



Export Control (Japan-Australia Economic Partnership Agreement Tariff Rate Quotas) Order 2016

I, Jennifer Cupit, delegate of the Secretary of the Department of Agriculture and Water Resources, make the following order.

Dated 7 March 2016

Jennifer Cupit
Assistant Secretary
Residues and Food Branch
Exports Division
Department of Agriculture and Water Resources

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Part 1—Preliminary

1 Name

This is the *Export Control (Japan-Australia Economic Partnership Agreement Tariff Rate Quotas) Order 2016*.

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	10 March 2016.	10 March 2016

Note: This table relates only to the provisions of this instrument as originally made.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 section 23A of the *Export Control Act 1982*.

4 Definitions

In this instrument:

Act means the *Export Control Act 1982*.

annual access amount has the meaning given by subsection 6(1).

apple juice means apple juice of a kind that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

bovine offal means edible offal of bovine animals that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

EXDOC means the electronic documentation system maintained by the Department.

Section 4

honey means honey that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

initial decision has the meaning given by subsections 14(1) and (2).

Japan-Australia Economic Partnership Agreement means the Japan-Australia Economic Partnership Agreement, done at Canberra on 8 July 2014, as amended from time to time.

Note: The Agreement could in 2016 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

orange juice means orange juice of a kind that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

pork means meat, internal organs or preparations of swine that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

poultry means meat or preparations of poultry that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

preserved meats (other) means preparations of bovine animals (including beef jerky, but not including goods that are preserved meats (sausage)) that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.

preserved meats (sausage) means any of the following goods made from bovine animals or swine that may be exported from Australia to Japan at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement:

- (a) sausages;
- (b) homogenised preparations;
- (c) liver paste.

quarter means a period of 3 months beginning on 1 April, 1 July, 1 October or 1 January.

quarterly access amount has the meaning given by subsection 6(3) affected by subsection 6(5).

quota goods means any of the following kinds of goods:

- (a) apple juice;
- (b) bovine offal;
- (c) honey;
- (d) orange juice;
- (e) pork;
- (f) poultry;
- (g) preserved meats (other);
- (h) preserved meats (sausage).

Section 5

Quota Unit means the section of the Department that is responsible for managing tariff rate quotas under the Japan-Australia Economic Partnership Agreement.

quota year means a period of 12 months beginning on 1 April.

relevant liability means:

- (a) a fee imposed under the *Export Control (Fees) Order 2015* that is due and payable; or
- (b) a charge prescribed by the *Export Charges (Imposition—Customs) Regulation 2015* that is due and payable; or
- (c) a charge prescribed by the *Export Charges (Imposition—General) Regulation 2015* that is due and payable.

tariff rate quota certificate means a tariff rate quota certificate issued under this instrument.

uncommitted access amount:

- (a) for a kind of quota goods for a quota year—has the meaning given by subsection 6(2); and
- (b) for a kind of quota goods for a quarter of a quota year—has the meaning given by subsection 6(4).

5 When is an export of a consignment complete

For this instrument, an export of a consignment of a kind of quota goods from Australia to Japan is complete when the consignment is unloaded in Japan.

6 Access amounts

Annual amounts

- (1) The **annual access amount** for a kind of quota goods for a quota year is the total weight of the goods that may be exported from Australia to Japan in the year at a reduced tariff rate under the Japan-Australia Economic Partnership Agreement.
- (2) The **uncommitted access amount** for a kind of quota goods for a quota year is the amount of the annual access amount for the kind of goods for the quota year in relation to which a tariff rate quota certificate has not been issued.

Note: If a tariff rate quota certificate for a kind of quota goods for a quota year is cancelled, the Secretary may decide that the certificate is taken never to have been issued for the purposes of working out the uncommitted access amount for the kind of goods for the year (see subsection 13(4)).

Quarterly amounts

- (3) The **quarterly access amount** for a kind of quota goods for a quarter of a quota year is the annual access amount for the kind of goods for the quota year divided by 4.
- (4) The **uncommitted access amount** for a kind of quota goods for a quarter of a quota year is the amount of the quarterly access amount for the kind of goods for the quarter in relation to which a tariff rate quota certificate has not been issued.

Section 7

Note 1: A tariff rate quota certificate for a quota year that is issued under section 11 before the start of the year is taken to have been issued in relation to the first quarter of the quota year (see subsection 11(6)).

Note 2: If a tariff rate quota certificate for a kind of quota goods for a quota year is cancelled, the Secretary may decide that the certificate is taken never to have been issued for the purposes of working out the uncommitted access amount for the kind of goods for a quarter of the year (see subsection 13(4)).

- (5) If, at the end of the first, second or third quarter (the **current quarter**) of a quota year, the uncommitted access amount for a kind of quota goods for the current quarter is an amount greater than zero, the quarterly access amount for the kind of goods for the next quarter is increased by the uncommitted access amount for the kind of goods for the current quarter.

7 Purpose of this instrument

This instrument provides for, and in relation to, the establishment and administration of a system of tariff rate quotas for the export of quota goods from Australia to Japan under the Japan-Australia Economic Partnership Agreement.

Note: Under the Agreement a certain weight of a kind of quota goods may be exported to Japan at a reduced tariff rate (see the definition of **annual access amount** in section 4). Quota goods must be covered by a tariff rate quota certificate to be eligible for the reduced tariff rate. A higher tariff rate may apply to quota goods that are exported to Japan and that are not covered by a tariff rate quota certificate.

Part 2—Tariff rate quota certificates

8 Application for tariff rate quota certificate

- (1) A person who intends to export a consignment of a kind of quota goods to Japan in a quota year may apply to the Secretary for a tariff rate quota certificate for the export of the consignment to Japan in the quota year.
- (2) An application for a tariff rate quota certificate for the export of a consignment of quota goods in a quota year must not be made:
 - (a) before 10 March of the calendar year in which the quota year starts; or
 - (b) more than 3 weeks before the applicant intends the goods to leave Australia.
- (3) An application:
 - (a) for the export of a consignment of bovine offal, pork, poultry, preserved meats (other) or preserved meats (sausage)—must be made by making an entry in EXDOC for the consignment; or
 - (b) for the export of a consignment of any other kind of quota goods—must be made in the form approved by the Secretary and given to the Quota Unit.
- (4) The Secretary may request further information from the applicant that is relevant to the application.
- (5) Any further information in relation to the application (whether or not provided in response to a request under subsection (4)) must be given to the Quota Unit.
- (6) A person who has made an application under subsection (1) may withdraw the application at any time before the Secretary makes a decision on the application.

9 Applications dealt with on first come first served basis

- (1) An application for a tariff rate quota certificate for the export of a consignment of quota goods referred to in paragraph 8(3)(a) is taken to be received by the Secretary at the time that all the information requested in EXDOC or under subsection 8(4) is received.
- (2) An application for a tariff rate quota certificate for the export of a consignment of quota goods referred to in paragraph 8(3)(b) is taken to be received by the Secretary at the time that all the information requested in the approved form referred to in that paragraph or under subsection 8(4) is received.
- (3) The Secretary must deal with applications in the order in which they are received.

10 Issue of tariff rate quota certificate—annual quotas

- (1) This section applies in relation to an application for a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year

Section 11

(other than an application relating to quota goods covered by section 11) that is received by the Secretary as referred to in section 9.

Note: Section 11 deals with applications relating to bovine offal for which there are quarterly quotas.

- (2) Subject to subsection (3), the Secretary must decide to issue a tariff rate quota certificate to the applicant for the export of a consignment of the kind of quota goods in the quota year if the uncommitted access amount for the kind of goods for the quota year is greater than zero.
- (3) The Secretary may decide not to issue a tariff rate quota certificate to the applicant if the Secretary considers that it is not appropriate to issue the certificate taking into account the following:
 - (a) any failure by the applicant to comply with subsection 18(3) in the quota year or a previous quota year;
 - (b) a failure of the applicant to hold any licence required under a law of the Commonwealth to export the goods;
 - (c) any relevant liability in relation to a tariff rate quota certificate or the export of a kind of quota goods that has not been paid by the applicant (including if the applicant is jointly liable with another person or other persons);
 - (d) whether the applicant's business as an exporter of the kind of quota goods is not financially viable or is not likely to remain so;
 - (e) whether it would not be in the best interests of the industry relating to the kind of quota goods for the certificate to be issued;
 - (f) if the total weight of the consignment applied for is more than the uncommitted access amount for the kind of goods for the quota year—that fact.
- (4) If the total weight of the consignment applied for is not more than the uncommitted access amount for the kind of goods for the quota year and the Secretary decides to issue a tariff rate quota certificate to the applicant, the certificate must be issued for the total weight of the consignment applied for.
- (5) If the total weight of the consignment applied for is more than the uncommitted access amount for the kind of goods for the quota year, and the Secretary decides to issue a tariff rate quota certificate to the applicant, the Secretary must issue a tariff rate quota certificate for a part of the consignment applied for that is not more than the uncommitted access amount.

11 Issue of tariff rate quota certificate—quarterly quotas

- (1) This section applies in relation to an application for a tariff rate quota certificate for the export of a consignment of bovine offal to Japan in a quota year that is received by the Secretary as referred to in section 9.
- (2) Subject to subsection (3), the Secretary must decide to issue a tariff rate quota certificate to the applicant for the export of a consignment of bovine offal in the quota year if the uncommitted access amount for bovine offal for the quarter of the quota year in relation to which the certificate is to be issued is greater than zero.

Section 12

- (3) The Secretary may decide not to issue a tariff rate quota certificate to the applicant if the Secretary considers that it is not appropriate to issue the certificate taking into account the following:
 - (a) any failure by the applicant to comply with subsection 18(3) in the quota year or a previous quota year;
 - (b) a failure of the applicant to hold any licence required under a law of the Commonwealth to export the goods;
 - (c) any relevant liability in relation to a tariff rate quota certificate or the export of a kind of quota goods that has not been paid by the applicant (including if the applicant is jointly liable with another person or other persons);
 - (d) whether the applicant's business as an exporter of the kind of quota goods is not financially viable or is not likely to remain so;
 - (e) whether it would not be in the best interests of the industry relating to the kind of quota goods for the certificate to be issued;
 - (f) if the total weight of the consignment applied for is more than the uncommitted access amount for bovine offal for the quarter of the quota year—that fact.
- (4) If the total weight of the consignment applied for is not more than the uncommitted access amount for bovine offal for the quarter of the quota year in relation to which the certificate is to be issued and the Secretary decides to issue a tariff rate quota certificate to the applicant, the tariff rate quota certificate must be issued for the total weight of the consignment applied for.
- (5) If the total weight of the consignment applied for is more than the uncommitted access amount for bovine offal for the quarter of the quota year in relation to which the certificate is to be issued and the Secretary decides to issue a tariff rate quota certificate to the applicant, the Secretary must issue a tariff rate quota certificate for a part of the consignment applied for that is not more than the uncommitted access amount.
- (6) A tariff rate quota certificate for a quota year that is issued under this section before the start of the quota year is taken to have been issued in relation to the first quarter of the quota year.

12 Tariff rate quota certificate is not transferable or variable

A tariff rate quota certificate is not transferable and may not be varied.

13 Cancellation of tariff rate quota certificate*Cancellation on request*

- (1) The Secretary must cancel a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year if the person to whom the certificate has been issued requests the Secretary to do so.

Section 13

Cancellation on own initiative

- (2) The Secretary may cancel a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year if:
- (a) the certificate is incorrect in any respect; or
 - (b) the consignment does not leave Australia within 6 weeks after the certificate was issued; or
 - (c) the person to whom the certificate was issued has failed to comply with a request under subsection 18(3) in the quota year or a previous quota year; or
 - (d) the person does not hold, or ceases to hold, any licence required under a law of the Commonwealth to export the goods; or
 - (e) a relevant liability in relation to a tariff rate quota certificate or the export of a kind of quota goods has not been paid by the person (including if the person is jointly liable with another person or other persons); or
 - (f) the person's business as an exporter of the kind of quota goods is not financially viable or is not likely to remain so; or
 - (g) the Secretary considers that it would not be in the best interests of the industry relating to the kind of quota goods for the person to continue to hold the certificate.
- (3) A tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year may be cancelled under this section at any time before the export of the goods is complete.

Uncommitted access amount may be increased by weight of cancelled certificate

- (4) For the purposes of working out the uncommitted access amount for a kind of quota goods for a quota year or a quarter of a quota year, the Secretary may decide that any cancelled certificate is taken never to have been issued.

Part 3—Review of decisions

14 Application for reconsideration by Secretary

- (1) A person who applied for a tariff rate certificate may apply to the Secretary to have a decision (the **initial decision**) not to issue the certificate under subsection 10(3) or 11(3) reconsidered.
- (2) A person to whom a tariff rate certificate has been issued may apply to the Secretary to have a decision (the **initial decision**) to cancel the certificate under subsection 13(2) reconsidered.
- (3) An application:
 - (a) must be in writing; and
 - (b) must set out the reasons for the application; and
 - (c) must be lodged with the Secretary within 28 days after the date on which the initial decision first came to the notice of the applicant or within such further period as the Secretary allows.

15 Secretary to reconsider decision

- (1) On receipt of an application in accordance with section 14, the Secretary must reconsider the initial decision, and may make any decision that he or she might have made in the first instance.
- (2) If the initial decision was made under subsection 10(3) or 11(3) and the Secretary:
 - (a) sets aside the initial decision; and
 - (b) decides to make a decision (the **substituted decision**) under section 10 or 11 to issue a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year in substitution for the initial decision;then, for the purposes of making the substituted decision, references in the relevant section to the uncommitted access amount for the quota year, or a quarter of the quota year, are taken to be references to the uncommitted access amount for the quota year, or the quarter of the quota year, at the time the substituted decision is made.
- (3) If the initial decision was a decision to cancel a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year under subsection 13(2), the Secretary may only set aside the initial decision if, at the time of setting aside the decision, the uncommitted access amount for the kind of quota goods for the quota year, or the quarter of the quota year, is equal to or more than the total weight of the consignment.

16 Effect of Secretary's decision

- (1) If the Secretary makes a decision under section 15 to set aside the initial decision, the initial decision ceases to have effect.

Section 17

- (2) The Secretary must give the applicant notice in writing of the Secretary's decision under section 15 within 45 days after the day on which the application for reconsideration was received.
- (3) The notice must set out the reasons for the Secretary's decision.

17 Application to Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary under section 15.
- (2) An application under subsection (1):
 - (a) in relation to an initial decision not to issue a tariff rate quota certificate—may only be made by the person who applied for the certificate; and
 - (b) in relation to an initial decision to cancel a tariff rate quota certificate—may only be made by the person to whom the certificate was issued.
- (3) If the initial decision was made under subsection 10(3) or 11(3) and the Administrative Appeals Tribunal:
 - (a) sets aside the initial decision; and
 - (b) decides to make a decision (the ***substituted decision***) under section 10 or 11 to issue a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year in substitution for the initial decision;then, for the purposes of making the substituted decision, references in the relevant section to the uncommitted access amount for the quota year, or a quarter of the quota year, are taken to be references to the uncommitted access amount for the quota year, or the quarter of the quota year, at the time the substituted decision is made.
- (4) If the initial decision was a decision to cancel a tariff rate quota certificate for the export of a consignment of a kind of quota goods to Japan in a quota year the Administrative Appeals Tribunal may only set aside the initial decision if, at the time of setting aside the decision, the uncommitted access amount for the kind of quota goods for the quota year, or the quarter of the quota year, is equal to or more than the total weight of the consignment.

Part 4—Miscellaneous

18 Audits

- (1) The Secretary may require an audit to be carried out in relation to the following:
 - (a) a tariff rate quota certificate issued to a person;
 - (b) all tariff rate quota certificates issued to a person during a specified period.
- (2) An audit must be carried out by an auditor approved in writing by the Secretary.
- (3) A person who is carrying out an audit in relation to one or more tariff rate quota certificates issued to a person may request the person to do either or both of the following:
 - (a) produce any documents, records or things that the auditor is satisfied are relevant to the audit;
 - (b) provide the auditor with all reasonable facilities and assistance for the effective carrying out of the audit.

19 Decisions made by computer

- (1) The Secretary may arrange for the use, under the Secretary's control, of computer programs for making decisions under this instrument in relation to tariff rate quota certificates.
- (2) A decision made by the operation of a computer program under an arrangement made under subsection (1) is taken to be a decision made by the Secretary.