



Australian Meat and Live-stock (Beef Export to the USA – Quota Year 2009) Order 2008

I, SIMON MURNANE, Delegate of the Secretary to the Department of Agriculture, Fisheries and Forestry, make this Order under section 17 of the *Australian Meat and Live-stock Industry Act 1997*.

Dated 16 October 2008

Simon Murnane

General Manager, Livestock Industries Branch
Department of Agriculture, Fisheries and Forestry

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1 Name of Order

This Order is the *Australian Meat and Live-stock (Beef Exports to the USA - Quota Year 2009) Order 2008*.

2 Commencement

This Order commences on the day after it is registered.

3 Application of this Order

- (1) This Order applies to beef (that is, meat derived from cattle) that is fresh, chilled or frozen and is classified in any of the following classifications of the Harmonized Tariff Schedule of the United States of America:

- 0201.10.10
- 0201.20.10
- 0201.20.30
- 0201.20.50
- 0201.30.10
- 0201.30.30
- 0201.30.50
- 0202.10.10
- 0202.20.10
- 0202.20.30
- 0202.20.50
- 0202.30.10
- 0202.30.30
- 0202.30.50.

Note The Harmonized Tariff Schedule is part of 19 USC Chapter 4 (the Tariff Act of 1930). Its implementation was authorised by 19 USC Chapter 18. The full Harmonized Tariff Schedule is available at <http://www.usitc.gov/tata/hts/bychapter/index.htm>.

- (2) This Order does not apply to:
- (a) edible offal; or
 - (b) canned or processed meat; or
 - (c) meat loaded onto a ship as part of the ship's stores.

- (3) In paragraph (2) (b):

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

Note The definition in Chapter 2 of the Schedule is as follows:

'The term "processed" covers meats which have been ground or comminuted, diced or cut into sizes for stew meat or similar uses, rolled and skewered, or specially processed into fancy cuts, special shapes, or otherwise made ready for particular uses by the retail consumer.'

4 Purpose of this Order

This Order sets out the conditions under which beef can be exported to the United States of America at a tariff rate of zero under the terms of the AUSFTA.

Note For 2009, the amount of beef that can be exported to the USA at zero tariff is 403 214 000 kilograms (the *access amount*). Imported beef must be covered by a US beef quota certificate to be accepted into the USA at a tariff rate of zero. For imports of beef over the access amount, or not accompanied by a US beef quota certificate, the tariff rate is 26.4%.

5 Definitions

(1) In this Order:

AUSFTA means the Australia-US Free Trade Agreement.

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

licensed exporter means the holder of a meat export licence, issued under section 10 of the *Australian Meat and Live-stock Industry Act 1997*, that permits the holder to export a beef product to the USA.

PTA or *provisional trigger allocation* means an authorisation by the Secretary to apply, under subsection 10 (5), for an AUSFTA approval to export an amount of beef product to the USA.

QA Unit means the section of the Department of Agriculture, Fisheries and Forestry known as the Quota Administration and Statistics Unit.

quota beef means beef to which this Order applies.

trigger day has the meaning given by subsection (2).

USA includes Puerto Rico.

US beef quota certificate means a certificate issued under section 7.

working day means a day that is not a Saturday or Sunday and is not a public holiday in the Australian Capital Territory, except 29, 30 and 31 December 2008.

(2) If there is a day or days before 1 October 2009 on which the total weight of AUSFTA beef for which US beef quota certificates have been issued in 2009 exceeds 342 731 900 kilograms, that day or the first such day is *trigger day* for this Order.

6 AUSFTA approval to export beef before trigger day

(1) Subject to subsections (2) and (3), if:

(a) a licensed exporter applies for an AUSFTA approval for a proposed export of a consignment of quota beef in the approved form; and

(b) the total weight of beef for which US beef quota certificates have already been issued in 2009 does not exceed 403 214 000 kilograms;

the Secretary must issue the approval.

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- (2) An AUSFTA approval must specify a date by which the export must be exported (the *export deadline*).
 - (3) If a day in 2009 is trigger day, the Secretary must not issue an approval if the application is made after that day.

7 How to get a US beef quota certificate

If an exporter:

- (a) holds an AUSFTA approval, issued under section 6, or subsection 10 (5) or 11 (3), for the export of a consignment of quota beef; and
- (b) makes an entry in EXDOC (that is, the electronic documentation system maintained by the Australian Quarantine and Inspection Service) for the consignment;

the Secretary must issue a US beef quota certificate for the consignment.

8 Notices about PTAs

- (1) In this section and section 9:
qualifying beef means beef to which this Order would have applied if this Order had been in force during the period commencing on 1 November 2006 and ending on 31 October 2008.
- (2) The Secretary must give a notice under this section to all eligible exporters that exported qualifying beef to the USA in either of the years beginning on 1 November 2006 and 1 November 2007.
- (3) The notice must state that if an exporter that receives it acknowledges it on or before trigger day (if it occurs) in the way specified in the notice, the exporter will be taken to have applied for a PTA.

9 Calculation of PTAs

- (1) In this section:
eligible export means an export to the USA of qualifying beef during the shipping years beginning on 1 November 2006 and 1 November 2007.
eligible exporter means an exporter that exported qualifying beef to the USA in either of those shipping years.
shipping year means a period of 12 months beginning on 1 November.
- (2) Subject to subsection (3), an eligible exporter's PTA for 2009 is calculated as follows:

$$60\,482\,100 \times \frac{TE}{TA} \text{ kilograms;}$$

where:

TE is the total (in kilograms) of the exporter's eligible exports.

TA is the total (in kilograms) of all eligible exporters' eligible exports.

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- (3) The exporter's PTA is:
 - (a) the amount calculated by the formula in subsection (2); or
 - (b) if the result of the calculation is less than 1 000 kilograms — nil.
 - (4) If the total of all eligible exporters' PTAs is less than 60 482 100 kilograms, the difference between that amount and the total of all exporters' PTAs is to be distributed among all eligible exporters that have received PTAs in proportion to their respective PTAs.

10 Notices about intended use of PTAs

- (1) This section applies if a day during 2009 is trigger day.
- (2) In this section:
notice day means the 10th working day after trigger day.
- (3) On trigger day, the Secretary must send, to each licensed exporter, a notice stating the date of trigger day and that those with a PTA are authorised to use it.
- (4) An exporter who holds a PTA must, on or before the end of notice day, notify the Secretary in writing whether the exporter intends to use some or all of the PTA, and the amount of the PTA that it intends to use (the *notified amount*).
- (5) An exporter that notifies the Secretary, on or before the end of notice day, that it intends to use some or all of its PTA must apply, by the end of the 5th working day after notice day, to the Secretary for an AUSFTA approval to export the notified amount of quota beef to the USA and the Secretary must grant the approval.
- (6) If an exporter fails to notify the Secretary before the end of notice day whether it intends to use some or all of its PTA, or notifies the Secretary on or before that day that it intends to use none of its PTA, the uncommitted quota pool increases by the amount of the exporter's PTA.
- (7) If an exporter notifies the Secretary before the end of notice day that it does not intend to use part of its PTA, the uncommitted quota pool increases by the amount of the part of its PTA in excess of the notified amount.
- (8) For subsections (4) to (7), any PTA that an exporter has received by trading forms part of its PTA if the QA Unit has been notified of the trade in accordance with section 14.

11 What happens if export cannot be completed

- (1) If an exporter is granted an AUSFTA approval, but the export is not, or cannot be, completed by the export deadline, the exporter must give the Secretary notice of that fact, and the reasons why the export could not be completed by the export deadline, within 5 working days after the export deadline.

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- (2) If an exporter gives the Secretary notice in accordance with subsection (1), the Secretary may amend the relevant approval in any respect.
 - (3) If the exporter does not give the Secretary notice in accordance with subsection (1), and the Secretary does not amend the approval, the approval lapses at the end of the 5th working day after the export deadline.
 - (4) If an approval lapses before trigger day, then, for the purposes of sections 6 and 10, the approval is taken never to have been issued.
 - (5) If an approval lapses on or after trigger day, the uncommitted quota pool increases by the amount not exported.

12 Use of uncommitted quota pool

- (1) This section applies if there is any amount in the uncommitted quota pool.
- (2) A licensed exporter may, after the day that is notice day for section 10, apply to the Secretary for an AUSFTA approval to export quota beef.
- (3) The Secretary must, if the amount of quota beef sought to be exported is not more than the amount in the uncommitted quota pool:
 - (a) give the approval sought; and
 - (b) specify a day and time by which the export must be completed (the *export deadline*).
- (4) If the Secretary gives the approval:
 - (a) the Secretary must also give a US beef quota certificate for the export; and
 - (b) the uncommitted quota pool reduces by the amount of the export.

13 What happens if export from uncommitted quota pool cannot be completed

- (1) If an exporter is granted an AUSFTA approval against the uncommitted quota pool, but the export cannot be completed by the export deadline, the exporter must give the Secretary notice of that fact, and the reasons why the export could not be completed by the export deadline, within 5 working days after the export deadline.
- (2) If an exporter gives the Secretary notice in accordance with subsection (1), the Secretary may amend the relevant approval in any respect.
- (3) If the exporter does not give the Secretary notice in accordance with subsection (1), and the Secretary does not amend the relevant approval:
 - (a) the approval lapses at the end of the 5th working day after the export deadline; and
 - (b) the uncommitted quota pool increases by the amount not exported.

14 PTA trading

- (1) A licensed exporter that has been granted a PTA may trade all or part of it with another licensed exporter.
- (2) The exporter to which the PTA was allocated, or that became the holder of it under a previous trade, must give notice to the QA Unit of the trade.
- (3) Subject to subsection (4), a trade of which notice is not given to the QA Unit within 10 working days after trigger day has no effect for the purposes of this Order.
- (4) Subsection (3) does not apply to a trade to a licensed exporter, acting as an agent of the quota holder, of sufficient quota to cover a single consignment for the purpose only of exporting that consignment.

15 Review of certain decisions

An exporter may apply to the Administrative Appeals Tribunal for review of a decision of the Secretary relating to amendment of an approval issued under this Order.

16 Where to send notices and documents

If a provision of this Order requires a person to give a document, lodge an application or provide information to the Department's QA Unit, the document, application or information must be sent in one of the following ways:

- (a) by post to:
Quota Administration & Statistics Unit
Australian Government Department of Agriculture, Fisheries and Forestry
GPO Box 858
CANBERRA ACT 2601;
- (b) by email to:
quota.admin@daff.gov.au;
- (c) by facsimile to:
02 6272 4585.

17 Sunsetting

This Order ceases to have effect at the end of 31 December 2009.