Export Control Amendment (Quotas) Bill 2015

Paul Davidson  
Economics Section

Contents

Purpose of the Bill .............................................................. 2  
Structure of the Bill .......................................................... 2  
Background ........................................................................ 2  
Tariff-rate quotas .............................................................. 2  
Committee consideration ...................................................... 3  
Senate Standing Committee for the Scrutiny of Bills ............ 3  
Policy position of non-government parties/independents.... 3  
Position of major interest groups ........................................ 3  
Financial implications .......................................................... 4  
Statement of Compatibility with Human Rights ...................... 4  
Parliamentary Joint Committee on Human Rights ................. 4  
Key issues and provisions..................................................... 4

Date introduced: 12 November 2015
House: House of Representatives
Portfolio: Agriculture and Water Resources
Commencement: The operative provisions of the Bill will commence on the day after Royal Assent, except for those items that repeal legislative provisions that deal with existing quota arrangements. These provisions will commence on 1 January 2017 so as to allow existing quotas to run their course under current legislative arrangements before being phased out.

Links: The links to the Bill, its Explanatory Memorandum and second reading speech can be found on the Bill’s home page, or through the Australian Parliament website.  
When Bills have been passed and have received Royal Assent, they become Acts, which can be found at the ComLaw website.
Purpose of the Bill
The purpose of the Export Control Amendment (Quotas) Bill 2015 (the Bill) is to amend the Export Control Act 1982 (the Act) to consolidate the legislative arrangements for tariff rate quotas, and give the Secretary of the Department of Agriculture and Water Resources legislative powers to make orders relating to tariff rate quotas. ¹

Structure of the Bill
The Bill comprises one Schedule with four Parts:

- Part 1 provides for amendments to the Act
- Part 3 provides for repeal of the Australian Meat and Live-stock (Quotas) Act 1990³ and
- Part 4 provides for transitional rules.

Background
A Department of Agriculture and Water Resources (the Department) discussion paper reviewing agricultural export regulations was released on 15 July 2015.⁴ The discussion paper noted that:

Historically, export regulation has been used to guarantee product integrity and ensure the safety and hygienic preparation of agricultural products for export. It has expanded over time to include other elements to increase trade opportunities, including product descriptions, volume limitations (quotas) and industry requirements. Flexibility in the export regulation has helped Australian exporters to gain market access.⁵

Against this backdrop, the Government seeks to rationalise the number of export control regulations, as part of the Government’s reduction in red tape, and to also provide for synergies in the deployment of government staff.⁶

Tariff-rate quotas
The main focus of the proposed amendments is to simplify the entire process of tariff-rate quotas (TRQs). Currently, TRQs are administered under a number of different Acts. The proposed amendments seek to ensure that all TRQ processes are covered under the Act, for all relevant commodities.

TRQs permit exporters access to concessional (and in some cases, zero) rates of duty under various bilateral and multilateral trade agreements that have entered into force for Australia. Duties are paid by Australian exporters to the trading partner country. The total amount of concessional duty is effectively fixed by a quota, which sets a maximum permissible quantity of exports. Any exports which exceed the quota do not receive concessional duties, and typically pay a much higher rate of duty.

The Department’s discussion paper notes that TRQs enable:

...exporters to reduce import taxes on a certain volume of goods into a particular country—which can result in savings for Australian businesses. Any exporter that wishes to export product to the same market without a quota allocation is subject to the full tariff rate.⁷

The Department currently administers 33 export quotas, and is responsible for allocating the quotas to Australian export businesses. Specific goods exported to the European Union, the United States, and Japan are administered by the Department.
The Department’s discussion paper provides that:

Each quota features different rules around who can apply for that quota, how it is allocated and how past performance is rewarded. These differences are reflected in the separate legislative instruments underpinning the quotas. The number of different rules, procedures and pieces of legislation can be administratively demanding, posing a challenge for exporters.

Such administrative difficulties have been noted by the Department:

Stakeholders have previously expressed concern over excessive export regulation and the costs associated in achieving and maintaining compliance with regulatory requirements. Stakeholders have also expressed concern about complex, duplicative, inconsistent and overlapping regulatory requirements.

Committee consideration

**Senate Standing Committee for the Scrutiny of Bills**

The Senate Standing Committee for the Scrutiny of Bills had no comment to make in relation to the Bill.

**Policy position of non-government parties/independents**

At the time of writing, the policy position of non-government parties and independents had not been made publicly available.

**Position of major interest groups**

Submissions received as part of the Department’s discussion paper focussed more on biosecurity, research and development matters than regulatory reform. Nevertheless, submitters did acknowledge that ‘a consistent approach and outcome to regulations across jurisdictions will enhance agricultural competitiveness and strengthen the national animal health system’.

Regulatory reform issues were expressed in relation to industry-specific regulations, rather than the administrative arrangements under the various export control Acts.

The dairy industry expressed concern that legislative flexibility may be reduced in the event that all commodities were integrated under one Act:

> Of particular importance to the dairy industry is the continued separation of arrangements for different export commodities so that efficiencies gained by the dairy industry are not compromised.

The Northern Territory Farmers Association expressed concerns about a ‘one size fits all’ approach:

> It is also important to understand the farming practices of farmers in northern Australia are very different to those of our southern counterparts, we have different seasons, different climatic and geographic conditions that need recognition, blanket approaches to regulations and reviews are not helpful, particularly when they are conducted and driven by a southern Australia mindset.

Teys Australia noted that the ‘past strategy of competing on a commodity basis is losing currency, as reflected by declining trade performance in recent years’. Teys Australia also submitted that the scope of the Act should be

---

9. Ibid., p. 23.
expanded to allow for the coverage of animal production activities, as well as cover food intended for either domestic or export use.\textsuperscript{16}

**Financial implications**

The Explanatory Memorandum states that the Bill will have no financial impact.\textsuperscript{17}

**Statement of Compatibility with Human Rights**

As required under Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth), the Government has assessed the Bill’s compatibility with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of that Act. The Government considers that the Bill is compatible.\textsuperscript{18}

**Parliamentary Joint Committee on Human Rights**

The Parliamentary Joint Committee on Human Rights considers that the Bill does not raise human rights concerns.\textsuperscript{19}

**Key issues and provisions**

Part 1 of the Bill contains the amendments to the *Export Control Act 1982* (the Act). *Item 1* of the Bill amends the definition of ‘order’ in the Act to include orders made under the Act (see *item 2*), as well as continuing to permit orders made under the regulations.

*Item 2* inserts *proposed section 23A* in the Act. Proposed section 23A grants the Secretary a broad power to make orders relating to TRQs for the export of goods. The Secretary already has a range of powers pursuant to the existing definition of ‘order’.

*Proposed subsection 23A(2)* permits the Secretary to make orders pertaining to a range of matters including (but not limited to):

- determining the amount of TRQ for the export of goods for a period
- methods for determining TRQ entitlements for the export of goods
- establishing and maintaining a register of TRQ entitlements
- imposing various conditions
- auditing and reporting requirements and
- the review of decisions.

*Proposed subsection 23A(3)* provides that the Secretary may give a written direction to a person or body in relation to an order that the Secretary has made. Failure to comply with a written direction does not amount to an offence punishable by penalty (see *item 5*). Where such a direction is inconsistent with an order, the direction prevails to the extent of the inconsistency.\textsuperscript{20} *Proposed subsection 23A(5)* provides that if orders or directions given by the Secretary are inconsistent with either the regulations or an order by the Minister, then those orders or directions have no effect to the extent of the inconsistency. There is no inconsistency where orders or directions can concurrently operate with the regulations or an order by the Minister.

*Proposed subsection 23A(6)* provides that a direction given pursuant to proposed subsection 23A(3) is not a legislative instrument. This means that directions made by the Secretary will not be subject to parliamentary scrutiny.

*Item 3* proposes to change the section heading to existing section 25 to reflect the fact that orders can be made under both the Act and the regulations pursuant to *items 1* and *2*.

---

\textsuperscript{16} Ibid.
\textsuperscript{17} Explanatory Memorandum, op. cit., p. 3.
\textsuperscript{18} The Statement of Compatibility with Human Rights can be found at page 4 of the *Explanatory Memorandum* to the Bill.
\textsuperscript{20} Proposed subsection 23A(4) of the Act.
**Item 4** provides that orders or directions made under proposed section 23A may make provision for TRQs or calculation methods, as made by the responsible overseas authority or body, and that such TRQs or calculation methods can be applied, adopted or incorporated (with or without modification).

**Item 5** inserts a note at the end of section 25 that explains that subsections 25(3)–(9) apply to orders made pursuant to proposed section 23A. The various subsections provide for a range of matters, including: that an order shall not be made prescribing any penalty for an offence, that an order is deemed to be an enactment for the purposes of the *Administrative Appeals Tribunal Act 1975*, and that a fee imposed under an order must not be such as to amount to taxation.\(^{21}\)

Part 2 of the Bill provides for consequential amendments to several Acts to ensure that export quota (and associated matters such as licensing, renewal, cancellation, and appeal) provisions are repealed. The purpose of the proposed amendments is to ensure that all export quotas for all covered matters are contained in the (as amended) Act.

**Proposed items 6–8** amend the *Australian Meat and Live-stock Industry Act 1997*. The items repeal the definition of ‘quota’ in section 3 and references to a quota in existing subparagraph 17(3)(c)(i). **Item 8** repeals existing Division 3 of Part 2 (sections 26 to 33), which provides for regulating meat export quotas under the *Australian Meat and Live-stock Industry Act*. The purpose of the repeal is to ensure that the Act—as proposed to be amended—would be the sole source of export quota provisions. However, section 29 of the *Australian Meat and Live-stock Industry Act* provides for Ministerial discretion to make a determination that, in the event that a quota was cancelled or varied so as to reduce the rights granted by the quota, it is appropriate that the quota holder be compensated a specified proportion of the sale price. The Ministerial discretion is not included in the Bill. However, the Secretary’s broad power to make orders and issue directions under proposed section 23A of the Act (discussed above), in particular the ability for orders to make provision in relation to ‘surrender, transfer, variation, and cancellation of TRQ entitlements’ (proposed paragraph 23A(2)(d)) would appear to provide scope for the Secretary to compensate if considered appropriate.

Under section 30 of the *Australian Meat and Live-stock Industry Act* an application may be made to the Administrative Appeals Tribunal (AAT) for review of a decision of the Secretary where that decision cancels all or a part of the quota, or varies a quota, or refuses to vary a quota on application by the quota holder. The Bill provides that the Secretary’s TRQ orders may deal with review of decisions (proposed subparagraph 23A(2)(i)), however, it does not specify any details that must be included in such orders, such as providing that the AAT is the body to hear such an appeal.

**Item 9** proposes to repeal Part V (sections 51 to 60) of the *Dairy Produce Act 1986*, which covers export controls for dairy produce. The purpose of the repeal is to ensure that the Act would be the sole source of export quota provisions. Currently under subsection 53(1) of the *Dairy Produce Act* a person is guilty of an offence if they export regulated dairy produce to a regulated dairy market and that person does not hold a licence to do so. Additionally, under subsection 53(2), a person is guilty of an offence if they export regulated dairy produce to a regulated dairy market and the person holds an approval issued in relation to the export, but the export is not in accordance with the conditions of that approval. Both offences are classified as civil offences.\(^{22}\) These offences are not in the Bill, nor are they currently in the Act.

**Items 10 and 11** propose to repeal and substitute references to ‘orders’ in the *Export Charges (Collection) Act 2015* to ensure their consistency with proposed section 23A.

**Part 3** of the Bill proposes to repeal the entirety of the *Australian Meat and Live-stock (Quotas) Act 1990 (Meat Quotas Act)*. The purpose of the proposed repeal is to ensure that all export quotas for all covered matters are contained in the (as amended) Act. Under section 4, the *Meat Quotas Act* includes an objectives section. The section is not replicated in the Bill, nor is it in the Bill. The Bill does provide more flexibility for the Secretary when granting quotas, as under the *Meat Quotas Act*, quotas can only last two years. However, the Bill does not replicate the explicit ability of the Secretary to place a limitation on meat or livestock exports to a specific country, which is currently available under section 5. Under section 7 of the *Meat Quotas Act*, the Secretary is

---


\(^{22}\) The penalty for breaching subsection 53(1) is 180 penalty units ($32,400). The penalty for breaching subsection 53(2) is 60 penalty units ($10,800). See section 4AA (which provides that a penalty unit is equal to $180) and subsection 4B(3), *Crimes Act 1914*. 

Export Control Amendment (Quotas) Bill 2015
Warning: All viewers of this digest are advised to visit the disclaimer appearing at the end of this document. The disclaimer sets out the status and purpose of the digest.
not obliged to grant a quota ‘if the Secretary is satisfied that it is not in the best interests of the industry to do so’. This discretion is not explicitly included in the Bill and does not exist in the Act.

**Part 4** provides for relevant transitional arrangements. **Item 13** allows the Minister to make rules that provide for transitional and savings measures relating to the existing export quota arrangements, due to the repeal of the existing arrangements pursuant to **items 6–9 and 12**.

© Commonwealth of Australia

Creative Commons

With the exception of the Commonwealth Coat of Arms, and to the extent that copyright subsists in a third party, this publication, its logo and front page design are licensed under a Creative Commons Attribution-NonCommercial-NoDerivs 3.0 Australia licence.

In essence, you are free to copy and communicate this work in its current form for all non-commercial purposes, as long as you attribute the work to the author and abide by the other licence terms. The work cannot be adapted or modified in any way.

Content from this publication should be attributed in the following way: Author(s), Title of publication, Series Name and No, Publisher, Date.

To the extent that copyright subsists in third party quotes it remains with the original owner and permission may be required to reuse the material.

Inquiries regarding the licence and any use of the publication are welcome to webmanager@aph.gov.au.

**Disclaimer:** Bills Digests are prepared to support the work of the Australian Parliament. They are produced under time and resource constraints and aim to be available in time for debate in the Chambers. The views expressed in Bills Digests do not reflect an official position of the Australian Parliamentary Library, nor do they constitute professional legal opinion. Bills Digests reflect the relevant legislation as introduced and do not canvass subsequent amendments or developments. Other sources should be consulted to determine the official status of the Bill.

Any concerns or complaints should be directed to the Parliamentary Librarian. Parliamentary Library staff are available to discuss the contents of publications with Senators and Members and their staff. To access this service, clients may contact the author or the Library’s Central Entry Point for referral.

Members, Senators and Parliamentary staff can obtain further information from the Parliamentary Library on (02) 6277 2500.