



Export Control (Beef Export to the USA Tariff Rate Quota) Order 2016

I, Duane Roberts, delegate of the Secretary of the Department of Agriculture and Water Resources, make the following order.

Dated 27 June 2016

Duane Roberts
Acting 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 (Beef Export to the USA Tariff Rate Quota) 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	1 July 2016.	1 July 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Note: This table relates only to the provisions of this instrument as originally made.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 Purpose of this instrument

This instrument provides for, and in relation to, the establishment and administration of a system of tariff rate quota for the export from Australia to the USA of quota beef in the 2016 to 2022 quota years.

Note: A certain weight of quota beef may be exported to the USA at a zero tariff rate. Quota beef must be covered by a tariff rate quota certificate to be eligible for the zero tariff rate. A higher tariff rate may apply to quota beef exported to the USA and not covered by a tariff rate quota certificate.

5 Definitions

In this instrument:

2015 order means the *Australian Meat and Live-stock Industry (Beef Export to the USA—Quota Years 2016-2022) Order 2015* as in force immediately before 1 July 2016.

access amount for a quota year means:

- (a) for the 2016 quota year—418 214 000 kilograms; or

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- (b) for the 2017 and 2018 quota years—423 214 000 kilograms; or
- (c) for the 2019 quota year—428 214 000 kilograms; or
- (d) for the 2020 quota year—433 214 000 kilograms; or
- (e) for the 2021 quota year—438 214 000 kilograms; or
- (f) for the 2022 quota year—448 214 000 kilograms.

consignment means a single shipment (by sea or air) of quota beef by an exporter to a single consignee.

eligible export, in relation to a quota year, means an export from Australia to the USA of quota beef during the 2-year period that:

- (a) begins on 1 November of a year that occurs 26 months before the start of the quota year; and
- (b) ends on 31 October of the calendar year preceding the quota year.

EXDOC means the electronic documentation system maintained by the Department.

export deadline for the export of a consignment of quota beef in a quota year means:

- (a) if the tariff rate quota certificate relating to the consignment is issued on or after 1 October in the quota year—the end of the quota year; or
- (b) otherwise—the end of 3 months beginning on the day the tariff rate quota certificate relating to the consignment is issued.

exporter means the holder of a licence issued under section 10 of the *Australian Meat and Live-stock Industry Act 1997* allowing the holder to export quota beef to the USA.

Harmonized Tariff Schedule means the Harmonized Tariff Schedule of the United States published by the United States International Trade Commission, as in force from time to time.

Note: The Harmonized Tariff Schedule could in 2016 be viewed on the United States International Trade Commission's website (<http://www.usitc.gov>).

initial decision means a decision referred to in subsection 17(1).

new tariff rate quota certificate means a tariff rate quota certificate in relation to the export of a consignment of quota beef in the 2016 quota year issued under section 7.

old US beef quota certificate means a US beef quota certificate in relation to the export of a consignment of quota beef in the 2016 quota year granted under section 7 of the 2015 order.

processed meat has the same meaning as in the Harmonized Tariff Schedule.

provisional tariff rate quota entitlement of an exporter for a quota year means the amount determined under section 10 for the exporter for the quota year.

quota beef means fresh, chilled or frozen meat derived from cattle that is described in any of the following subheadings of the Harmonized Tariff Schedule:

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- (a) 0201.10.10;
- (b) 0201.20.10;
- (c) 0201.20.30;
- (d) 0201.20.50;
- (e) 0201.30.10;
- (f) 0201.30.30;
- (g) 0201.30.50;
- (h) 0202.10.10;
- (i) 0202.20.10;
- (j) 0202.20.30;
- (k) 0202.20.50;
- (l) 0202.30.10;
- (m) 0202.30.30;
- (n) 0202.30.50;
- (o) 9913.02.05;

but does not include any of the following:

- (p) edible offal;
- (q) canned or processed meat;
- (r) meat loaded onto a ship as part of the ship's stores.

Quota Unit means the section of the Department that is responsible for managing the system of tariff rate quota referred to in section 4.

quota year means a calendar year beginning on or after 1 January 2016.

tariff rate quota certificate means a certificate issued under section 7, 14 or 15.

tariff rate quota entitlement of an exporter for a quota year means the amount allocated to the exporter under section 13 as the exporter's tariff rate quota entitlement for the quota year.

trigger amount for a quota year means the amount equal to 85% of the access amount for the quota year.

uncommitted tariff rate quota amount for a quota year means any part of the access amount for the quota year that is:

- (a) not covered by a tariff rate quota certificate for the quota year; and
- (b) not allocated as tariff rate quota entitlement of an exporter for the quota year under section 13.

Note: In certain circumstances, the total weight of quota beef for which a tariff rate quota certificate for a quota year was issued is taken not to be covered by a tariff rate quota certificate for the quota year (see subsections 8(9) and 16(9)).

USA means the United States of America and includes Puerto Rico.

working day means a day that is not any of the following:

- (a) a Saturday or Sunday;
- (b) a public holiday in the Australian Capital Territory;
- (c) a day in the period beginning on 27 December in a year and ending on 31 December in the year.

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6 When trigger amount for a quota year is reached

If, at a particular time before 1 October of a quota year, the total weight of quota beef for which tariff rate quota certificates have been issued is equal to the trigger amount for the quota year, the trigger amount for the quota year has been reached at that time.

Part 2—Tariff rate quota certificates before trigger amount for quota year is reached

7 Tariff rate quota certificates before trigger amount for quota year is reached

Application for tariff rate quota certificate

- (1) An exporter may apply to the Secretary for a tariff rate quota certificate for the export from Australia to the USA of a consignment of quota beef in a quota year.
- (2) The application must be made by making an entry in EXDOC for the consignment of quota beef.

Issue of tariff rate quota certificate

- (3) If an exporter applies under subsection (1) for a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year, the Secretary must issue the certificate to the exporter if:
 - (a) the total weight of quota beef for which tariff rate quota certificates have already been issued for the quota year is not more than the access amount for the quota year; and
 - (b) issuing the certificate would not result in the access amount for the quota year being exceeded; and
 - (c) the trigger amount for the quota year has not been reached; and
 - (d) issuing the certificate would not result in the trigger amount for the quota year being exceeded.
- (4) If issuing the tariff rate quota certificate would result in the trigger amount for the quota year being exceeded, the Secretary may, to the extent that the trigger amount for the quota year is not exceeded, issue the certificate for part of the consignment.
- (5) If issuing the tariff rate quota certificate would result in the access amount for the quota year being exceeded, the Secretary may, to the extent that the access amount for the quota year is not exceeded, issue the certificate for part of the consignment.
- (6) If the Secretary issues a tariff rate quota certificate for the consignment or part of the consignment, the Secretary must:
 - (a) make an entry reflecting the issue of the certificate for the consignment, or part of the consignment, in an electronic system maintained by the Department; and
 - (b) notify the exporter of the issue of the certificate.

8 Notice of non-completion of export etc.

- (1) If:
 - (a) a tariff rate quota certificate in relation to a consignment of quota beef is issued under section 7; and

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- (b) the export of the consignment is not, or cannot be, completed by the export deadline for the export;
the exporter may give the Quota Unit notice of that fact and the reasons why the export could not be completed by the export deadline for the export.
- (2) If the exporter gives the Quota Unit notice in accordance with subsection (1) before the export deadline for the export, the Secretary may vary the tariff rate quota certificate in any respect.
- (3) If the Secretary varies the tariff rate quota certificate under subsection (2), the Secretary must:
 - (a) make an entry reflecting the variation of the certificate in an electronic system maintained by the Department; and
 - (b) notify the exporter of the variation.
- (4) If the Secretary decides not to vary the tariff rate quota certificate under subsection (2), the Secretary must notify the exporter of the decision.
- (5) If:
 - (a) the exporter does not give the Quota Unit notice in accordance with subsection (1) before the export deadline for the export; or
 - (b) the exporter gives notice in accordance with subsection (1) but the Secretary does not vary the tariff rate quota certificate under subsection (2) before the export deadline for the export;the Secretary may cancel the certificate.
- (6) If the Secretary cancels the tariff rate quota certificate under subsection (5), the Secretary must:
 - (a) make an entry reflecting the cancellation of the certificate in an electronic system maintained by the Department; and
 - (b) notify the exporter of the cancellation.
- (7) If the Secretary decides not to cancel the tariff rate quota certificate under subsection (5), the Secretary must notify the exporter of the decision.
- (8) If a tariff rate quota certificate for the export of a consignment of quota beef in a quota year issued under section 7 is cancelled before the trigger amount for the quota year is reached, the certificate is taken never to have been issued.
- (9) If a tariff rate quota certificate for the export of a consignment of quota beef in a quota year issued under section 7 is cancelled after the trigger amount for the quota year is reached, the total weight of quota beef for which the certificate was issued is taken not to be covered by a tariff rate quota certificate for the quota year.

Part 3—Tariff rate quota certificates after trigger amount for quota year is reached

9 Notice of exporter's provisional tariff rate quota entitlement for quota year before trigger amount for quota year is reached

- (1) If the Secretary believes that the trigger amount for a quota year is likely to be reached, the Secretary must give a written notice to each exporter that has made an eligible export in relation to the quota year.
- (2) The notice must:
 - (a) state the amount (if any) of the exporter's provisional tariff rate quota entitlement for the quota year; and
 - (b) state that the exporter must acknowledge the notice before the date specified in the notice if the exporter wishes the provisional tariff rate quota entitlement to be allocated to the exporter after the trigger amount for the quota year is reached (if it is reached); and
 - (c) specify the way in which the notice is to be acknowledged.

10 Calculation of exporter's provisional tariff rate quota entitlement for quota year

- (1) Subject to subsections (2) and (3), the amount of an exporter's provisional tariff rate quota entitlement for a quota year is worked out using the following formula:

$$0.15 \times \text{access amount for the quota year} \times \frac{TE}{TA}$$

where:

TA is the total weight (in kilograms) of all exporters' eligible exports in relation to the quota year.

TE is the total weight (in kilograms) of the exporter's eligible exports in relation to the quota year.

- (2) If the amount of an exporter's provisional tariff rate quota entitlement for a quota year worked out under subsection (1) is less than 1 000 kilograms, the exporter's provisional tariff rate quota entitlement for the quota year is nil.
- (3) If the total amount of the provisional tariff rate quota entitlements of all exporters for a quota year (as determined under subsections (1) and (2)) is less than the amount equal to 15% of the access amount for the quota year, the difference between those amounts is to be apportioned to those exporters in proportion to each exporter's provisional tariff rate quota entitlement for the quota year.

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11 Notice to exporters after trigger amount for quota year is reached

- (1) If the trigger amount for a quota year is reached, the Secretary must, as soon as practicable, give each exporter that made an eligible export in relation to the quota year a written notice stating:
 - (a) when the trigger amount for the quota year was reached; and
 - (b) if the exporter has acknowledged a notice given to the exporter under section 9—the exporter’s provisional tariff rate quota entitlement for the quota year.
- (2) If an exporter is notified of the exporter’s provisional tariff rate quota entitlement for a quota year under paragraph (1)(b), the exporter must, before the end of the tenth working day after being so notified, give the Quota Unit a written notice specifying:
 - (a) the amount (if any) of the exporter’s provisional tariff rate quota entitlement for the quota year that the exporter requests to have allocated under section 13 as the tariff rate quota entitlement of the exporter for the quota year; and
 - (b) the amount (if any) of the exporter’s provisional tariff rate quota entitlement for the quota year that the exporter intends to transfer to another exporter under section 12; and
 - (c) the amount (if any) of the exporter’s provisional tariff rate quota entitlement for the quota year that the exporter relinquishes.

12 Transfer of exporter’s provisional tariff rate quota entitlement for quota year

- (1) If an exporter gives a notice under paragraph 11(2)(b) in relation to the transfer of an amount of the exporter’s provisional tariff rate quota entitlement for the quota year, the exporter may transfer all or part of that amount to another exporter.
- (2) If an exporter transfers an amount of the exporter’s provisional tariff rate quota entitlement for the quota year under subsection (1), the exporter must give written notice of the transfer to the Quota Unit before the end of the tenth working day after being given the notice under paragraph 11(1)(b).
- (3) A transfer has no effect for the purposes of this instrument if notice of the transfer is not given in accordance with subsection (2).

13 Allocation of tariff rate quota entitlements for quota year

The Secretary must allocate to an exporter the following amounts as the exporter’s tariff rate quota entitlement for a quota year:

- (a) any amount of the exporter’s provisional tariff rate quota entitlement for the quota year requested in a notice given by the exporter under paragraph 11(2)(a);
- (b) any amount of another exporter’s provisional tariff rate quota entitlement for the quota year that has been transferred to the exporter under section 12.

14 Tariff rate quota certificates for exporters' allocated tariff rate quota entitlements for quota year

Application for tariff rate quota certificate

- (1) If an exporter has been allocated tariff rate quota entitlement for a quota year, the exporter may apply to the Secretary for a tariff rate quota certificate for the export from Australia to the USA of a consignment of quota beef in the quota year.
- (2) An application must be made by making an entry in EXDOC for the consignment of quota beef.

Issue of tariff rate quota certificate

- (3) If an exporter applies under subsection (1) for a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year, the Secretary must issue the certificate to the exporter if the sum of:
 - (a) the weight of the consignment; and
 - (b) the total weight of quota beef for which tariff rate quota certificates for the quota year that have already been issued to the exporter under this section; is not more than the exporter's tariff rate quota entitlement for the quota year.
- (4) If the Secretary issues a tariff rate quota certificate for the consignment, the Secretary must:
 - (a) make an entry reflecting the issue of the certificate for the consignment in an electronic system maintained by the Department; and
 - (b) notify the exporter of the issue of the certificate.

15 Tariff rate quota certificates if there is an uncommitted tariff rate quota amount for quota year etc.

Application for tariff rate quota certificate

- (1) An exporter may apply to the Secretary for a tariff rate quota certificate for the export from Australia to the USA of a consignment of quota beef in a quota year if:
 - (a) the trigger amount for the quota year has been reached; and
 - (b) the uncommitted tariff rate quota amount for the quota year is greater than zero; and
 - (c) a tariff rate quota certificate for the export of the consignment in the quota year could not be issued under section 14 to the exporter.
- (2) The application must be made by making an entry in EXDOC for the consignment of quota beef.

Issue of tariff rate quota certificate

- (3) If an exporter applies under subsection (1) for a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year, the Secretary must issue the certificate to the exporter if:

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- (a) the weight of the consignment is not more than the uncommitted tariff rate quota amount for the quota year; and
 - (b) issuing the certificate would not result in the uncommitted tariff rate quota amount for the quota year being exceeded; and
 - (c) a tariff rate quota certificate for the export of the consignment in the quota year could not be issued under section 14.
- (4) If issuing the tariff rate quota certificate would result in the uncommitted tariff rate quota amount for the quota year being exceeded, the Secretary may, to the extent that the uncommitted tariff rate quota amount for the quota year is not exceeded, issue the certificate for part of the consignment.
- (5) If the Secretary issues a tariff rate quota certificate for the consignment or part of the consignment, the Secretary must:
 - (a) make an entry reflecting the issue of the certificate for the consignment, or part of the consignment, in an electronic system maintained by the Department; and
 - (b) notify the exporter of the issue of the certificate.

16 Notice of non-completion of export etc.

- (1) If:
 - (a) a tariff rate quota certificate in relation to a consignment of quota beef is issued under section 14 or 15; and
 - (b) the export of the consignment is not, or cannot be, completed by the export deadline for the export;the exporter may give the Quota Unit notice of that fact and the reasons why the export could not be completed by the export deadline for the export.
- (2) If the exporter gives the Quota Unit notice in accordance with subsection (1) before the export deadline for the export, the Secretary may:
 - (a) vary the certificate in any respect; or
 - (b) cancel the certificate.
- (3) If:
 - (a) the exporter does not give the Quota Unit notice in accordance with subsection (1) before the export deadline for the export; or
 - (b) the exporter gives notice in accordance with subsection (1) but the Secretary does not vary or cancel the tariff rate quota certificate under subsection (2) before the export deadline for the export;the Secretary may cancel the certificate.
- (4) If the Secretary varies the tariff rate quota certificate under subsection (2), the Secretary must:
 - (a) make an entry reflecting the variation of the certificate in an electronic system maintained by the Department; and
 - (b) notify the exporter of the variation.
- (5) If the Secretary decides not to vary the tariff rate quota certificate under subsection (2), the Secretary must notify the exporter of the decision.

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- (6) If the Secretary cancels the tariff rate quota certificate under subsection (2) or (3), the Secretary must:
 - (a) make an entry reflecting the cancellation of the certificate in an electronic system maintained by the Department; and
 - (b) notify the exporter of the cancellation.
- (7) If the Secretary decides not to cancel the tariff rate quota certificate under subsection (2) or (3), the Secretary must notify the exporter of the decision.
- (8) If a tariff rate quota certificate for the export of a consignment of quota beef in a quota year issued under section 14 is cancelled, the certificate is taken never to have been issued.
- (9) If a tariff rate quota certificate for the export of a consignment of quota beef in a quota year issued under section 15 is cancelled, the total weight of quota beef for which the certificate was issued is taken not to be covered by a tariff rate quota certificate for the quota year.

Part 4—Review of decisions

17 Application for reconsideration by Secretary

- (1) If:
 - (a) a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year is issued to an exporter; and
 - (b) the Secretary decides to vary or not vary, or to cancel or not cancel, the certificate under section 8 or 16;the exporter may apply to the Secretary to have the decision (the *initial decision*) reconsidered.
- (2) An application must:
 - (a) be in writing; and
 - (b) set out the reasons for the application; and
 - (c) be lodged with the Secretary within 28 days after the date the exporter is notified of the initial decision or within such further period as the Secretary allows.

18 Secretary to reconsider decision

- (1) On receipt of an application made under section 17, the Secretary:
 - (a) must reconsider the initial decision; and
 - (b) subject to subsection (2) and (3), may make any decision that he or she might have made in the first instance.
- (2) If:
 - (a) the initial decision was a decision to vary a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year under section 8 or 16; and
 - (b) the certificate was varied to reduce the total weight of quota beef covered by the certificate;the Secretary may only set aside the initial decision if, at the time of setting aside that decision, the uncommitted tariff rate quota amount for the quota year is at least equal to the amount by which that total weight was reduced.
- (3) If the initial decision was a decision to cancel a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year under section 8 or 16, the Secretary may only set aside the initial decision if, at the time of setting aside that decision, the uncommitted tariff rate quota amount for the quota year is at least equal to the total weight of the consignment.
- (4) If the Secretary makes a decision under subsection (1) to set aside the initial decision, the initial decision ceases to have effect.
- (5) The Secretary must give the applicant written notice of the Secretary's decision under subsection (1) within 45 days after the day on which the application was received.

- (6) The notice must set out the reasons for the Secretary's decision.

19 Application to Administrative Appeals Tribunal

- (1) Applications may be made to the Administrative Appeals Tribunal for review of decisions of the Secretary made under section 18.
- (2) If:
- (a) the initial decision was a decision to vary a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year under section 8 or 16; and
 - (b) the certificate was varied to reduce the total weight of quota beef covered by the certificate;
- the Administrative Appeals Tribunal may only set aside the initial decision if, at the time of setting aside that decision, the uncommitted tariff rate quota amount for the quota year is at least equal to the amount by which the total weight was reduced.
- (3) If the initial decision was a decision to cancel a tariff rate quota certificate in relation to the export of a consignment of quota beef in a quota year under section 8 or 16, the Administrative Appeals Tribunal may only set aside the initial decision if, at the time of setting aside that decision, the uncommitted tariff rate quota amount for the quota year is at least equal to the total weight of the consignment.

Part 5—Transitional and repeal provisions

20 Transitional—old US beef quota certificates granted under 2015 order

An old US beef quota certificate granted to an exporter before 1 July 2016 is taken, for the purposes of this instrument, to be a new tariff rate quota certificate that was issued to the exporter on the day the US beef quota certificate was granted to the exporter.

21 Transitional—review of certain decisions made under 2015 order

- (1) This item applies if:
 - (a) before 1 July 2016, the Secretary makes a decision (the *reviewable decision*) of the following kind:
 - (i) a decision under subsection 8(2) of the 2015 order to vary or not vary an old US beef quota certificate granted to an exporter;
 - (ii) a decision under subsection 8(4) of the 2015 order to cancel or not cancel an old US beef quota certificate granted to an exporter; and
 - (b) immediately before that day, both of the following apply:
 - (i) an application for review of the reviewable decision by the Administration Appeals Tribunal has not been made;
 - (ii) the time for the exporter to make such an application has not ended (including any extensions of that time under section 29 of the *Administrative Appeals Tribunal Act 1975*).
- (2) The exporter may, on or after 1 July 2016, apply under section 17 of this instrument to have the reviewable decision reconsidered. Despite paragraph 17(2)(c) of this instrument, the application must be lodged with the Secretary within the time referred to in subparagraph (1)(b)(ii) of this section or such further period as the Secretary allows.
- (3) The reviewable decision is taken, for the purposes of this instrument, to be an initial decision made under the corresponding provision of section 8 of this instrument.

22 Repeal

This instrument is repealed at the end of 31 December 2022.