:

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.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

36 Section 6 (definition of *eligible meat*)

Repeal the definition, substitute:

eligible meat means:

- (a) EU-eligible meat; or
- (b) UK FTA-eligible meat; or
- (c) UK WTO-eligible meat.

37 Section 6

Insert:

EU-access amount means:

- (a) for the quota year beginning on 1 January 2022—5,851,000 kilograms; or
- (b) 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.

EU-eligible meat means sheepmeat and goatmeat of the kind described under order numbers 09.2105, 09.2106 and 09.2012 in Annex I to the EU Regulation.

38 Section 6 (definition of *quota destination*)

Repeal the definition.

39 Section 6

Insert:

quota type means a kind of eligible meat for export to a particular destination.

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.

relevant weight means:

- (a) for EU-eligible meat and UK WTO-eligible meat—the carcase equivalent weight; or
- (b) for UK FTA-eligible meat—the actual weight of the UK FTA-eligible meat.

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

UK FTA-eligible meat means sheepmeat of a kind that may, under the Australia-UK Free Trade Agreement, be exported from Australia to the UK at a reduced tariff rate.

UK WTO-access amount means:

- (a) for the quota year beginning on 1 January 2022—13,335,000 kilograms; or
- (b) 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.

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.

40 Section 7

Omit “eligible meat to a quota destination within the access amount for the quota destination and a quota year”, substitute “a quota type within the access amount for the quota type and a quota year”.

41 Section 8

Omit “destination” (wherever occurring), substitute “type”.

42 Subsections 9(1) and (2)

Omit “destination”, substitute “type”.

43 Subsection 10(1)

Omit “quota destination and a quota year to be allocated to each applicant under section 9, using the following method statement.”, substitute:

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.

44 Subsection 10(1) (method statement)

Omit “destination” (wherever occurring), substitute “type”.

45 After subsection 10(1)

Insert:

(1A) For the purposes of paragraph 10(1)(a), the method statement is as follows:

Method statement

Step 1. Use the formula in section 12 to work out the step 1 amount for each applicant.

Step 2. If the step 1 amount for an applicant is less than 12,000 kg:

- (a) the amount is excluded; and
- (b) the applicant is excluded and is not allocated an amount of tariff rate quota entitlement for the quota type and quota year under this section.

- Step 3. Use the formula in section 12 to distribute the total of the amounts excluded at step 2 among the applicants who are not excluded at step 2, and add the amount distributed to each such applicant's step 1 amount to reach the applicant's step 3 amount. For this purpose:
- (a) replace references in the formula to AA with references to the total of the amounts excluded; and
 - (b) replace references to all applicants with references to applicants who are not excluded.
- Step 4. 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, round all the amounts down to the nearest kilogram instead.
- Step 5. The amount of tariff rate quota entitlement allocated for the quota type to an applicant not excluded at step 2 is the step 3 amount, rounded in accordance with step 4.

46 Paragraph 10(2)(a)

Omit "destination", substitute "type".

47 Subsections 11(1) to (4)

Omit "destination" (wherever occurring), substitute "type".

48 Section 12

Omit "statement in subsection 10(1)", substitute "statements in subsections 10(1) and (1A)".

49 Section 12 (definition of AA)

Omit "destination", substitute "type".

50 Section 12 (definition of *applicant's accredited exports*)

Omit "carcase equivalent weight of all the applicant's exports of eligible meat for the quota destination", substitute "relevant weight of all the applicant's exports for the quota type".

51 Section 12 (definition of *applicant's quota exports*)

Omit "year for export of consignments to the quota destination", substitute "type and quota year".

52 Section 12 (definition of *total accredited exports*)

Omit "carcase equivalent weight of all applicants' exports of eligible meat for the quota destination", substitute "relevant weight of all applicants' exports for the quota type".

53 Subsection 13(1)

Omit "destination", substitute "type".

54 Subsection 14(1)

Omit “destination”, substitute “type”.

55 Paragraphs 15(1)(a) and (b)

Omit “destination” (wherever occurring), substitute “type”.

56 Section 16

Omit “destination” (wherever occurring), substitute “type”.

57 Subsection 17(1)

Omit “destination” (wherever occurring), substitute “type”.

58 Paragraph 17(2)(a)

Omit “destination”, substitute “type”.

59 Subsection 18(1)

Omit “destination”, substitute “type”.

60 Subsection 19(1)

Repeal the subsection (not including the note), substitute:

- (1) 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 tariff rate quota 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.

61 Subsection 19(2)

Omit “destination”, substitute “type”.

62 Paragraph 19(3)(a)

Omit “carcase equivalent”, substitute “relevant”.

63 Subsection 19(5)

Repeal the subsection, substitute:

- (5) A tariff rate quota certificate issued under this section in relation to a consignment of a quota type for export to a destination in a quota year:
 - (a) has no effect before the start of the quota year to which the certificate relates; and
 - (b) ceases to have effect if the consignment is not accepted by the relevant destination authority before the end of the quota year.

64 Subsection 20(1)

Repeal the subsection (not including the note), substitute:

- (1) 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 tariff rate quota certificate for the export of the quota type in the quota year within the access amount for the quota type and the quota year.

65 Paragraphs 20(3)(a) and (b)

Omit “destination”, substitute “type”.

66 Paragraph 20(4)(a)

Omit “carcase equivalent”, substitute “relevant”.

67 Subsection 20(6)

Omit “destination” (wherever occurring), substitute “type”.

68 Subsection 20(8)

Repeal the subsection, substitute:

- (8) A tariff rate quota certificate issued under this section 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.

69 Subsection 23(1)

Omit “for the export of a consignment of eligible meat to a quota destination”, substitute “in relation to a consignment of a quota type for export to a destination”.

70 Paragraph 23(1)(a)

Repeal the paragraph, substitute:

- (a) the certificate has not been accepted by the relevant destination authority;
and

71 Subsection 23(2)

Omit “for the export of a consignment of eligible meat to a quota destination”, substitute “in relation to a consignment of a quota type for export to a destination”.

72 Paragraph 23(2)(a)

Repeal the paragraph, substitute:

- (a) the certificate has not been accepted by the relevant destination authority;
and

73 Paragraph 24(1)(a)

Omit “quota destination authority annotates a tariff rate quota certificate for export of a consignment to the quota destination”, substitute “relevant destination authority annotates a tariff rate quota certificate”.

74 Subsection 24(4)

Omit “destination” (wherever occurring), substitute “type”.

75 Subsection 25(1)

Omit “carcase equivalent”, substitute “relevant”.

76 Paragraph 25(2)(c)

Omit “carcase equivalent”, substitute “relevant”.

77 Section 27

Omit “eligible meat”, substitute “EU-eligible meat”.

78 Subsections 28(1) and (6)

Omit “eligible meat”, substitute “EU-eligible meat”.

79 Subsection 30(2)

Omit “for export of a consignment of eligible meat to a quota destination”, substitute “in relation to a consignment of a quota type for export to a destination”.

80 Subsection 30(2)

Omit “that quota destination”, substitute “that destination”.

81 Paragraph 30(3)(a)

Omit “eligible meat for export to a quota destination”, substitute “a quota type for export to a destination”.

82 Paragraph 30(3)(b)

Omit “that quota destination”, substitute “that destination”.

83 At the end of Part 6

Add:

Division 4—Transitional provisions relating to the Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022

52 Application of amendments to the 2022 and 2023 quota year

This instrument as in force immediately before the commencement of Schedule 1 to the *Export Control Legislation Amendment (Tariff Rate Quotas) Rules 2022* continues to apply in relation to:

- (a) allocations of tariff rate quota entitlement for the following quota types and the quota years beginning on 1 January 2022 and 1 January 2023:
 - (i) 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
 - (ii) 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
- (b) tariff rate quota 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

Export Control (Tariff Rate Quotas—General) Rules 2021

1 Section 6

Insert:

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.

Note: The Agreement could in 2022 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

India quota goods: see subsection 74A(1).

2 After Part 1 of Chapter 3

Insert:

Part 1A—Exports to India

74A India quota goods

- (1) ***India quota goods*** are goods of any of the following kinds:
 - (a) almonds;
 - (b) cotton;
 - (c) lentils;
 - (d) oranges and mandarins;
 - (e) pears.
- (2) For the purposes of this Part:

almonds means almonds (in shell and shelled) of a kind that may, under the India-Australia Economic Cooperation and Trade Agreement, 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 India-Australia Economic Cooperation and Trade Agreement, be exported from Australia to India at a reduced tariff rate.

lentils means lentils of a kind that may, under the India-Australia Economic Cooperation and Trade Agreement, 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 India-Australia Economic Cooperation and Trade Agreement, be exported from Australia to India at a reduced tariff rate.

pears means pears of a kind that may, under the India-Australia Economic Cooperation and Trade Agreement, be exported from Australia to India at a reduced tariff rate.

74B Quota year

- (1) A quota year for a kind of India quota goods for export to India is a period of 12 months beginning on 1 January.
- (2) For the purposes of this Part, the *initial quota year* is the quota year in which the India-Australia Economic Cooperation and Trade Agreement comes into force.

74C Quarter of quota year

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.

74D Method for issuing tariff rate quota certificates

Kinds of India quota goods other than cotton

- (1) The first come, first served method applies for the purposes of issuing a tariff rate quota certificate 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.

Note: The first come, first served method is set out in Part 1 of Chapter 2.

Cotton

- (2) Subject to subsections (3) and (4), the allocation method applies for the purposes of issuing a tariff rate quota certificate in relation to a consignment of cotton for export to India in the initial quota year or a later quota year.

Note: The allocation method is set out in Part 3 of Chapter 2.

- (3) For the purposes of 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, disregard the formula in subsection 32(1) and use the following formula:

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

where:

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.

standard access amount is the standard access amount for cotton for export to India for the quota year.

- (4) For the purposes of determining whether an applicant has an allocation penalty for cotton in a quota year, disregard paragraph 33(2)(a).

74E Access amounts

Annual access amount

- (1) 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 India-Australia Economic Cooperation and Trade Agreement, be exported from Australia to India in the quota year at a reduced tariff rate.

Quarterly access amount for lentils

- (2) There is a quarterly access amount for lentils for export to India.

74F Application and reclamation days for cotton

- (1) The annual application day for cotton for export to India for a quota year is:
- (a) for the initial quota year and the quota year following the initial quota year—the day specified by the Secretary; and
 - (b) for a later quota year—15 November in the calendar year immediately before the quota year.
- (2) The reclamation day for cotton for export to India for a quota year is:
- (a) for the initial quota year and the quota year following the initial quota year—the day specified by the Secretary; and
 - (b) for a later quota year—31 July in the quota year.

74G Eligible person for cotton

All persons are an eligible person for cotton for export to India.

74H Eligible past exports for cotton

- (1) A consignment is an eligible past export for cotton for export to India in relation to the initial quota year or either of the next 2 quota years if it is a consignment of cotton exported to India in the period:
- (a) beginning on the 1 November that is 26 months before the start of the quota year; and
 - (b) ending on 31 October of the calendar year before the quota year starts.

- (2) A consignment is an eligible past export for cotton for export to India in relation to a quota year other than a quota year to which subsection (1) applies if:
 - (a) it is a consignment of cotton exported to India; and
 - (b) a tariff rate quota certificate was issued in relation to the consignment in the period:
 - (i) beginning on the 1 November that is 26 months before the start of the quota year; and
 - (ii) ending on 31 October of the calendar year before the quota year starts.

74J Minimum quota allocation for cotton

The minimum quota allocation for cotton for export to India in relation to a quota year is 500 tonnes.

74K Penalties for cotton

- (1) The required usage percentage for cotton for export to India is 90%.
- (2) The penalty pool threshold for cotton for export to India in relation to a quota year is 45,000 tonnes.

Note: There is no penalty individual threshold for cotton. Paragraph 33(2)(a) is to be disregarded when determining whether an applicant has an allocation penalty: see subsection 74D(4).

74L Maximum transfer percentage for cotton

The maximum transfer percentage for cotton for export to India is 50%.

74M New entrant amounts for cotton

- (1) 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 India-Australia Economic Cooperation and Trade Agreement, be exported from Australia to India in the quota year at a reduced tariff rate.
- (2) The new entrant access cap for cotton for export to India in relation to a quota year is 500 tonnes.