



Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2023

I, Madeleine King, Minister for Resources, make the following Guidelines.

Dated 30 March 2023

Madeleine King

Minister for Resources and Minister for Northern Australia

Contents

1 Name.....	1
2 Commencement	1
3 Authority.....	1
4 Definitions	1
5 Purpose	2
6 Overview of the ADGSM	2
7 Summary of timeframes.....	3
8 Determining a domestic shortfall quarter.....	4
9 Permission types	7
10 Protecting long-term contract gas	9
Schedule 1—Repeals	12
<i>Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2020</i>	<i>12</i>
Schedule 2—Long-term Contract Gas	13

1 Name

This instrument is the *Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2023*.

2 Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

3 Authority

This instrument is made under regulation 13GF of the *Customs (Prohibited Exports) Regulations 1958*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the definitions section of the Regulations, including the following:

- (a) authorised officer;
- (b) domestic shortfall quarter;
- (c) permission;
- (d) Resources Department;
- (e) Resources Minister.

In these Guidelines:

ACCC means the Australian Competition and Consumer Commission.

AEMO means the Australian Energy Market Operator.

ADGSM means the Australian Domestic Gas Security Mechanism.

Collector has the same meaning as in the *Customs Act 1901*.

Department means the Resources Department.

gas supply has the meaning set out in subsection 8(9).

LNG is short for liquefied natural gas.

LNG project means the entity, or group of entities, and any related bodies corporate that operate a facility for the processing of natural gas from a gaseous to a liquefied state and its associated upstream operations.

LNG tollee exporter means a third party entity that supplies natural gas to an LNG project under a gas processing agreement for the purpose of exporting LNG.

Minister means the Resources Minister.

Minister's determination means a determination made by the Minister in accordance with regulation 13GE of the Regulations.

Minister's notification means a notifiable instrument made by the Minister in accordance with paragraph 13GE(2)(c) of the Regulations.

Q1 is the first quarter of the calendar year. That is, the period commencing 1 January and concluding on 31 March.

Q2 is the second quarter of the calendar year. That is, the period commencing 1 April and concluding on 30 June.

Q3 is the third quarter of the calendar year. That is, the period commencing 1 July and concluding on 30 September.

Q4 is the fourth quarter of the calendar year. That is, the period commencing 1 October and concluding on 31 December.

Regulations means the *Customs (Prohibited Exports) Regulations 1958*.

related bodies corporate has the same meaning as in the *Corporations Act 2001*.

shortfall means an insufficient supply of natural gas for Australian consumers.

5 Purpose

- (1) The purpose of the Guidelines is to set out the requirements, indicative timing, processes, and considerations associated with the operation of the ADGSM. This includes in relation to decisions by the Minister under Division 6 of Part 3 of the Regulations regarding the determination of a domestic shortfall quarter, and the granting of permissions.
- (2) The Guidelines are subject to, and do not replace or amend the requirements of, the Regulations and the *Customs Act 1901*, which should be read in conjunction with these Guidelines.
- (3) The Guidelines are not a legislative instrument. The Minister may depart from the Guidelines where justified by circumstances. Where the Minister proposes to depart from the Guidelines, procedural fairness will be afforded to any adversely affected person.

6 Overview of the ADGSM

- (1) The objective of the ADGSM is to ensure that there is a sufficient supply of natural gas to meet the forecast needs of Australian gas consumers by controlling, if necessary, LNG exports.
- (2) The ADGSM is intended to be a measure of last resort, only used if market-based solutions and other regulatory interventions fail to provide sufficient gas to Australian consumers.
- (3) The ADGSM applies Australia wide. In practice, the ADGSM:
 - a. establishes a process for the Minister to determine whether there will be a shortage of natural gas for Australian consumers in a forthcoming quarter (a **domestic shortfall quarter**); and

-
- b. prohibits exports of LNG during a domestic shortfall quarter, unless written permission has been granted by the Minister or an authorised officer (a *permission*); and
 - c. establishes a permission regime, whereby the Minister or an authorised officer may grant a permission to export LNG.
- (4) Division 6 of Part 3 of the Regulations came into effect from 1 July 2017 and will be automatically repealed on 1 January 2030.

7 Summary of timeframes

Minister to be advised of forecast domestic gas supply and demand

- (1) The Minister will base their decision on whether to make a Minister's notification on forecasts, information and advice on the domestic gas supply and demand balance. These forecasts, information and advice will be provided by:
- a. the Department, ACCC and AEMO;
 - b. Australian gas producers and consumers; and
 - c. any other sources of information the Minister considers relevant.

Minister's notification

- (2) The Minister's notification must be issued at least three months prior to the commencement of the domestic shortfall quarter.
- a. For Q1, this is 1 October the previous calendar year.
 - b. For Q2, this is 1 January the same calendar year.
 - c. For Q3, this is 1 April the same calendar year.
 - d. For Q4, this is 1 July the same calendar year.

Consultation

- (3) Following the Minister's notification, the Minister will consult on whether to determine a domestic shortfall quarter with:
- a. LNG projects;
 - b. the Ministers specified in paragraph 13GE(2)(b) of the Regulations.
- (4) Those consulted will have at least 30 calendar days from the Minister's notification to provide any information that would impact on the shortfall forecast.

Minister's determination

- (5) The Minister's determination will be made no later than 45 calendar days after the deadline for the Minister's notification, as set out in subsection (2) in this section.

Permissions

- (6) In accordance with paragraph 13GC(1)(a) of the Regulations, a permission will be required for all LNG exported in a domestic shortfall quarter.
- (7) The Minister will grant an initial permission to an LNG project no less than 30 calendar days before the domestic shortfall quarter commences.
- (8) Following the grant of an initial permission, the Minister may grant additional permissions, vary a permission, accept the surrender of a permission, revoke a permission, or alter the conditions of a permission.
- (9) Volumes specified in an allowable volume (AV) permission can be traded on and from the date the permission is granted.

8 Determining a domestic shortfall quarter

Advice to Minister

- (1) The Department, AEMO and ACCC will provide the Minister information and advice on Australia's forecast domestic gas supply and demand. The Minister may also consider information provided by industry, and any other sources the Minister considers relevant.
- (2) Forecasts of domestic gas supply and demand will be based on information collected from Australia's gas producers, large gas users and LNG projects. Forecasts may also take into account information relating to factors influencing domestic gas supply and demand, such as seasonal weather forecasts, domestic electricity markets and demand for Australian LNG.

Minister's notification

- (3) Before the Minister may determine that a quarter will be a domestic shortfall quarter, the Minister must first, by notifiable instrument, notify the Minister's intent to determine whether a forthcoming quarter will be a domestic shortfall quarter.
- (4) The notice will set out:
 - a. in petajoules, the forecast domestic:
 - i. demand;
 - ii. supply;
 - iii. shortfall;
 - b. LNG projects for which the Minister is considering issuing allowable volume permissions;

Note: An LNG project for which the Minister is considering issuing an allowable volume permission can get an indication of the volume in its initial permission by inputting the values in the notice into the formula in subsections 9(7)-(9).

 - c. LNG projects for which the Minister is considering issuing unlimited volume permissions.

-
- (5) Prior to making the Minister's notification, the Minister may work with industry to identify voluntary, industry-led solutions for shortfall avoidance. Any volumes of additional gas supplied to domestic customers through this process would be taken into account in any decisions by the Minister to issue a Minister's notification or Minister's determination.

Consultation with LNG projects

- (6) The Minister will write to LNG projects to:
- a. alert them to the Minister's notification;
 - b. invite views on the Australian domestic gas market outlook;
 - c. for an LNG project for which the Minister is considering issuing an allowable volume permission — request confirmation of their gas supply for the quarter as at the date of the Minister's notification;
 - d. for an LNG project for which the Minister is considering issuing an unlimited volume permission — notify the LNG project it is located in a part of the domestic gas market where Australian consumers are forecast to be unaffected by the shortfall; and
 - e. invite proposals for an industry-led solution to prevent the forecast shortfall.
- (7) An LNG project should alert any LNG tolee exporters with which it has a gas processing agreement to the Minister's notification.
- (8) The Minister may consult Australian gas producers, importers, LNG tolee exporters or other gas market participants that are not LNG projects on the matters specified in subsection 8(6).
- (9) **Gas supply** is, at the time the Minister made the Minister's notification, the LNG project's:
- a. gas production volume;
 - b. plus volumes purchased from participants in the domestic market (**domestic gas purchased volume**);
 - c. plus its tolled gas volume;
 - d. minus volumes contracted to be sold to domestic customers or Australian LNG projects (**domestic gas sales volume**).
- (10) The Minister may request information on how the LNG project calculated gas supply, including the LNG project's:
- a. gas production volume; and
 - b. tolled gas volume; and
 - c. domestic gas purchased volume; and
 - d. domestic gas sales volume.

Determining a domestic shortfall quarter

- (11) The Minister will exercise fair and reasonable discretion and judgement in considering all relevant and available information to deciding whether to make a Minister's determination.
- (12) For the Minister to make a Minister's determination, the Minister must have reasonable grounds for their belief that:
- a. there will not be a sufficient supply of natural gas for Australian consumers unless exports of LNG are controlled.
- (13) When considering whether there are reasonable grounds to believe that there will not be a sufficient supply of natural gas for Australian consumers unless exports are controlled, and that exports of LNG would contribute to that lack of supply, the Minister may take into account a range of factors. These may include, but are not limited to, the following.
- a. The extent to which limiting LNG exports could be expected to reduce a shortfall.
 - b. External factors influencing the gas market.
Example: This may include natural disasters, infrastructure malfunctions or closures, or a sudden rise in demand.
 - c. The materiality of a shortfall. The Minister may choose not to determine a domestic shortfall quarter, even where the Minister determines there will be a shortfall, if the Minister considers the likely shortfall volume to be small compared to forecast demand.
 - d. The social and economic costs of imposing export controls. The Minister may choose not to determine a domestic shortfall quarter, even where the Minister determines there will be a shortfall, if the Minister considers the social and economic costs of imposing export controls are likely to be greater than the benefit to Australian consumers affected by a shortfall.
 - e. Limitations in the ability for LNG projects to redirect gas to the domestic market. The Minister may consider the practical impact of export controls in the event of a Minister's determination.
Example: The Minister may consider whether market impediments (such as transport and storage infrastructure constraints) are likely to prevent export controls from resulting in the additional supply of gas to Australian consumers affected by a shortfall.
 - f. The availability of an industry-led solution to an identified shortfall. The Minister may consider whether a person has entered into commitments to voluntarily deliver volumes to Australian consumers in the relevant part of the Australian domestic gas market which would be sufficient to avoid the occurrence of a shortfall.
 - g. The past performance of all participants in the Australian domestic gas market, including any strategic behaviour or 'gaming' of the ADGSM.

-
- (14) The Minister's determination will specify the shortfall volume and be accompanied by a statement of reasons. The statement of reasons will be published on the Department's website.
 - (15) The Minister may choose not to make a Minister's determination, even where the Minister considers there will be a shortfall, based on consideration of the factors set out in this section. The Minister may cause a statement of reasons to be published on the Department's website for a decision not to make a Minister's determination.
 - (16) The Minister may revoke a Minister's determination at any time. In such circumstances, the Minister will make a new notifiable instrument to repeal the Minister's determination, and write to each LNG project to notify them of the decision.

Shortfalls which only impact consumers in part of Australia

- (17) In deciding whether to make the Minister's determination, the Minister will consider Australian consumers in each part of the Australian domestic gas market, including each of the major gas markets that together comprise the Australian domestic gas market (that is, the Western, Northern, and Eastern gas markets).
- (18) The Minister may determine a domestic shortfall quarter if Australian consumers in a part of the Australian domestic gas market will be affected by a shortfall, notwithstanding that consumers in other parts of the Australian domestic gas market will not be affected by a shortfall.

Example: The Minister may determine a quarter as a domestic shortfall quarter where the Minister has reasonable grounds to believe that there will not be a sufficient supply of natural gas for Australian consumers in the Eastern gas market during the quarter unless exports are controlled, despite that consumers in the Northern and Western gas markets will not be affected by a shortfall.
- (19) Where the Minister determines a quarter as a domestic shortfall quarter, all LNG projects will receive one of two types of permissions. The types of permission distinguish between LNG projects:
 - a. in a shortfall market; and
 - b. not in a shortfall market.

9 Permission types

- (1) In a domestic shortfall quarter, the export of LNG from Australia is prohibited unless the LNG project or tollee exporter:
 - c. has a permission; and
 - d. the permission is produced to the Collector.
- (2) Permissions will be issued for a domestic shortfall quarter and will expire at the end of the domestic shortfall quarter.
- (3) The Minister may grant permissions for an unlimited volume or for an allowable volume.

Unlimited volume (UV) permissions

- (4) A UV permission allows an LNG project to export an unlimited volume of LNG in a domestic shortfall quarter. Other limitations, apart from the ADGSM, may influence the volume of gas an LNG project can export, including as a result of state-based agreements or licencing conditions.
- (5) The Minister may grant a UV permission to an LNG project that is in a part of the Australian domestic gas market where Australian consumers are unaffected by the shortfall.
- Example: The Minister may issue UV permissions to LNG projects in the Western and Northern gas markets during a domestic shortfall quarter where consumers in the Eastern gas market would be impacted by the shortfall.
- (6) If an LNG tollee exporter intends to export LNG from an LNG project issued a UV permission, the Minister may grant a UV permission to the LNG tollee exporter.

Allowable volume (AV) permissions

- (7) An AV permission will be granted to an LNG project not granted a UV permission.
- (8) AV permissions will be expressed in tonnes of LNG, converted from petajoules using the formula 1 petajoule = 18,382 tonnes.
- (9) The allowable volume in an AV permission will be:
- a. the LNG project's gas supply for the domestic shortfall quarter;
- Note: Gas supply is defined in subsection 8(9) of these Guidelines.
- b. minus the LNG project's shortfall alleviation contribution.
- (10) The **shortfall alleviation contribution** is:
- a. the shortfall volume specified in the Minister's determination;
 - b. divided by the number of LNG projects to be granted AV permissions.

Trade of AV permissions

- (11) An LNG project granted an AV permission may buy or sell a volume in its AV permission with another LNG project granted an AV permission. For the avoidance of doubt:
- a. any person not issued an AV permission in accordance with the Guidelines may not trade an AV permission; and
 - b. a volume in, or associated with, a UV permission may not be traded.
- (12) The terms and conditions of the trade of a volume in an AV permission will be a commercial matter for the buyer and seller.
- (13) The buyer and seller of an AV permission volume should notify the Department following the completion of the trade.

-
- a. Both buyer and seller will need to surrender their AV permissions in exchange for new AV permissions.

Example: The Minister or an authorised officer may accept the surrender of a permission in exchange for granting another permission under section 13GC(3) of the Regulations.

- b. The volumes in the buyer and seller's new AV permissions will reflect the traded volume.
- c. The buyer and seller's new AV permissions will be for the same domestic shortfall quarter as the surrendered permissions.

AV permission for an LNG tollee exporter

- (14) If an LNG tollee exporter intends to export LNG from an LNG project issued an AV permission, the LNG tollee exporter will be granted an AV permission.
- (15) The LNG project's allowable volume, calculated in accordance with subsection 9(9) of these Guidelines, will be divided between the LNG project and the LNG tollee exporter in a manner that reflects their respective LNG production during the domestic shortfall quarter.
 - a. The allowable volume in the LNG tollee exporter's AV permission will be proportionate to the forecast LNG production entitlement of the LNG tollee exporter in relation to the LNG project's forecast LNG production.

Permission conditions

- (16) The Minister may grant a permission to an LNG project subject to conditions the Minister deems necessary and appropriate to achieve the ADGSM's objective.

Note: The ADGSM's objective is set out in subsection 6(1) of these Guidelines.
- (17) If an LNG project does not comply with a permission condition, the Minister may in writing
 - a. revoke the permission; or
 - b. vary the permission (including in relation to type, volume, and other conditions).

10 Protecting long-term contract gas

- (1) In this section, **LNG project** includes LNG tollee exporter.
- (2) If the allowable volume in an AV permission is less than the LNG project's long-term contract gas, the LNG project may request the Minister increase the allowable volume in the AV permission.
- (3) **Long-term contract gas** is the minimum volume the LNG project must supply under a protected long-term contract. In determining the minimum volume the LNG project must supply, the LNG project's lack of discretion to supply a volume in the relevant period is the relevant test.

Example: An LNG project (the seller) has a long-term LNG Supply and Purchase Agreement (SPA) with a foreign energy utility (the buyer). The SPA stipulates: 1) 5 million tonnes of LNG will be delivered annually 2) the buyer can exercise the option to have an

additional 1 million tonnes of LNG delivered in any given year, at a price agreed between buyer and seller. In 2024, the buyer and seller agree a price and the buyer calls in its option to have the additional 1 million tonnes delivered in 2024. The long-term contract gas for 2024 is 6 million tonnes for the SPA.

- a. Long-term contract gas cannot be increased as a result of renegotiating or otherwise updating a protected long-term contract. Where the minimum volume the LNG project must supply increases as a result of renegotiating or otherwise updating a protected long-term contract, the contract's long-term contract gas is the long-term contract gas in the original agreement that was renegotiated or updated.
- (4) For the purposes of determining long-term contract gas, a ***protected long-term contract*** is an agreement which underpinned the final investment decision of the LNG project. These agreements include, but are not limited to, Heads of Agreement and memorandums of understanding that later evolved into an LNG Supply and Purchase Agreement.
- a. A protected long-term contract may be executed before or up to 12 months after the LNG project's final investment decision.
 - b. The Minister may consider a renewed agreement, or an agreement formalising an earlier agreement, to be a protected long-term contract, provided the original agreement underwrote the final investment decision of the LNG project.

LNG project may write to the Minister to confirm long-term contract gas

- (5) To provide greater certainty to LNG projects, an LNG project may write to the Minister seeking recognition of the long-term contract gas under a protected long-term contract. Such a request should annex the protected long-term contract.
- (6) Following such a request, if the Minister determines the annex is a protected long-term contract, the Minister will cause Schedule 2 of these Guidelines to be updated. The update will specify:
 - a. the LNG project (the seller);
 - b. the buyer;
 - c. the date the protected long-term contract was executed; and
 - d. the protected long-term contract's long-term contract gas, disaggregated by any future specified delivery timing.
- (7) In recognition that a protected long-term contract may have a seasonal profile (where the timing of the delivery is specified in the protected long-term contract), Schedule 2 of these Guidelines will disaggregate long-term contract gas by month. Where the agreement does not specify delivery timing by month, equal volumetric delivery in each month will be assumed. Where the agreement specifies the buyer's right to determine delivery timing, the Minister will consider any delivery timing requests from the buyer.

Example: A protected long-term contract requires the seller to deliver 30 thousand tonnes of LNG in Q4 of every year, beginning on 1 January 2012 and ending on 1 January 2025. In Q1 2024, the seller writes to the Minister requesting confirmation of the long-term contract gas in the protected long-term contract. The Minister updates Schedule 2 of these Guidelines to specify: a) the seller (Northern LNG); b) the buyer (Asia Gas Inc.); c) the date the protected long-term contract was executed (1 November 2011); d) for October 2024 – long-term contract gas is 10 thousand tonnes of LNG; for November 2024 – long-term contract gas is 10 thousand tonnes of LNG; for December 2024 – long-term contract gas is 10 thousand tonnes of LNG.

- (8) Long-term contract gas for a domestic shortfall quarter will be the sum of the monthly long-term contract gas volumes for the domestic shortfall quarter.

Relevant criteria for increasing the allowable volume in the AV permission

- (9) When considering an application to increase the allowable volume in an AV permission, the Minister will consider the following criteria.
- a. Whether the LNG project has exhausted all available commercial solutions to fulfil its contractual obligations, including but not limited to its protected long-term contracts. Commercial solutions include increasing the allowable volume in an AV permission through trade and purchasing LNG on the global market to meet a contractual obligation.

Note: Subsections 9(11) to 9(13) of these Guidelines relate to the trade of AV permissions.

- b. The economic and social impacts of a shortfall in Australia equivalent to the increase in the allowable volume under consideration.
- c. The likely impact on Australia's reputation as a reliable trade and investment partner.
- d. Whether the LNG project has increased production to ease the shortfall.

Example: In response to a Minister's determination, an LNG project increases production and enters contracts with domestic customers to ease the shortfall. The allowable volume in the project's AV permission is less than its long-term contract gas, so the LNG project requests the Minister increase the allowable volume in the AV permission. Given the LNG project increased production and supplied it to the domestic market to ease the shortfall, the Minister decides to increase the allowable volume in the LNG project's AV permission to its long-term contract gas amount.

Schedule 1—Repeals

Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2020

1 The whole of the instrument

Repeal the instrument

Schedule 2—Long-term Contract Gas