Australian Government
Department of Agriculture and Water Resources

Regulation Impact Statement

Export tariff rate quota regulatory streamlining

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Glossary

80:20 allocation rule	A ratio used in the EU sheepmeat and goatmeat quota to calculate allocations. Exporters' in-quota exports will contribute 80 per cent of their allocation, and exporters' exports of eligible meat from EU-accredited establishments to any foreign country will contribute 20 per cent.
AHECC	The Australian Harmonized Export Commodity Classification is used for the classification of goods when providing export declarations to the Australian Customs Service.
AUSFTA	The Australia-United States Free Trade Agreement which includes the provisions for beef and some dairy tariff rate quotas.
DAISY	The statistics and report administration IT system used by the department to manage the administration of dairy tariff rate quotas.
FCFS	'First come, first served' is the process to access quota whereby quota is assigned only where a valid consignment application has been made and is ready to have the necessary certification issued.
Erga omnes	Latin phrase that, in legal terminology, means a right or obligation that is owed "toward all". In this document it is a reference to the European Union sheepmeat and goatmeat erga omnes tariff rate quota, defined in European Commission Regulation (EU) No 1354/2011, available as a global quota.
GATT	The General Agreement on Tariffs and Trade is the agreement to promote international trade through reduced trade barriers that preceded the WTO.
JAEPA	The Japan-Australia Economic Partnership Agreement, which includes eight tariff rate quotas managed by Australia including meats, juices and honey.
Japan EBO	Japan edible bovine offal is one of eight tariff rate quotas the Australian Government manages as part of the Japan-Australia Economic Partnership Agreement.
Performance transfer	Regarding EU sheepmeat & goatmeat quota – the transfer of shipping history from one exporter to another. This effectively credits the receiving exporter with the shipping history from that consignment. Shipping history is taken into account in working out tariff rate quota entitlements.
Quota rent(s)	The monetary amount saved by exporting under quota.
Reclaim date	Under a quota allocation system, the date by which unused quota is reclaimed in order to be reallocated or otherwise made available for use.
RFP	A Request for Permit is a permit application lodged via the Export Documentation System for the export of prescribed goods from Australia.
SARA	The Statistics and Report Administration IT system used to manage the administration of meat quotas (excluding JAEPA quotas).
TRQ	Tariff Rate Quota is a quota permitting a specific quantity of imported product to enter the importing country at a reduced rate of customs duty.
WTO	The World Trade Organization is the global international organisation that deals with the rules of trade between nations.

Background

The Department of Agriculture and Water Resources has completed a Regulation Impact Statement (RIS) on the management of its export tariff rate quotas (TRQs). The RIS examined the effectiveness and efficiency of the existing TRQ administration and identified ways to improve the management of all quotas.

Historically, the red meat TRQs (excluding those under the Japan-Australia Economic Partnership Agreement (JAEPA)) were managed by the Australian Meat and Livestock Corporation (AMLC) which was an industry run company. In 1997 AMLC ceased and the management of quota was passed to government.

Dairy TRQ arrangements were put in place by the Australian Dairy Corporation and Australian Dairy Industry Council after the General Agreement on Tariffs and Trade (GATT) Tokyo Round of multilateral trade talks (1979) and the World Trade Organization (WTO) Uruguay Round (1994). In 2003, the department assumed responsibility for quota management. Regulations under the Australia-United States Free Trade Agreement (AUSFTA) are based on an industry approach negotiated with government in 2004.

When JAEPA was introduced, government administered the new TRQs due to pre-existing quota administration arrangements and the small number of certificates required by the juice, honey, pork and poultry industries.

i. What are quotas?

Tariffs on agricultural imports are a long standing feature of international trade. Tariffs protect local producers from international competition and provide a source of government revenue. Tariffs are a barrier to trade as they raise prices for domestic consumers by reducing or eliminating imports. Agricultural exporting nations, including Australia, have long pursued the lowering or removal of tariffs in multilateral and bilateral trade negotiations.

The original GATT allowed countries to use some non-tariff measures, such as subsidies and import quotas, to limit agricultural trade or protect domestic production. Agricultural trade became highly distorted, especially with the use of export subsidies which would not normally have been allowed for industrial products[1]. The Uruguay Round was the first multilateral agreement dedicated to the agricultural sector, aiming to promote fair competition and less distortion.

Part of the reform was to allow “tariffs only” in place of the above measures, and introduced tariff rate quotas – lower tariff rates for specified quantities of a product, and higher rates for quantities that exceed the quota. The agreement also involved progressive cuts to the tariff rates over time.

ii. Export quotas in Australia

Export TRQs negotiated in trade agreements can be allocated to either Australia to manage or the other party of the agreement. For example, under JAEPA, 11 export quotas are managed by Japan and eight are managed by Australia.

In 2016, there were 33 different TRQs which Australia either managed or issued certificates for, governed by 11 pieces of legislation on exports including an estimated 90 individual rules. Approximately 106 exporters utilise the department’s quota systems to achieve tariff concessions in excess of $700 million.

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[1] Agriculture: fairer markets for farmers ‘https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm3_e.htm’

Table 1. Australian managed TRQs (tonnage as at 1 July 2017)

Market/Commodity (agreement)	Quota	Commencement of Current Rule-set
USA beef (AUSFTA & WTO)	Beef – 423,214 tonnes	2005
European Union (EU) beef (GATT)	High quality beef (HQB) – 7,150 tonnes Grainfed beef – 48,200 tonnes*	2012
EU sheepmeat and goatmeat (GATT)	Sheepmeat and goatmeat – 19,186 tonnes Erga omnes – 200 tonnes*	1998
EU buffalo (GATT)	Buffalo – 2,250 tonnes	2012
USA dairy (17 under both AUSFTA and WTO)	American cheese (AUSFTA) – 734 tonnes American cheese (granular) (WTO) – 1,000 tonnes Butter/butter fat (AUSFTA) – 2,203 tonnes Cheddar cheese (AUSFTA) – 1,101 tonnes Cheddar cheese (WTO) – 2,450 tonnes Condensed milk (AUSFTA) – 6,399 tonnes Cream (AUSFTA) – 7,999 litres European cheese (AUSFTA) – 3,771 tonnes Goya cheese (AUSFTA) – 4,714 tonnes Ice cream (AUSFTA) – 7,999 litres NSPF (other) cheese (WTO) – 3,050 tonnes Other milk powder (AUSFTA) – 6,660 tonnes Other dairy products (AUSFTA) – 3,199 tonnes Other cheese (AUSFTA) – 6,660 tonnes Skim milk powder (AUSFTA) – 147 tonnes Swiss cheese (AUSFTA) – 943 tonnes Swiss cheese (WTO) – 500 tonnes	2009
EU dairy (WTO)	Table cheddar cheese – 3,711 tonnes Cheese for processing – 500 tonnes	2009
Japan (JAEPA)	Edible bovine offal – 18,200 tonnes Preserved meats 1 – 2,060 tonnes Preserved meats 2 – 6,200 tonnes Pork – 10,640 tonnes Poultry – 88 tonnes Honey – 104 tonnes Apple juice – 1,600 tonnes Orange juice – 1,300 tonnes	2015

*Global quotas for which Australia has access.

Exporters apply for quota certificates when they are applying for their other export documentation, using the department's electronic export documentation (EXDOC) system (some non-prescribed commodities apply directly to the Quota Unit, such as juices/honey). For those TRQs which are administered using a quota allocation mechanism (EU high quality beef (HQB), EU sheepmeat & goatmeat and dairy TRQs), the exporter must have allocated quota available in order to receive a quota certificate for their consignment.

- For consignments going to the EU, a paper certificate is signed, stamped and sent to the exporter to accompany the consignment overseas.
- For consignments going to the USA, the quota system sends an electronic certificate to the USA via a third party (Kleinschmidt) while a notification is sent to the exporter.
- For consignments going to Japan, the exporter is emailed an electronic certificate.

As such, quota is administered through two streams of work; allocation and certification. Allocation occurs at various points through the year depending on the commodity and quota rules. Certification is largely outlined in the previous paragraph and occurs on a daily basis. In 2015-16 the department issued approximately 30,000 quota certificates in total.

iii. Reform of current legislation

After the introduction of TRQs under JAEPA, the department commenced the transition of all quota legislation to sit under the *Export Control Act 1982* (ECA). Previously, quotas were governed by separate Acts and Regulations, as shown in table 2.

Table 2. Previous legal structure

Quota	Historical instrument/s
EU beef EU sheepmeat and goatmeat USA beef	*Australian Meat and Live-stock Industry Act 1997* *Australian Meat and Live-stock (Quotas) Act 1990* Australian Meat and Live-stock Industry Regulations 1998
USA and EU dairy	*Dairy Produce Act 1986* Dairy Produce Regulations 1986
JAEPA quotas	*Export Control Act 1982*; Sections 20 and 23

As part of the department's broader quota administration modernisation project, all quota administration has been transitioned to sit under the ECA, with other instruments repealed or amended as per table 3.

Table 3. The transition to a new legal framework

Historical arrangements/instrument	New state	Date of transition
Australian Meat and Live-stock Industry Act 1997	*Export Control Act 1982* (Section 23A)	11 December 2015
*Australian Meat and Live-stock (Quotas) Act 1990**	Repeal	1 January 2017
Australian Meat and Live-stock Industry Regulations 1998^	Repeal quota references	1 January 2017
Dairy Produce Regulations 1986^	Export Control (Dairy Produce Tariff Rate Quotas) Order 2016	1 January 2017
Australian Meat and Live-stock Industry (Sheepmeat and Goatmeat Export to the European Union) Order 2014*	Export Control (Sheepmeat and Goatmeat Export to the European Union Tariff Rate Quota) Order 2016	1 January 2017
Australian Meat and Live-stock Industry (Beef Export to the USA – Quota Years 2016-2022) Order 2015*	Export Control (Beef Export to the USA Tariff Rate Quota) Order 2016	1 July 2016
Australian Meat and Live-stock Industry (High Quality Beef Export to the European Union) Order 2015*	Export Control (High Quality Beef Export to the European Union Tariff Rate Quotas) Order 2016	1 July 2016

Historical arrangements/instrument	New state	Date of transition
Export Control Act 1982; Sections 20 and 23 Export Control (Meat and Meat Products) Orders 2005; Sch 8, 14.1 Export Control (Poultry Meat and Poultry Meat Products) Orders 2010; Sch 8, 14 Export Control (Prescribed Goods – General) Order 2005; Sch 8.05 (1)	Export Control (Japan Australia Economic Partnership Agreement Tariff Rate Quotas) Order 2016	1 April 2016

* Repealed in full

^ Repealed in part.

iv. Reform of current IT and cost recovery arrangements

In line with the reform of legislation, the department has reformed its cost recovery approach and is updating its IT arrangements for quota administration.

Quota administration is a cost recovered function which was historically recovered on a per tonnage and application basis, until all cost recovery across the department was reviewed in 2015. From 1 December 2015, quotas transitioned the cost recovery arrangements to be cost recovered on a per certificate basis. The EU sheepmeat and goatmeat TRQ was the last to transition into this new arrangement on 1 January 2017.

Quota administration occurs across three distinct IT systems; SARA, DAISY and Oracle. The technology that underpins both SARA and DAISY has become redundant and requires replacing, while the Oracle system was built for the implementation of JAEPA quotas. The department is undertaking an upgrade with the intent that one IT system will be able to cope with all existing and future quotas. This will reduce IT maintenance costs and streamline existing processes, saving time and money for both exporters and government.

v. Quota principles

By 2005 the Council of Australian Governments (COAG) had developed a set of principles to underpin effective regulations and review of those regulations[2]. Based on this work, the independent Quota Management Panel that conducted the US beef quota review in 2005 identified a set of principles to evaluate the appropriateness, effectiveness and efficiency of quota administration arrangements. These principles have subsequently been used in all reviews of quota administration.

Table 4. The quota principles

Principle 1: Optimise the commercial value and use of the quota
Optimal value of the quota is more likely to be achieved where company decision making is focused on maximising commercial returns rather than meeting conditions established by quota arrangements. Quota administration should not seek to promote full use of the quota access if it is contrary to market signals and could reduce the value of Australian exports.
Principle 2: Minimise regulatory intervention
The quota will be utilised most effectively and efficiently when market forces operate to the greatest extent possible, with individual companies able to make decisions in response to domestic and international market signals. This principle is related to considerations about the need for an allocation process.

[2] Taylor, Donal & Welsman (2005, p. 11)

Principle 3: Administer consistently, transparently and efficiently
A quota administration system should be efficient, transparent and aim for consistency in applying management rules. This principle is related to considerations of administration costs and clarity in quota management for business planning purposes. In particular it should seek to minimise the use of discretionary decisions.
Principle 4: Minimise barriers to exporting
Quota management should aim to minimise the barriers to market participation. This principle relates to considerations about the design of quota rules and conditions that can affect the cost of market entry. The commercial value of the quota will be enhanced if there is a competitive and innovative group of exporters focused on market development.
Principle 5: Consider commercial arrangements
Changes to existing quota management arrangements need to consider existing commercial arrangement and relationships, and past investments in developing a capacity for market participation.
Principle 6: Reward market development
To optimise the value of the access, quota management should reward market development. Active market participants with commercial strategies to develop customer relationships are more likely to maximise the value of the quota rents.

These principles have therefore been used as an appropriate framework for evaluating the options considered in the RIS process regarding the administration of TRQs.

vi. Previous reviews

Quota is a commercially sensitive topic and as such, has undergone a number of reviews. These reviews contained recommendations on how the administration of quota could be improved to better reflect the above principles, and to maximise the appropriateness, effectiveness and efficiency of quota administration arrangements.

The following documents were considered in the conduct of the RIS:

- Report of the 2005 Beef Quota Review Panel on Administrative Arrangements for the US Beef Quota
- Report of the 2008 Dairy Quota Review Panel on Administrative Arrangement for EU and USA Dairy Quotas Managed by Australia
- Review of Administrative Arrangement for the Tariff-quota on EU High Quality Beef (2011).

Additionally, in 2013, Mr David Harris completed a project on the effective administration of agricultural TRQs through the Rural Industries Research and Development Corporation. The project, while not based solely on Australian TRQs, reviews the administration of, and provides insight into, the effective use of TRQs.

1. What is the problem?

The department administers certificates to over 100 exporters across 33 quotas. These exporters range from small family-owned businesses to large multinational companies. Nearly half of these exporters are involved in multiple quotas. The administrative arrangements for each quota have been developed in isolation, as different trade agreements were implemented (FTA, GATT and WTO). This means separate legislative instruments have been created with each agreement, containing varying rules. Many exporters are therefore required to understand multiple rule sets in order to comply with legislation. Inconsistencies in how certain rules are applied between quotas and differences in the legislative language make this difficult. Additionally, some rules result in inequitable outcomes, are unnecessarily burdensome, or increase the complexity of the system without adding value. The majority of these rules are not requirements of the trade agreements; rather, they are determined by Australia. Therefore these issues do not have to persist.

Table 5 sets out current rules across Australian-managed TRQs to demonstrate the variance that exists. Outcomes are then explained to show where one or more of these rules has resulted in unfavourable outcomes. It is important to note at this point that variance between quotas is not inherently negative; consultation demonstrated the importance of quota administration catering for particular commodity and market needs. Therefore, if there is variance between quotas that is not raised as an issue in this section, it should be inferred that it is not considered a problem. Consideration of the quota principles against the rules helps to demonstrate why there are problems with the current arrangements.

Table 5. Current administrative rules and outcomes

Provisions	Current rules	Outcome
New Entrant	- EU HQB new entrants can access a maximum allocation of 12 tonnes. - EU sheepmeat new entrants must first ship globally to build performance so they can potentially receive an allocation the following year. - Dairy quota has a set aside amount for small exporters accessible as an allocation.	- EU HQB quota can only be accessed during the initial allocation process. 12 tonnes per year is unviable for a business to establish market access. - Delay for new entrants to access EU sheepmeat can be seen as a barrier to market participation. - Dairy new entrants or small exporters can be confident in receiving a quota allocation, supporting market access, but must apply during the initial allocation process, and access volume can be limited.
Eligibility	- Under the dairy TRQs only manufacturers can be allocated an annual allocation of quota. Non-manufacturers are eligible for first-come first-served quota only, otherwise must source a transfer from a manufacturer.	- Non-manufacturers for dairy are not rewarded for their market development and have a barrier to market access. Additionally, quota may be underutilised due to non-manufacturers being unable to receive an allocation, and manufacturers 'hoarding' unused quota.
Allocation Parameters	- EU HQB quota is allocated based on shipments to the regulated market. - Dairy is allocated based on: 50 per cent exports to the regulated market and 50 per cent to any export markets (that is, global shipments). - EU sheepmeat is allocated based on: 80 per cent exports to the regulated market and 20 per cent to any export markets via EU accredited works. - After a trigger point USA beef is allocated based on previous shipping history to the USA.	- Allocating a portion of quota based on global shipments does not reward market development based on the regulated market only. - Global shipments are not a reflection of historical usage, which means the distribution of quota may not reflect expected quota usage.
	- EU HQB and dairy allocation calculations do not allow further allocation to penalised parties even when quota is still available.	- Quota is not being distributed to optimise access/use and therefore value, remaining inaccessible until reallocation.

Provisions	Current rules	Outcome
Transfers	- Restrictions apply to transfers for EU HQB, which can result in being ineligible for a quota allocation for three years. - When quota is allocated, USA beef only allows transfers for a 10 day period. - EU sheepmeat has no limitations on transfers until the reclaim date. - EU sheepmeat allows for performance transfers. - Dairy exporters can transfer freely until 15 June but if the transfer is to a non-manufacturer and is unused at the end of the quota year penalties can apply to the manufacturer that transferred the quota.	- EU HQB attempts to address risks of exporters retaining quota they are not in a position to use. - EU HQB deters exporters requesting far more quota than they can use. However, miscalculations in transfers risks loss of access. - The USA beef 10 day transfer window forces speculation on quota needs. Exporters over-estimate for safety, but this results in excessive costs for quota. - Transfers in dairy are restricted after only six months of the quota year. Dairy exporters are having to speculate on future shipments, and are therefore more likely to suffer penalties or be unable to access the quota they need.

Penalties	- EU HQB exporters are penalised 1:1 if they have shipped less than 92.5 per cent of their total entitlement by 15 May of the quota year.
	- Dairy exporters are penalised if any annual allocation is unused at the end of the quota year. Penalty is 1:1, applied in two years' time. However quota accessed via first come, first served (FCFS) provisions can be held until the end of the year without penalty or payment.
	- No penalties for dairy non-manufacturers.
	- USA beef and EU sheepmeat do not have penalties for unused allocations.
		- EU HQB discourages exporters from retaining quota that they are not in a position to use.
		- Dairy attempts to improve availability through penalising unused allocations, but does not do the same for FCFS, creating a loophole.
		- Non-manufacturers for dairy are not penalised for underutilisation; rather, the party they received the transfer from is penalised.
		- A lack of penalty provisions can risk hoarding behaviour, however:
		  o consignment information reduces the risk in EU Sheepmeat.
		  o the trigger in USA beef only occurs when quota is highly sought after.

Provisions	Current rules	Outcome
Other	- JAEPA and USA beef quota rules define FCFS as being where a quota certificate is issued to match a consignment volume; this is only issued as complete consignment applications are received. - Dairy quota rules define FCFS as being a long term allocation, issued to exporters in the order requested; this is not limited to one consignment and the volume is not limited. - EU HQB rules define FCFS as being a reallocation process, issued proportionally to all eligible exporters who apply by a set date. - EU HQB and dairy do not include true FCFS arrangements.	- The term FCFS has three completely different meanings across the various quotas. This inconsistency creates confusion for stakeholders which can have commercial implications. - While dairy exporters can access FCFS on a consignment-needs basis, the ability for a single exporter to take significant volumes can impede quota access for others. - The use of FCFS for EU HQB is misleading, as it is actually a reallocation process. Additionally, the legislation actually lacks a provision to issue certificates for any quota volume which remains unallocated following the reallocation process. This is an impediment to access and usage.
	- Reclaim provision time periods are: o all dairy – 15 June (5 ½ months out) o EU HQB – 15 February (4 ½ months out) o Sheepmeat – 1 November (2 months out)	- Dairy is too far out from the end of the year; exporters may not be aware of shipments that far in advance, which creates speculation. - Sheepmeat is late, which some exporters have advised makes planning shipments more difficult.
	- To retain quota for EU Sheepmeat exporters must provide consignment information - To access FCFS quota for dairy, exporters must provide consignment information.	- Due to the nature of shipments, consignment information is often inaccurate. It is also easily abused. - The lack of detail required for dairy consignments means the system is misused and the policy intent is not delivered. - This information is an additional regulatory burden.
	- EU HQB has a process to return, retain or reallocate quota. - There is no reallocation process in EU Sheepmeat (return/retain only). - FCFS allocations in Dairy act as a reallocation process, but it is not proportional across applicants.	- The EU HQB process achieves the intent of redistributing quota to those who can use it. - EU Sheepmeat exporters expressed a lack of certainty in accessing FCFS is commercially risky. - The dairy process is not equitable, as one exporter can take entire quotas, even when it is unlikely they will use it. This is a barrier to export that reduces quota use and value.

The following elaborates on aspects of table 5 to explain in greater detail why many of the existing rules are resulting in undesirable outcomes and behaviours.

Unviable new entrant provisions

An aspect of quota administration is that there must be a way for new entrants to gain access to the quota. This is to encourage competition and innovation, and minimise barriers to exporting – quota Principle 4. For example, TRQs that operate under the FCFS arrangement cater for new entrants as anyone is able to access the quota when exporting. EU HQB includes a new entrant process, however, as determined through consultation, the process is not viable. The tonnage available to new entrants does not allow exporters to build a commercially competitive quota allocation, and as a result, is a barrier. EU sheepmeat relies on the global exports component of the annual allocation calculation (that is, global shipments) to enable new entrants to access the quota market, however, it requires that a new entrant ship to other countries first to build performance. They can then apply for quota the following year. This delay in access can be viewed as a barrier to export.

Limitations for eligibility

A barrier to trade exists in dairy TRQs which only allow allocations to be made to manufacturers. Non-manufacturers can only access the quota by receiving a transfer or via FCFS if quota is available. The aim of this rule was to have the benefits of TRQs flowing back to the industry and community[3] rather than to individual companies. It has, however, led to instances where manufacturers have requested and received allocations but have not used them. Non-manufacturers that have wished to export have effectively been locked out until six months into the quota year when unused quota is reclaimed and made available as FCFS. Rather than value-adding as intended, this rule is actually preventing optimal quota usage, in line with Principle 1.

Potential for underuse

To maximise the value of Australian exports, quota value and use should be optimised. For this to occur, quota should be available to those in a position to use it, which necessitates having a disincentive to retain quota that will not be used. In dairy TRQs, the FCFS rule does not penalise underutilisation, so does not create an incentive to return quota that will not be used. This also applies to EU sheepmeat, where exporters are not penalised for retained quota that they do not use. In both cases this has resulted in quota being unused at the end of the year, even though other exporters would have utilised it, had they had access.

Use of global shipments

The process of calculating proportional quota allocations using export figures to any market (and not just exports to the quota market) is referred to as global shipments. The rationale for its use in TRQ administration is that it encourages diversification, taking pressure off the quota market. This has not been effective for dairy TRQs, as dairy exports tend to be commodity markets, and more ad hoc. A side effect of using global shipments is that allocations do not reflect historical quota usage. This results in the distribution of quota being unlikely to reflect expected quota usage. Additionally, unlike meat exports, global exports data for dairy products must be sourced through Customs. The Customs information is not as detailed as needed which may affect the accuracy of allocations. Overall this means the use of global shipments is not contributing to better outcomes for dairy TRQs and is not supported by the dairy industry.

Conversely, consultation demonstrated that EU sheepmeat exporters felt the use of global shipments contributes to a more functional system for them. Exporters expressed that this model

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[3] McQueen, Welsman & Harris (2008, p 61)

rewards diversification which is extremely beneficial in reducing the distortionary effect of the TRQ for their industry. It also provides a pathway for exporters to enter the quota market, without having to provide an explicit new entrant provision. Exporters did not believe that the distribution of quota not reflecting historical usage was an issue. The department has concerns that this approach results in suboptimal allocation, however, it acknowledges that the problem is not as significant as previously thought for the EU sheepmeat TRQ.

Inefficient regulations

There are also shortfalls in some TRQs meeting Principle 2, which sets out the importance of minimising regulatory intervention. Exporters of EU sheepmeat are required to provide information detailing all remaining consignments in order to justify retaining allocated quota for the final two months of the quota year. The department must then monitor quota usage against this consignment information, including departure date. The commercial reality is, however, that planned consignments change. If changes are significant or past the specified departure date, the department must reclaim the quota. To avoid this risk, exporters are likely to estimate dates that are later in the year. This means the information is very likely inaccurate. This approach is not effective as it is time consuming, increases the regulatory burden, incentivises inaccuracy, and therefore is not likely to achieve the intent of improving access to unused quota. It also raises issues about discretionary decision-making, set out in Principle 3. Sheepmeat exporters were supportive of addressing this issue.

EU HQB already manages this situation through the application of penalties, negating the need to ask for additional consignment information (dairy TRQs also do so for quota that is <u>retained</u> as part of the reclaim process). Proper penalty provisions deter quota holders from retaining quota they do not intend to use. This reduces the oversight necessary from the regulator and reduces the likelihood of inconsistent rulings.

Rules that necessitate speculation are problematic as outcomes are unlikely to reflect exporters' actual needs. This occurs in dairy TRQs where exporters have to return or retain quota after only six months, and in US beef where exporters have to identify potential future shipments in a ten day window. Exporters are likely to overestimate their needs to cover commercial arrangements, which increases the likelihood of quota remaining unused.

EU sheepmeat exporters can be forced to speculate in a different way. Any quota returned in EU sheepmeat can only be accessed by exporters via FCFS arrangements. To access this, exporters must have a consignment prepared and apply to the department without knowing if they will receive quota. Exporters expressed that, given the importance of having access to quota for a shipment to be viable to the EU, this can be too risky. As a result, quota may remain unused by the end of the year, despite multiple exporters being willing to use it.

Non-complementary rules

Many rules and arrangements governing TRQs are complementary, and changing one rule can have implications for others. This was an unforeseen outcome of recent changes to cost recovery arrangements. Dairy exporters were previously charged an application fee for each category of quota applied for and a per tonnage fee applicable to the final allocated amount. Due to the financial implications, the system encouraged exporters to only apply for what they would use, discouraging 'hoarding' behaviour. These fees were changed to a per certificate basis in 2015 and, as such, exporters no longer pay an application fee, or for their entitlement – they are only charged for a certificate. This has removed the incentive for exporters to only apply for what they expect they will need. As a result exporters are now asking for larger volumes of many quotas, despite being unlikely to use them. The result has been other exporters, particularly non-manufacturers, being unable to access the quota market. This means quota use is unable to be maximised (and value realised) due to an unintended barrier to trade being created.

Consistency

Some consistency across quotas is valuable to assist stakeholders with understanding requirements. The fact that FCFS is used in three different ways across the current legislative instruments is misleading for stakeholders. Given that exporters are making commercial decisions based on the rules, it is appropriate to address risks of misinterpretation.

Responsiveness

There are some general aspects of quota administration which do not allow for responsiveness to changing industry or regulatory requirements. The current structure is static, meaning that a quota management system cannot change for a given quota without significant effort, despite the fact that it may no longer be delivering efficient outcomes. This is the case with many of the dairy TRQs today.

Under the current arrangements, the ability to add new TRQs is limited and requires further legislative instruments. It can also result in further rules and complexity, and IT systems changes to manage it. This increases the complexity of the overall system and potentially increases the cost to exporters and industry in a cost-recovered environment. It is also time-consuming and administratively burdensome, which presents risks in not being responsive enough when new free trade agreements are signed. This was experienced with the introduction of JAEPA TRQs in 2015.

2. Why is government action needed?

Quota management requires an independent body that can provide regulatory oversight and objectivity. In the case of TRQs under AUSFTA, it is stipulated that quota certificates can only be issued by a government entity. This can include a statutory body, however this was ultimately not considered viable during discussions with stakeholders in 2015. Establishing a statutory body would require significant legislative amendments, which the department did not consider favourable. While the red meat industry preferred this, others did not, and it was considered unlikely that trading partners would agree to split quota management under two separate systems.

Of particular importance is that if issues arise, they would still require government-to-government engagement, increasing the costs and duplication involved with a separate body, making it unfavourable. The Department of Agriculture and Water Resources is already required to maintain market access rights, achieved through high level working groups, working trade relations and a mutual understanding of government-to-government requirements. A separate statutory authority would need to duplicate some of this activity or have additional structures to work between organisations.

Detail on the stages of the process to date, including discussions regarding options for quota management, are summarised in Appendix D.

2.1. Objectives

The objectives of the proposed changes to quota administration processes are as follows:

- To reduce behaviours and outcomes that impede quota access and usage.
- To reduce the regulatory burden on stakeholders.
- To provide a consistent framework that enables stakeholder understanding and enhances their decision-making ability.
- To streamline processes where possible to improve efficiency.
- To future-proof quota administration so that it is responsive to new quota markets, and changes to existing markets.

3. What policy options are you considering?

In 2015 the government met with relevant industries regarding quota management and a decision was made to maintain government management of TRQs. It was also agreed that the government would review the commonality of rules to consider possible streamlining. With this in mind and in accordance with the Australian Government Guide to Regulation and the Office of Best Practice Regulation's (OBPR) guidelines, the government has considered the following policy options in regards to the administration of quota.

Option 1: Status quo – retain all current regulations

- This option would involve retaining the existing allocation arrangements to maintain the status quo.

Option 2: Remove regulation – first come, first served system

- This option would involve removing allocation rules for all quotas managed by Australia and having quotas operate under an FCFS arrangement.

Option 3: Tiered management system

- This option would involve introducing a set system with tiered levels of regulation depending on the level of quota usage per TRQ.

Option 4: Industry-tailored tiered management system

- This option would involve introducing a broader tiered system than Option 3 that allows regulation broadly based on the level of quota usage, but with elements tailored for specific industry needs.

3.1. Option 1: Status quo – retain all current regulations

Option 1 is to keep the current regulatory arrangements and maintain the status quo. This would mean current regulatory arrangements would remain for quota allocation, under the updated *Export Control Act 1982* and the associated orders for each TRQ. Quota administration would continue to operate under five separately administered legislative orders with fixed rules and varying levels of complexity. The current arrangements are summarised in Appendix C.

EU HQB, EU sheepmeat and goatmeat, and dairy TRQs would remain under their respective allocation systems. The US beef TRQ would remain under its FCFS process with high usage triggering allocations. The Japanese juice, preserved meats, poultry, pork and honey TRQs would remain under FCFS arrangements. Japanese edible bovine offal (EBO) would continue to operate under a quarterly FCFS model.

As this is the status quo, this option does not address the problems defined.

3.2. Option 2: Remove regulation – first come, first served system

Option 2 is the fully deregulatory option. The government would no longer allocate quota before the start of each annual quota period for TRQs that have historically been highly utilised or where a high-fill trigger had existed. It would also remove the restrictions of allocations only being available to one part of the export sector, such as dairy allocations being limited to manufacturers.

Instead, all quota certificates would be issued on an FCFS basis whereby quota would be assigned only where a valid consignment application has been made and is ready to have the necessary certification issued*. This would allow for any exporter, trader, manufacturer or processor to access available quota at any point in time. However, once a quota is fully utilised, subsequent exports would become subject to the out-of-quota tariffs.

This option would resolve some aspects of the problem, such as improving access and efficiency and reducing complexity. However, it would not resolve those relating to rewarding market access, and most significantly, would introduce a range of additional problems for highly utilised TRQs that had previously been allocated. A details analysis is included in Section 5, below.

3.3. Option 3: Tiered management system

Option 3 is a tiered management system, offering a management process to cater for the primary levels of quota usage – low, medium and high. This streamlines quota management by reducing the number of allocation methods and introducing a consistent approach to managing TRQs. This would allow for a single legislative instrument to be drafted to govern all TRQs managed by the Australian Government, thereby reducing complexity.

A mechanism is generally proposed for each level of quota usage:

- For low quota utilisation markets, there would be no allocation. Quota would be made available in response to applications on a FCFS basis.
- For medium quota utilisation markets, there would be no allocation until a trigger threshold is reached on or before a set date (known as FCFS with high-fill trigger).
- For high quota utilisation markets, quota would be allocated under a rationalised administrative model (detailed below).

However, the TRQs would not be fixed to a mechanism. If quota usage shifts between certain volumes, a review process would be triggered to consider whether another allocation mechanism would be more appropriate for future years. This would occur where quota usage shifts between less than 80 per cent, 80-90 per cent and greater than 90 per cent in either two consecutive years or three times in a five year period. Any review would consider a range of factors, including industry perspectives. This means the system can respond to long term changes.

Existing TRQs would therefore be managed as follows:

Mechanism for Management	Quotas
First come, first served	• 6 of 8 JAEPA TRQs (excepting EBO and honey) • 17 of 19 dairy TRQs (excepting US FTA cheddar and butter)
FCFS with high-fill trigger	• US beef • US FTA Cheddar
Allocation	• EU HQB • EU sheepmeat and goatmeat • US FTA butter • Japan EBO and honey TRQs

Adjusting all underutilised TRQs to the FCFS mechanism resolves problems relating to barriers to trade and exporters being unable to access quota when in a position to use it. It also minimises regulatory intervention by effectively applying a deregulatory approach. This acknowledges that

* This definition of FCFS should be taken to apply for all usage within this document, unless otherwise specified. A valid consignment application may be a request for certificate through EXDOC, by email or other method, depending on the TRQ.

allocating low use quotas does not contribute to better outcomes. Rather the allocation process merely adds unnecessary administration time and costs, and may actually interfere with the market.

The FCFS with high fill trigger would generally deliver the benefits of FCFS for the listed TRQs, but also offers exporters a level of commercial certainty if quota usage increases. This allocation system has been demonstrated to be valuable for medium utilisation TRQs and is supported by industry.

The proposed allocation process would address the issues relating to eligibility, access and rewarding market development for quota markets. It would also successfully deter undesirable behaviour such as exporters retaining quota when they are not in a position to use it. However, feedback from consultation flagged that this would not result in greater benefits for the EU sheepmeat TRQ, due to differences in how the sheepmeat industry operates compared to other commodities. Equally, feedback suggested that allocating Japan EBO will not result in better outcomes than its existing system.

A details analysis is included in Section 5, below.

The following is a breakdown of each allocation mechanism and the proposed rules within each.

First come, first served – low use

Where TRQs have historically low usage and there is no expectation of reaching full utilisation, this mechanism would apply. The department would issue all quota certificates necessary to access quota on a FCFS basis. This would allow any exporter to access available quota at any point in time.

First come, first served with high-fill trigger – medium use

Initially quota will be available as FCFS with quota certificates being issued per consignment. A usage trigger will be in place which will transition the process from FCFS to an allocation process. Based on the review of beef exports to the USA[4] and the subsequent experience under the revised allocation system, the trigger would be enacted if quota usage reaches 85 per cent utilisation on or before three months from the end of a quota year. If quota usage is below 85 per cent at or after that date the quota will remain FCFS for the remainder of the quota year.

When it is expected that the trigger will be reached in a given quota year the department would initiate the allocation process; this would be through requests to exporters to apply for an allocation. Once the trigger is reached the following allocation parameters would apply.

Allocation

Shipping history parameter

The same shipping history parameter currently used for US beef would be applied, being two years.

Allocate proportionally

All unallocated quota (less any accepted by new entrants, below) will then be allocated proportionally to applicants, based on shipping history.

Include a new entrant provision

As new entrants will not have a shipping history, a proportion of the 15 per cent would be offered to new entrants. An exporter would be considered a new entrant for the first two years of quota usage (reflecting the two year shipping history).

[4] Taylor, Donal & Welsman (2005, p. 38)

Transfers

Transfers would not be allowed for any allocated quota.

Penalties

Standard 1-for-1 penalties will apply for underutilisation of the allocated quota. These penalties will be applied in the next period of allocation (that is, if the trigger point is not reached in the following year the penalties will carry over until applied, or until an agreed expiry is reached). Exporters will receive penalties for any unused quota allocations, including on any returns.

Rationalised allocation system – high use

This allocation mechanism would operate similarly to EU HQB and would be applied to TRQs that have high levels of usage, likely to be fully utilised. Detail regarding the primary elements of the mechanism are as follows.

Allocation

Option 3 would remove the restriction on dairy quota allocations being limited to manufacturers. Instead any exporter would be eligible.

Shipping history parameter

Shipping history will only include the quota market. Allocations would be determined by using an average of an exporter's shipping history relative to all quota exports to the same market (as per current EU HQB rules).

Include a minimum allocation

For practical purposes a minimum allocation parameter would be included, as is already used in each of the current allocation systems. This is to avoid allocating volumes too small to be viable and that may therefore be wasted. The minimum allocation would be set at one tonne.

Include a new entrant provision

New entrant access will be guaranteed through a new entrant provision. For each TRQ the amount available will be determined on the basis of what is a viable amount for the commodity and market, and on how many new entrants should reasonably be catered for.

Apply a streamlined allocation process

The allocation process would operate similarly to the existing process for the EU HQB quota system. Applications would be requested by a set date before the start of a quota year. The department would then calculate and allocate the quota (less the new entrant provision) to all eligible applicants:

- Where the total volume applied for by exporters exceeds the available quota, it will be allocated proportionally against the shipping history.
- Where the total volume applied for is less than the available quota, all applicants will receive their requested amount, and any remaining quota will become available under FCFS arrangements (until the reclaim date).
- Any unused quota under the new entrant provision will not become available to standard quota users until the reclaim date is reached.

New entrants

As stated above, there would be a percentage of each TRQ set aside for new entrants. An exporter would be considered a new entrant if they are a first, second or third year new entrant in relation to the quota year (reflecting the shipping history parameter).

The following process would apply:

- The new entrant provision would be available as FCFS until the reclaim date for the quota year.
- A cap would be applied to ensure fair opportunity for access.
- Once the reclaim date is reached new entrants will have first preference for any unused volume of the new entrant provision (maximum allocation still applying). This would be allocated quota.
- To dissuade potential misuse of allocated quota the following mechanisms would apply:
  - Only new entrants that have shipped in the first part of the quota year would be eligible to apply
  - New entrants would not be permitted to transfer their quota allocation, nor any quota transferred to them by another exporter.
  - If a first year new entrant requests allocation and does not use at least some, they will be excluded for the next two quota years.
  - If a second or third year new entrant requests allocation and does not use it, the average unused volume per year will be calculated as a penalty in their first year of standard quota allocation (if at least 90 per cent of allocation is used, no penalty will apply).

Transfers

Allow transfers under standard quota allocation, but with added safeguards

Transfers would be allowed for the first part of a quota year, up until the reclaim date. This is appropriate as exporter circumstances can change, and transfers allow for the movement of quota to reach an optimum distribution. However, a limit of 50 per cent of an allocation will be able to be transferred in a single quota year, otherwise an exclusion will be applied. This is to deter exporters requesting much more quota than they can use, with the primary intent of transferring quota for a profit.

Following the reclaim and reallocation processes, transfers would no longer be allowed. The intent of reclaiming unused quota and reallocating is to improve quota access for those who wish to use it. Preventing trading of reallocated quota deters exporters from applying for quota that they do not intend to use.

Do not allow new entrants to transfer out

Any quota allocated to new entrants through the reallocation process would not be transferable. The intent of the new entrant provision is to provide a fair and reasonable avenue for market entry, not additional speculative or trader behaviour. Additionally, new entrants can source transfers from other exporters, but cannot transfer any of that quota to others. This is to support new exporters in building their shipping history.

Reclaim and reallocation process

Reclaim timeframe

A reclaim date would be applied a set date prior to the end of a quota year. The date would be dependent on the TRQ to reflect the commodity and market needs.

Allow for voluntary returns prior to the reclaim date

Exporters would be able to return unused quota without penalty as long as it is returned prior to the reclaim date.

Unused allocation can be retained

In most instances exporters' allocation requests at the start of the year are planned to cover the entire year. In order to cater for their commercial arrangements, exporters would be able to retain any remaining annual quota allocation post-reallocation if they still intend to use it. Confirmation to the department would have to be provided prior to the reclaim date.

To prevent underutilisation, however, where less than 25 per cent of an allocation is used by the reclaim date, all unused allocation will be forfeited.

A reallocation process for all unallocated quota

A reallocation process will be used to help maximise the availability of quota to those who wish to use it. The process proposed is similar to the current EU HQB process and will work as follows:

- New entrants will have first preference for any unused volume of the set aside amount (maximum new entrant cap still applying). This would be allocated quota.
- All unallocated quota (including any remaining new entrant provision) will be allocated based on exporter applications and using the same methodology as the initial allocation for the year.
    - New entrants will not be eligible for this allocation.
- Where the total volume applied for is less than the available quota, all applicants will receive their requested amount, and any remaining quota will become available under FCFS.
    - New entrants will be eligible for FCFS and will no longer be limited to the maximum new entrant allocation.

Penalties

The application of penalties under this mechanism is to deter behaviour that distorts the market or interferes with optimising the quota's commercial value and use.

Exclusions will be applied in certain circumstances to deter distortionary behaviour

To encourage only committed exporters to apply for quota, if a first year new entrant requests allocation and does not use at least some of it, they will be excluded for the next two quota years.

Equally, to deter exporters requesting allocation which they do not intend to use, an exclusion will apply where an exporter transfers greater than 50 per cent of their allocation in a single year. The exclusion period would be two years.

Underutilised quota will be penalised

Standard 1-for-1 penalty provisions will apply for less significant underutilisation (that does not warrant exclusion). The penalties will be applied to an exporter's next year of quota allocation. Exporters will incur penalties for any quota allocation retained or requested post-reallocation that remains unused by the end of the quota year. Quota can be returned after the reclaim date, however, penalties will still apply.

Despite the above provisions, exporters will not receive penalties if they have used at least 90 per cent of their allocation by a set date from the end of the quota year.

As per the existing EU HQB model, Option 3 will withdraw quota allocations at the reclaim date if they are significantly underutilised. Allocations will be removed if less than 25 per cent is used by the reclaim date. In these instances exporters will not be able to retain any quota.

3.4. Option 4: Industry-tailored tiered management system

Option 4 represents a revision of Option 3 based on consultation discussion and feedback. It remains a tiered management system, however two additional 'tiers' or mechanisms have been introduced to cater for TRQs that would not gain additional benefits by being managed under one of the three mechanisms of Option 3. The option gives greater consideration to industry- and market-specific needs via the additional mechanisms and tailored inputs.

This would still allow for a single legislative instrument to be drafted to govern all TRQs managed by the Australian Government. The option presents separate mechanisms to cater for the different levels of quota usage. It includes FCFS, FCFS with high-fill trigger and a rationalised allocated model, generally applicable for low, medium and high use quotas. In addition, this option includes a FCFS model that operates quarterly and includes the existing EU sheepmeat allocation model with modifications.

Like Option 3, this includes a process to review whether a given TRQ would operate better under another mechanism, and the ability to adjust to a preferred mechanism in future quota years.

This option also future-proofs quota administration to cater for new TRQs introduced through future bilateral or multilateral free trade agreements. The most appropriate mechanism for managing a new TRQ can be selected based on commodity and market, and can be implemented with minimal changes required to legislation and IT systems.

Through consultation it was agreed that existing TRQs would be managed as follows:

Mechanism for Management	Quotas
First come, first served	• 7 of 8 JAEPA TRQs (excepting EBO) • 17 of 19 dairy TRQs (excepting US FTA cheddar and butter)
FCFS Quarterly	• Japan EBO
FCFS with High-fill Trigger	• USA beef
Rationalised Allocation	• EU HQB • US FTA cheddar and butter TRQs
EU sheepmeat & goatmeat Allocation	• EU sheepmeat and goatmeat

As per Option 3, adjusting all underutilised TRQs to the FCFS mechanism resolves problems relating to barriers to trade and exporters being unable to access quota when in a position to use it. It also minimises regulatory intervention by effectively applying a deregulatory approach. This acknowledges that allocating low use TRQs does not contribute to better outcomes. Rather, the allocation process merely adds unnecessary administration time and costs, and may actually interfere with the market.

Despite being highly utilised, FCFS Quarterly is very effective for Japan EBO. An allocation approach would not deliver better outcomes but would increase the regulatory burden.

Consultation found that due to the Japan honey TRQ being extremely small and highly sought-after, an allocation system would not deliver greater benefits. Despite some flaws, the FCFS system remains the most appropriate for the honey TRQ.

The FCFS with high fill trigger would deliver the benefits of FCFS, but also offers exporters a level of commercial certainty if quota usage increases. This allocation system has been valuable for the US beef TRQ. The enhancements made compared to Option 3 better resolve the problems surrounding access that were raised regarding the US beef TRQ.

The proposed rationalised allocation process would address the issues relating to eligibility, access, and rewarding market development for quota markets. It would also successfully deter undesirable behaviour such as exporters retaining quota when they are not in a position to use it. The sheepmeat allocation process provides greater consideration to industry-specific needs to ensure that overall benefits realised do not reduce.

A details analysis is included in Section 5, below.

The following is a breakdown of each mechanism and the proposed rules within each.

First come, first served

Quota certificates would be issued on the basis of complete requests for permit (RFPs) (or equivalent) during a quota year. Alternatively the access amount can be made available on a quarterly basis, that is, the quota volume is split into quarters representing the maximum amount that can be accessed in a three month period. FCFS is an effective system for TRQs that will not be fully utilised. The FCFS on a quarterly basis can be effective for some highly utilised TRQs.

First come, first served with high-fill trigger

Trigger

As per both Options 1 and 3, this mechanism would operate under FCFS arrangements, with allocations only being triggered if 85 per cent of the quota is used within the first nine months of the quota year.

Allocation

If the trigger is expected to be reached, the department will calculate allocations based on proportional use and advise exporters of their entitlement. Depending on the TRQ, the shipping history used to calculate the allocations could vary. In the case of the US beef TRQ, the existing two year period would remain as there is no significant justification for change, and the majority of industry feedback advised that two years is satisfactory.

Exporters would be able to accept their entitlement at any stage ahead of the trigger being reached. Once the trigger is reached, any quota returned or not accepted will return to the quota pool (available as FCFS).

This approach is consistent with the outcomes reached during consultation.

Transfers

Transfers will be permitted at any stage following acceptance of post-trigger allocations. As exporters are receiving proportional allocations (and not requesting specific amounts, as for Option 3) transfers are appropriate; they provide the necessary pathway for quota to be able to reach those who are in a position to use it. The transfer window (per the status quo) will be removed as it was ineffective for US beef in 2015.

Penalties

Penalties will not be imposed under this mechanism. The use of penalties does not contribute to better outcomes where allocations are purely proportional (that is, volumes are not requested) and where quota is transferable until the end of the quota year (both elements of which are considered beneficial). Additionally, if the trigger is reached there is a very low risk of quota not being utilised.

Rationalised allocation system

This allocation mechanism is relatively consistent with Option 3, but makes adjustments to reduce complexity and provide industry-specific inputs. Initially it would apply to the EU HQB, US FTA butter and US FTA cheddar cheese TRQs.

Eligibility

As long as a company holds a relevant licence (if applicable), they would be eligible to apply for an allocation. This only represents a change for dairy TRQs which do not currently permit non-manufacturers to apply for allocations. This restriction would be removed.

Allocation

Shipping history used for calculating allocations

Allocations would be calculated based on exporters' shipping history of quota exports. The length of time of the shipping history would be determined in conjunction with relevant industries for a given TRQ; consultation feedback demonstrated that this should not necessarily be the same for all TRQs. Overall support remained for three years for both EU HQB[5] and those dairy TRQs remaining allocated[6]. As per Option 3, the shipping history will only include exports under quota so the quota is more likely to be allocated to those who will use it.

Additionally, the quota allocation calculations would use a TRQ's 'shipping year' as the timeframe. This is more appropriate when determining what an exporter should be entitled to, but represents a change for dairy TRQs which currently use financial years.

Minimum allocation

A minimum allocation would still apply to any TRQ as currently occurs. Consistent with Option 3, this would be set at one tonne by default. The department and industries agreed in consultation that a change for a given TRQ could be considered where industry recommendation was provided.

New entrant provision

The new entrant process is proposed to work as follows:

- Exporters would be considered new entrants to a market for the first three years of accessing quota to a market.
- The new entrant provision would be available as FCFS until the reclaim date is reached.
- A capped access amount would be applied to ensure fair opportunity for access and so existing quota holders are not disadvantaged.
- Once the reclaim date is reached new entrants would have first preference for any unused volume of the new entrant provision (maximum cap still applying). This would be allocated quota. To dissuade misuse of allocated quota the following would apply:
    - Only new entrants that have shipped during the quota year would be eligible to apply.
    - New entrants would be limited to allocations of no more than the volume already shipped during the quota year. For example if a new entrant had shipped 24 tonnes during the quota year to date, they could not receive more than 24 tonnes as an allocation for the remainder of the year. The cap continues to apply.
    - New entrants would not be permitted to transfer their quota allocation, nor any quota transferred to them by another exporter.

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[5] AMIC 2nd submission, page 4.
[6] ADPF submission, pages 3.

In the case of the EU HQB quota the set aside amount would be maintained at 500 tonnes but the new entrant cap would be increased from 12 tonnes to 100 tonnes to address the issue of an unviable access amount. Feedback stated that for dairy TRQs a viable new entrant is approximately 50 tonnes. While the dairy industry posed a set-aside amount of 1.5 per cent per quota[7], the department must ensure that the volume can cater for an appropriate number of new entrants, so will be determined on a per TRQ basis.

Apply a streamlined allocation process

Applications would be requested by a set date before the start of a quota year. The department would then calculate and allocate the quota (less the new entrant provision) to all eligible applicants.

- Where the total volume applied for by exporters exceeds the access amount it will be allocated proportionally against the shipping history.
- Where the total volume applied for is less than the access amount, all applicants will receive their requested amount and any remaining quota will become available as FCFS (until the reclaim date is reached).
- Any unused quota under the new entrant provision will not become available to standard quota users until the reclaim date is reached.

Additionally, this option adjusts the process so that once all exporters eligible to receive 'supplementary quota' (being quota reclaimed due to penalties) have received their request amounts, ineligible exporters (those who had been penalised) would then be considered eligible to receive any remaining supplementary quota volume. This is to recognise that the quota is still in demand and should therefore be allocated rather than remain unallocated and inaccessible until the reallocation process takes place months later.

Transfers

Transfers will be permitted for allocated quota prior to the reclaim date but a 50 per cent limit will be applied. If more than 50 per cent of an exporter's allocation is transferred in a single year, the exporter will be ineligible to receive an allocation for the next two quota years.

As per the status quo and Option 3, exporters will not be permitted to transfer retained or reallocated quota after the reclaim date. Similarly, new entrants will not be permitted to transfer their quota allocation.

Reclaim and reallocation process

The reclaim process will be conducted eight months into the quota year. Commencing reclaim and reallocations after eight months provides a reasonable period for exporters to utilise allocations, while still providing sufficient time for reallocated quota to be used. It is also an appropriate timeframe to expect exporters to be able to estimate shipments.

Quota holders would be able to return unused quota prior to the reclaim date without incurring a penalty. They would also be able to retain their unused quota allocations as long as they have used more than 25 per cent of the quota allocation. If less than 25 per cent is used the remaining allocation amount would be surrendered.

The reallocation process would work as follows:

- Exporters could request an additional volume of quota to be allocated to them.
    - If the available quota is more than the total amount requested, applicants will receive their request amount.
    - If the available quota is less than the total amount requested, the quota will be allocated proportionally across the applicants, using the same parameters as the initial allocations.

[7] ADPF submission, page 4.

- Exporters would not be required to provide any consignment information details.
- Retained and reallocated quota cannot be transferred and any unused volume would attract penalties (if the exporter used less than 90 per cent of their allocation for the quota year).

Following this process, if there is any quota remaining unallocated (or any quota returned after this point) it would be available as FCFS. This would only be available where an exporter has a consignment application in EXDOC (or equivalent) that is ready to be issued export certification documents and only to exporters that do not have any remaining allocated quota.

Penalties

Proposed penalty provisions remain consistent with Option 3. Penalties will be incurred on a 1-for-1 basis for unused quota that was either retained or reallocated to exporters. However, exporters will only receive penalties if they have not used at least 90 per cent of their allocation six weeks from the end of the quota year. Penalties will be calculated and applied to the next year's quota allocations.

This represents a change for dairy TRQs which previously had a year delay in applying penalties. There is no change for EU HQB beyond reducing the minimum usage level from 92.5 per cent to 90 per cent.

Consultation raised whether there can be an option of discretionary decision making due to unforeseen circumstance. The department will investigate the possibility of allowing the return of quota without penalty due to instances such as fire or natural disasters impacting processing facilities.

EU sheepmeat allocation system

This allocation system is proposed to remain relatively consistent with the status quo, with some changes to improve efficiency and clarity. While it had been thought that Option 3 was offering greater benefits to the management of the quota, consultation feedback showed that the current system was better suited to how the industry and market operates and that overall the changes would only introduce a level of uncertainty.

Allocations

Allocations would continue to be calculated based on 80 per cent exports under quota and on 20 per cent accredited exports (eligible meat through EU-accredited establishments). The shipment history period used in the calculations would remain as one year, as agreed in consultation.

Minimum allocation

The minimum allocation amount is proposed to remain as 12 tonnes, as a balance between limiting the number of very small allocations while still catering for new entrants in the process of building an allocation.

Transfers

Transfers would continue to be available prior to the reclaim date, however retained and reallocated quota would not be transferable.

Reclaim & reallocation process

This option proposes to conduct a reclaim process 10 months into the quota year. Quota holders would be able to return unused quota prior to the reclaim date without incurring a penalty. They would also be able to retain their unused quota allocations.

Additionally, exporters could request an additional volume of quota to be allocated to them.

- If the available quota is more than the total amount requested applicants will receive their request amount.
- If the available quota is less than the total amount requested the quota will be allocated proportionally across the applicants, using the same parameters as the initial allocations.

Exporters would not be required to provide any consignment details for retained or reallocated quota.

Penalties

Any unused volume would receive penalties. Penalties would be a 1:1 ratio, applicable to the next year's allocation. Penalties would be applied where an exporter had used less than 90 per cent of their allocated quota six weeks from the end of the quota year (being aligned with the shipping year).

4. Consultation

The department undertook a targeted consultation process in recognition of the well-defined business sectors directly affected by the proposed regulatory changes. The department communicated directly with all stakeholders, inviting written responses to the Early Assessment RIS, and engaging stakeholders through planned teleconferences and face-to-face workshops held throughout the country.

A revised option (Option 4) was developed based on what was learnt in consultation. Additional Papers regarding this option were disseminated to stakeholders in order to receive additional feedback (see Appendix E for these Papers). The formal consultation period ultimately ran for four and a half months to cater for all industries' needs and ensure thorough feedback was gathered. For full details regarding the consultation process and stakeholders engaged, please refer to Appendix A.

The following section details the outcomes of the consultation process; the views of the stakeholders; the action taken to address concerns that were raised; and any concerns which did not reach a consensus position during consultation.

4.1. Outcomes of consultation

General feedback

A range of general concerns were raised by stakeholders during consultation. The Australian Meat Industry Council (AMIC) disagreed that the department was best placed to manage the TRQs and that they would prefer a statutory body. The department acknowledges AMIC's position but per the discussions in 2015, due to the legislative amendments that would have been required, a statutory authority model was not a viable option and the ultimate position agreed by all peak industry bodies in 2015 was for the government to continue to manage TRQs. This is reflected in Section 2.

Generally, stakeholders disagreed with the suggestion that greater consistency between quota management systems would be inherently beneficial across TRQs. Feedback highlighted that many differences between TRQs were necessary due to differences between products and markets. Specific examples are covered below. The department acknowledged this feedback; as a result the problem definition was clarified and this approach informed the development of Option 4. The department also refined examples given in the problem definition to better show which TRQs related to which elements of the problem. This was in response to concerns that this had been too broadly stated.

AMIC raised concerns regarding the RIS process, particularly regarding the timing of consultation. During consultation the department clarified that it was necessary to have options formulated to produce meaningful discussions, highlighting that no decisions had been made and all elements were open for discussion. This approach is reflected in the ultimate development of a fourth option that has taken all consultation feedback into consideration.

Additionally, during consultation and in their written submission, AMIC stated it considered at least 12 months' notice is "essential" before any change to the existing allocation systems are made, to enable exporters to adjust their marketing programs. The department agreed that a 12 month transition time would be reasonable and could be catered for if required.

Option 1 – Status quo

Feedback regarding Japan EBO explained that while the quarterly FCFS system had originally been a compromise position, the system had resulted in effective outcomes, and there was not a desire to change. This feedback contributed to the inclusion of the quarterly FCFS mechanism in Option 4.

In general, exporters of EU sheepmeat were supportive of the status quo. The concerns raised regarding applying the other options to EU sheepmeat TRQ are captured under the relevant headings, below.

EU Sheepmeat exporters raised concerns about having to provide consignment information to retain quota entitlements. This information is difficult to provide accurately, and there was concern it can lead to exporters intentionally providing later shipment details. Sheepmeat exporters indicated they wanted the department to be able to apply discretion not to reclaim entitlements if shipment dates changed. The department explained that discretionary decision making was not favoured, and that a more flexible approach would be replacing the requirement with penalties to manage exporter behaviour. This was included in Option 4.

A second issue was that after the reclaim process additional quota can only be accessed via FCFS. A sheepmeat exporter described this as lacking certainty, stating that they 'won't put it in a container unless they're sure [that they can access quota]'. This was acknowledged and also included in Option 4.

A sheepmeat exporter also advised that they believed the timing of quota return for EU sheepmeat (being 2 months) lacked time to effectively respond and use the remaining quota. Opinions differed regarding this timeframe. Other exporters believed that extending this timeframe to three months would result in a higher level of forecast uncertainty, and that given the importance of the Christmas period for exports this created greater risks. As more stakeholders favoured remaining with two months, this was not changed in developing Option 4.

A honey exporter raised concerns regarding the application of FCFS to the Japan honey TRQ. Due to its small size and high demand, the TRQ is being fully utilised very early in the quota year. The potential to apply an allocation mechanism is covered under Option 3, below.

Option 2 – First come, first served

There was a consensus across stakeholders that Option 2 was unworkable under conditions where demand for quota exceeds supply. This includes EU HQB and EU sheepmeat. Stakeholders for the meat industry indicated this is preferable for the remaining JAEPA TRQs, noting that this currently applies under the status quo and is an available system under Option 3. ADPF and Dairy Australia indicated support for a FCFS option for 17 of the 19 dairy TRQs, but also acknowledged that this system was available under Option 3.

Option 3 – Tiered management system

Mechanism 1 – Low quota utilisation market allocation process (FCFS)

There was general agreement that a FCFS mechanism is an appropriate option for many TRQs, best applied to TRQs that will not be fully utilised. The department recommended this apply to six of the eight JAEPA TRQs and 17 of the 19 dairy TRQs.

Mechanism 2 – Medium quota utilisation market allocation process (FCFS with trigger point)

It was viewed by exporters that definitions of thresholds (for example setting the US beef trigger as 85 per cent by nine months) should be specific to each TRQ and that the department should work with each sector to this end. As US beef is the only existing TRQ using this mechanism, this would be a consideration for any future TRQs.

AMIC expressed the view that following a trigger, entitlements should not be allocated to new entrants; if new entrants had shipped in the two previous years they would already have performance so would receive an allocation. Additionally, new entrants were already able to access quota during the year as 85 per cent had been available as first come, first served. Participants, including the department, viewed this as a valid assessment, and the approach was applied for Option 4.

Meat exporters raised concerns with the proposal to require exporters to specify volumes when applying for a post-trigger entitlement. They viewed it as extremely likely that the combined request amount would exceed the available quota amount, making the request redundant (as allocations would revert to proportional distribution). Additionally, as this would mean exporters would be unlikely to receive their request amount, the rationale for not allowing transfers no longer applies. The department acknowledged this line of argument, and included this alternative proposal in Option 4.

Mechanism 3 – High quota utilisation market allocation process

Meat and dairy stakeholders highlighted the need for case-by-case discussions on the allocation process between the department and each sector due to sectors and markets operating differently. During the first round of consultation, dairy industry representatives reserved their position on any change from current allocations pending further industry discussions and consultation (this is provided for in the summary of the second round of consultation, being Option 4, below). Nonetheless a dairy exporter pointed out that the dairy industry situation surrounding manufacturers versus non-manufacturers had significantly changed in the last 15 years. They explained that non-manufacturer exporters played a valuable role in the export supply chain, and that it was no longer justified to exclude non-manufacturers from receiving allocations. Several other dairy industry participants agreed with this.

Stakeholders preferred that almost all timeframes, including the shipping histories used for allocation calculations, were TRQ-specific. This has been taken into consideration and is encompassed in the problem definition.

Meat exporters advised that an allocation system compared to a FCFS system for Japan EBO would not be more beneficial. They explained that being a commodity market, the more flexible access granted from a FCFS system was better than an allocation. The department took this into consideration in developing the revised option.

A constant theme of the consultation was the importance of treating TRQs separately. Dairy stakeholders agreed that market diversification was not a relevant consideration for the dairy sector regarding TRQs. As such there are no benefits for the dairy industry to retain global shipment volumes in their allocation calculations. This is distinct from the sheepmeat industry, discussed below.

Exporters using EU sheepmeat quota expressed a range of concerns regarding the changed allocation mechanism.

The 80:20 allocation mechanism, in conjunction with performance accounts, allows EU-accredited establishments to receive quota entitlements, even when they have not been the exporter. The department had viewed this as an inefficiency, however industry stakeholders explained that this should be viewed as reward for investment in EU accreditation. The proposed mechanism under Option 3 would not allow this to occur, and as a result would remove a significant incentive. The flow on would be fewer establishments willing to gain EU accreditation which would be to the detriment of market access for exporters. The industry position included support from attending non-packer exporters who are most impacted by the current arrangements. That they are supportive of these arrangements, despite it reducing their potential quota entitlement, was considered important by the department.

Similarly, sheepmeat exporters expressed concern with the combined impact of restricting transfers and removing performance accounts. They explained that transfers were more often linked to repaying commercial lending agreements between parties and that lending and transfers were integral for this sector of the industry to maximise their returns:

- A sheepmeat exporter may hold quota but have the opportunity to gain greater value exporting their product to another market. The exporter can provide another exporter with the quota on the basis of returning it the next year (effectively lending). The result is two exported shipments, maximising value for Australian exports, and the exporter knowing they have maintained their quota access.
- If the sheepmeat exporter had not been able to lend the quota to another, the most likely outcome would have been them sending their product under quota instead, due to the importance of maintaining their quota access. The result is a reduced return for the exporter, and the other exporter being unable to send their shipment.

Additionally, it was explained that being able to transfer on a lends-basis protected businesses from unforeseen circumstance, for example a temporary plant shut down. Removing this protection was a concern.

Both of the above issues would impact on exporters' ability and incentive to diversify exports across markets, which stakeholders advised was an important aspect of the sheepmeat industry. Diversification helps to reduce the distortionary effect that the quota can have on the market.

While the Option 3 new entrant process would give new entrants of EU sheepmeat faster access, stakeholders expressed concern with the impact this process would have on exporters' ability to build a quota allocation. In its written submission AMIC provided a worked example to demonstrate this; Option 3's new entrant process could allow an allocation of only 60 tonnes to have been built after five years, whereas the current system could result in over 400 tonnes.

The department acknowledged that this information shows the current EU sheepmeat system is delivering a range of benefits to the industry that outweigh the identified issues. As changing the system would introduce a level of uncertainty for business, it may not justify the change proposed in Option 3. More modest changes were discussed with the sheepmeat sector to improve the existing system and have been included in Option 4.

Views regarding the application of penalties differed. A beef exporter believed that current penalty provisions do not go far enough to deter withholding of unwanted quota, to the detriment of other exporters. They suggested a higher penalty ratio, as used in New Zealand for quotas, could improve outcomes. Other meat exporters disagreed, suggesting that in most cases unused quota indicated a lack of value for the entitlement at the time, due to the absence of a sufficient price premium in the controlled market to offset export costs. They viewed penalty provisions as inefficient as they can actually encourage exports into the market despite a price premium not existing, simply to avoid penalties.

The department was able to provide examples where penalty provisions had not applied and exporters had held a quota allocation and did not use it, despite demand existing from others. This did not support the broader industry position regarding demand, therefore the department's view remains that penalties should be used to discourage exporters withholding quota. However, the department does not see value in increasing the penalty ratio as this could begin to have a more negative impact on exporters than is justified.

Some concerns were raised regarding the new entrant provision. There was concern that under the FCFS proposal, once the access amount is reduced there may be too great a risk in preparing consignments, and therefore the access amount would not be reached. An alternative approach was proposed, whereby a form of pre-RFP reservation could be used to remove this risk. The department explained that a reservation scheme had already been extensively investigated as part of the current IT system upgrade and that it was unworkable. The department acknowledged the risk raised, but explained that it was a necessary balance to improve access. Additionally, the reallocation process helps resolve the problem.

Regarding EU HQB, meat exporters raised that the 36 tonne cap per exporter was not a viable amount and that this was the greatest contributor to underutilisation by new entrants. On this basis the department decided to increase the new entrant cap to ensure viability. Some meat industry stakeholders were concerned that this would lead to speculation and larger companies trying to take advantage of this. The department does not view this as likely due to FCFS only be available once a completed RFP has been received, and the fact that the system already has a process in place to prevent related entities accessing quota as a new entrant.

Another alternative was proposed for the new entrant process. A meat exporter suggested that a previous system whereby new entrants supply market plans for the department to assess and determine who should receive quota should be used. The department advised that this has significant issues regarding timing, the level of discretion having to be applied, a lack of expertise to complete such assessments, and the increase in regulatory burden.

Overall stakeholders recognised the need for a new entrant allocation but there was little enthusiasm for it and a desire to limit its impact. As there is a level of vested interest involved, the department has taken a measured view of feedback. Consultation demonstrated that regardless of the new entrant process adopted there would be disadvantages involved. Adjustments were made to the new entrant allocation process in Option 4 to reduce opportunities for misuse.

When the department raised that the current EU HQB model lacked a true FCFS process, stakeholders advised that it had been their expectation that the system should have included the process originally. Stakeholders supported including the process, as well as the proposal to amend legislative language to make these processes clearer.

Regarding the Japan honey TRQ, there was discussion on the potential merits of allocating the quota. While having an allocation was desirable, there were concerns with limitations in the size of the allocations exporters could expect, given the small volume of the total quota.

Option 4 – Industry-tailored tiered management system

Following the development and provision of papers explaining Option 4, stakeholders provided the department with feedback on the additional option.

First come first served

The dairy industry were supportive of changing 17 of the 19 dairy TRQs to a FCFS mechanism and the meat industry were supportive of the proposal to maintain Japan EBO operating under the Quarterly FCFS arrangements. This is a consensus from all parties.

First come first served, with high fill trigger

The meat industry were supportive of the proposal to allow transfers at any stage should allocations be made, and that no penalties would apply. No concerns were raised by stakeholders.

The dairy industry submission had stated that, should any dairy TRQs operate under this mechanism in future, they proposed an adjustment to the trigger point to eight months. The department clarified this position, highlighting that this would actually reduce certainty given it would make it less likely that allocations were triggered, even when usage may be high. On this basis industry agreed to remain with nine months should any dairy TRQs use this mechanism.

Rationalised allocation system

Regarding eligibility rules for dairy TRQs, there were differing positions regarding the access to quota that non-manufacturers should have. Earlier consultation showed support for non-manufacturer access, whereas the dairy industry submission proposed a cap on access[8]. Clarification on this position[9] detailed that this was a compromise; objection centred from manufacturers who face reduced quota access which led to the proposed access cap.

The department does not consider this sufficient justification to limit access to some quota users. Feedback during the consultation sessions established that changes in the industry meant that non-manufacturers play an integral role in dairy exports and as such should be provided with the same access to allocations. Furthermore, providing an equal opportunity to access will allow quota entitlements to reflect performance. Therefore, despite some differing views, the department proposed that the rule should remain as open to any eligible exporters.

Dairy stakeholders agreed with ceasing to use global shipments in allocation calculations. Feedback detailed the market specialisation of smaller dairy manufacturers and trading houses as needing to be recognised and rewarded, given their contribution to maximising the returns to the dairy supply chain in Australia[10]. The dairy industry also agreed in principle to change from using financial years to shipping years in calculations[11].

The AMIC submission on behalf of meat exporters expressed concern with the proposed new entrant process, believing the FCFS approach would encourage speculation. They put forward alternative approaches believed to address their concerns[12]. Regarding EU HQB, the submission proposed one system of allocation (similar to the existing system with further controls) allowing for a total of 100 tonnes over three years (averaging 33 tonnes per year).

The department's view is that this fails to address other problems already raised. It was already established that 36 tonnes per year is an unviable new entrant amount. To ensure a fair system, new entrant access must be viable, otherwise it has the same effect as no access at all. To consider the meat industry's proposed system the access amount would have to be increased significantly. However, it is extremely likely that increasing the access amount and maintaining an allocation process would increase speculation. It is likely that most, if not all, of the set aside amount would become allocated but be unlikely to be used (as currently occurs). This would not produce the outcome industry intended and does not address the risks raised by the department.

The AMIC submission alternatively stated support for the FCFS approach if allocations remained at 12 tonnes. As stated above, this amount is unviable and therefore cannot be accepted. The submission also suggested that the FCFS approach would encourage speculation. The department does not agree that this would be the case as exporters would have to have a consignment prepared and a request for permit submitted and approved before they can receive FCFS quota. This meets the intent of catering for genuine new entrants and reducing speculation. Therefore, despite a lack of consensus, the process set out in Option 4 remains the recommended approach.

Regarding reclaim timeframes, the dairy industry supported six months, citing that eight months could hamper quota use being maximised[13]. The department clarified this position[14], advising that

[8] ADPF submission, pages 1, 3.
[9] DAWR-DA email correspondence.
[10] ADPF submission, pages 3.
[11] Ibid.
[12] AMIC 2nd submission, pages 2-3.
[13] ADPF submission, page 4.
[14] DAWR-DA email correspondence.

six months would be less favourable regarding exporter's certainty. It would make it more likely to lead to speculation in the latter part of the quota year as they would have to estimate the remaining six months rather than just four months. The department also noted that the earlier reclaim had been in place to cater for non-manufacturers who could not request allocations and needed time to plan and complete shipments. This no longer applies. On this basis the dairy industry were amenable to apply the reclaim at eight months.

Additionally, this timeframe is more appropriate given the application of penalties (see below). It is more reasonable to expect exporters to be able to estimate their needs over four months rather than six months.

Meat and dairy industries agreed to remove the transfer limit of 33 per cent in two consecutive years. The AMIC submission also supported removing the 50 per cent limit for EU HQB[15]. The department does not support this; the rule contributes to the policy intent of deterring applications for quota an exporter is not in a position to use. The dairy industry submission supports the 50 per cent limit for dairy TRQs in order to limit the ability to arbitrage[16].

Stakeholders also supported simplifying the rules surrounding reclaim by removing the rule that cancelled a quota allocation where an exporter had 'used less than 1 tonne when allocated more than 1 tonne'. There was agreement that this reduced complexity without compromising the policy intent, which is covered by the existing 25 per cent usage rule.

Regarding penalties, the dairy industry had requested that penalties not be applied, citing a risk that this would deter applications for quota[17]. However, the department believes this would actually present a greater risk regarding 'hoarding' that is seen in the current dairy allocation system; if there are no penalties (as in dairy FCFS process currently) then there is no incentive for exporters to request quota volumes they realistically expect to use. This is to the detriment of other quota users. For this reason the department has chosen to retain penalty provisions.

EU sheepmeat allocation system

Overall, EU sheepmeat exporters supported maintaining the reclaim process at two months from the end of the quota year, as it provides more time for them to confirm their shipments leading into the busy Christmas period. They also supported the change to allow exporters to request additional quota at this stage, rather than only return or retain quota, arguing it will give them greater certainty than only being able to access unallocated quota through FCFS arrangements.

There was full support for removing the need to provide consignment information. Exporter feedback advised that the information cannot be provided with accuracy as it is a busy sales period where commercial arrangements, and therefore consignment details, can change regularly. Noting this, and that the process can also be misused by exporters intentionally providing details that allow them to avoid any reclaim, the department agreed that a change is required as it is currently a regulatory burden that is not delivering the policy intent.

The department proposed that penalties be applied instead of requiring the provision of consignment information. This is to ensure that the policy intent is met, being that exporters should not be holding on to quota when they are not able to use it. Stakeholders did not support applying penalties, with the meat industry submission citing the 'use it or lose it' (being the reclaim) as penalty enough.

The department does not agree with this rationale, as the reclaim does not deter retaining quota (even when consignment information is provided, as explained above). Furthermore, where an

[15] Ibid.
[16] ADPF submission, page 5.
[17] ADPF submission, page 5.

exporter requests additional quota they are likely to have already shipped their entire original allocation; if they do not use the additional quota they do not suffer any reduction in allocation the next year, but it is likely they have prevented another exporter from accessing and using that quota. The other exporter has been denied the opportunity to build their performance and add value to Australian exports. Despite not having consensus, the department believes it is therefore necessary to include penalties to deter exporters retaining or requesting additional quota they do not need. The inclusion of the rule to not penalise where 90 per cent of an allocation is used by the end of the shipping year provides a buffer to exporters to minimise the chance of unduly penalising.

The sheepmeat industry supported maintaining unrestricted transfers for the first 10 months of the quota year, however they also believed this should be extended to the final two months post-reclaim. Despite a lack of consensus, the department could not agree to this as doing so would undermine the reclaim and reallocation processes in place to help optimise the distribution of remaining quota; if transfers were allowed then the incentive for an exporter to only request the quota they need would be gone.

Regulatory burden estimate

Stakeholders did not express concerns over the regulatory burden estimate provided in the consultation process but noted it was of limited usefulness in comparing the relative benefits and costs of the three original options. Subsequent to the workshops, a representative from AMIC provided some additional material to the department regarding exporter staff time inputs used for the regulatory burden estimate. This material has been incorporated into Appendix B.

5. Impacts

The following table summarises the strengths and weaknesses of each option to provide a useful comparison of their merits. These merits are then discussed in detail following the table, including how they perform against the quota principles (see Table 4. for the quota principles). Overall this demonstrates that Option 4 provides the greatest benefits for each industry involved.

Table 6. Comparison of strength and weaknesses of each option.

Provision	Strengths	Weaknesses
Mechanisms	Option 1 – appropriate mechanisms applied to EU HQB, EU sheepmeat, US beef, JAEPA TRQs, and 2 of the dairy TRQs. Option 2 – appropriate mechanism for most JAEPA and dairy TRQs. Option 3 – appropriate mechanisms applied to EU HQB, US beef, dairy TRQs and most JAEPA TRQs. Option 4 – appropriate mechanisms applied to all current TRQs.	Option 1 – unfavourable mechanisms applied to most dairy TRQs. Option 2 – unfavourable mechanisms applied to highly utilised TRQs. Option 3 – less favourable mechanisms applied for EU sheepmeat, Japan EBO and Japan honey.
New Entrant	Options 1 & 4 – EU Sheepmeat allows exporters to build effective entitlements over time. Option 2 – open access for new entrants across all TRQs. Options 3 & 4 – Viable EU HQB access for new entrants.	Option 1 – EU HQB continues to be unviable for new entrants. Option 3 – reduces exporters' ability to build larger EU sheepmeat entitlements.
Eligibility	Option 2 – Open access to all exporters. Options 3 & 4 – No limitation on dairy non-manufacturers.	Option 1 – dairy non-manufacturers continue to be unable to receive allocations.
Allocation Parameters	Options 1, 3 & 4 – EU HQB allocations are likely to reflect exporters' quota needs. Options 3 & 4 – allocated dairy TRQs will better reflect exporters' quota needs. Options 1 & 4 – EU sheepmeat will cater for industry-specific needs.	Option 1 – allocated dairy TRQs are unlikely to reflect quota needs, and new and small exporters will find access difficult. Option 2 – no allocations means highly utilised TRQs are likely to run out quickly and cause market distortion. Option 3 – will impact commercial arrangements for EU sheepmeat exporters by limiting flexibility and reducing investment incentives.
Transfers	Option 1 & 4 – EU sheepmeat transfers provide flexibility to exporters that complements the allocation system. Option 4 – unrestricted US beef transfers allows for quota distribution to reach an optimal state.	Option 3 – limits EU sheepmeat exporter flexibility. Option 1 – US beef transfer window will continue to distort price. Option 3 – removing US beef transfers will not allow for distribution to reach an optimal state.

Penalties	Options 1, 3 & 4 – EU HQB provides exporters leeway by allowing a certain level of unused quota. Option 4 – replacing consignment information with penalties for EU sheepmeat and dairy, which reduces regulatory burden and provides more flexibility for exporters.	Option 1 – delay in applying dairy penalties lacks visibility for exporters.
FCFS arrangements	Options 3 & 4 – apply a consistent definition of FCFS. They also introduce FCFS for EU HQB to cater for when demand is reduced.	Option 1 – maintains multiple definitions of FCFS. – Lacks FCFS arrangement for EU HQB limiting exporter access.
Reallocations	Options 3 & 4 – equitable reallocation processes for EU HQB, dairy and EU sheepmeat TRQs.	Option 1 – EU Sheepmeat and dairy exporters required to provide consignment information. – Dairy system does not include a proportional reallocation process and is too early in the quota year. – EU Sheepmeat does not include a reallocation process (only retain).

Option 1

Option 1 would continue to deliver the best outcomes for the eight JAEPA TRQs. Six of the TRQs have low utilisation rates so the FCFS system provides exporters access on request. This is ideal for quota value and use being optimised (principle 1) as there is no market distortion.

Despite its high utilisation, the Japan honey TRQ would also remain in this system. Normally an allocation mechanism would be applied to give exporters surety, however due to the small size of the quota (equating to roughly only 5-6 consignments) an allocation mechanism risks allocating exporters unviable amounts. Therefore the better outcome is FCFS, despite the likelihood of the quota being used extremely quickly.

The Japan EBO TRQ would maintain the Quarterly FCFS system which has been determined as the best approach for the TRQ. While the quota can often be fully utilised some weeks before the end of a quarter, an exporter can still be confident of accessing quota in each quarter. This reduces the distortionary effect of a highly sought-after TRQ and provides year-round access. Overall exporters are also able to respond to the market signals, rather than also having to consider future quota allocations. Distributing usage across the year also means no production region in Australia (that is, north versus south) holds an advantage in access over the other. This contributes to principles 2, 4 and 5.

US beef TRQ would also function well unchanged. With a low likelihood of reaching the allocation trigger again, exporters would enjoy the same benefits as those in a FCFS system. However, should allocations be triggered, they would still be impacted by the 10 day transfer window. Exporters would still be forced to over-estimate needs for safety, and due to this artificially high demand, would be forced to pay excessive costs for quota. This has a negative impact on returns.

For the remainder of TRQs the problems with current quota administration as defined in Section 1 will continue to occur.

The majority of dairy TRQs would continue to be allocated, despite low utilisation. This is inefficient and a barrier to trade for many exporters (principle 4). There will continue to be barrier to trade for non-manufacturers, who will also not be rewarded for their market development. The use of global shipments in calculations will continue to impact on allocations, not rewarding development of the quota market (principle 6), and being unlikely to distribute the quota against likely usage. This is particularly disadvantageous for smaller and specialised dairy manufacturers and trading houses. This all contributes to the optimal use and value of each TRQ not being realised (principle 1).

New exporters would continue to have difficulty in establishing access to EU HQB, due to the new entrant volume not being commercially viable, representing a barrier to trade (principle 4). The lack of FCFS access means that when demand is lower, underuse is compounded by being inaccessible to other exporters. This is also a barrier to trade, and prevents optimal quota use (principle 1).

EU Sheepmeat will be relatively effective for industry needs by rewarding diversification, rewarding investments towards improved access, and providing flexibility to seek out more commercially favourable deals (principle 5).

Some sheepmeat exporters (primarily non-packer exporters) may not maintain their quota entitlement year-on-year, requiring them to source additional quota via transfers. However, industry participants, including non-packers, are comfortable with this arrangement. They saw value in EU accredited establishments gaining quota via global exports as a reward for their investment (being the costs involved with gaining and maintaining EU accreditation). It incentivises establishments to be EU accredited, which enables other exporters to access a greater range of markets. In other words, the cost to some exporters in reduced quota allocations is outweighed by the benefit of improved access the industry as a whole enjoys through having EU accredited establishments in Australia.

Unrestricted transfers in the first part of the quota year provide flexibility and allow for suboptimal distribution to be resolved (principle 2). Overall, they are a complement to the allocation process. There may be some exporters who take advantage of the system—recent years show some exporters receiving quota allocations consistently transfer their entire allocation, equating to 2 to 3 per cent of the quota—however considering the scale of this is small, it does not offset the benefits the vast majority of the industry are gaining. In the last three years every sheepmeat exporter has utilised transfers without exception. This contributes to the accessibility of quota, including for new participants.

However, providing consignment information will continue to be an issue, and uncertainty will remain for exporters wishing to access unallocated quota in the latter stages of the quota year, due to it only being available through FCFS arrangements.

The use of commodity-specific legislation (and rules) will mean that new markets will require new legislation to be drafted. This is a time-consuming process which can potentially cause delays for implementation, as was experienced with the introduction of the JAEPA TRQs administered by the department. Additionally this process may result in a new set of rules being developed which may also need to be incorporated into an IT system. This would add to time and costs.

The lack of flexibility in the allocation systems also means there will continue to be no capacity to respond to changes in existing TRQs.

Option 2

Option 2 does not take into account the different commercial and market pressures at play with different levels of quota usage (principle 5). In highly utilised TRQs this option could create significant market uncertainty and erode the value of quota rents[18] (principle 1). There would be incentive to export as much as possible quickly, potentially using up all quota early in the year. The

[18] D. N. Harris & Associates (2013, p. 14)

likelihood of this is increased by the fact that businesses that did not previously have allocations can access the quota. This increases the likelihood of market access becoming opportunistic and exports becoming ad hoc. Depending on the commodity and market there may not be incentive to export outside of the TRQ. This has flow-on effects for the supply chain; a TRQ being fully utilised early in the quota year will reduce demand for the quota products for the remainder of the year, which impacts on production. Disruption to normal trading activities could also limit the opportunity for long term market development[19], in line with principle 6.

Additionally, for highly utilised TRQs, exporters will have no certainty as to the volume of a commodity they can expect to export under quota, nor the period it will be available. This can make business planning difficult as it forces businesses to be more reactive, which is generally not commercially favourable (principle 5).

In the case of EU HQB and EU Sheepmeat this is particularly unfavourable. There are additional requirements and regulations that must be met for a product to be HQB-eligible, such as the animal coming from a European Union Cattle Accreditation Scheme (EUCAS) accredited feedlot and carcass evaluation being conducted. Similarly, EU Sheepmeat eligibility relies on establishments being EU-accredited. Outlay costs involved with these extra requirements become a risk because access, and therefore returns, are uncertain. Such instability is likely to be compounded in new markets where trading relationships are not yet established. This option fails to meet the objective of minimising market distortion and, rather than reward market development (principle 6), it may create a disincentive to do so.

Option 2 would represent the same outcomes as Option 1 for seven of the eight JAEPA TRQs, being the same process. US beef TRQ would also be unaffected where the allocation trigger is not reached. However if quota utilisation increased then the risks as described above for highly utilised TRQs would apply.

While Japan EBO can currently run out each quarter, the period without access is relatively short so the impact on the market is minimal. If it instead operated as a yearly FCFS quota it would be extremely likely to be fully utilised months from the end of the quota year. It would therefore suffer from the same problems as other highly utilised TRQs.

The majority of dairy TRQs would operate effectively as they have low utilisation rates. There would be significant benefits regarding access (principle 4); non-manufacturers would no longer be impeded, and access would be improved more broadly as no exporters would be able to 'hoard' quota they are not going to use. This would allow exporters to purely respond to the market, which in turn delivers optimal quota value and use. However, highly utilised dairy TRQs of US FTA butter and cheddar cheese would be negatively impacted as per other highly utilised TRQs.

The effectiveness of this system for any new TRQs will be contingent on their level of utilisation.

Option 3

Option 3's tiered management system was intended to simplify processes while also delivering a flexible system that could cater for existing and future TRQs. While it addresses many aspects of the defined problem, it does not cater for industry specific needs as well as required, resulting in some elements of the problem not being resolved.

Using a FCFS mechanism for low utilisation TRQs means exporters would be free to respond to market demands (principle 2). Where it was clear that TRQ will not be filled the greatest benefits come from an open market. Market signals will steer commercial decisions and as there are no in-

[19] D. N. Harris & Associates (2013, p. 14)

built incentives for companies to export just to retain or increase quota allocation, there would not be distortionary behaviour[20]. This would continue to apply for all JAEPA TRQs (except Japan EBO and honey) and also be applied to 17 of the 19 dairy TRQs (except US FTA butter and cheddar cheese). For the dairy TRQs, and in line with principle 4, this would resolve the access issues for non-manufacturers and prevent any 'hoarding' of quota that an exporter is not in a position to use. It would also reduce regulation by not having to conduct any allocation processes.

As Japan EBO and honey are highly utilised TRQs, this option would necessitate shifting them to the allocation mechanism. This was intended to provide greater business certainty; an exporter would know the volume of quota they would be entitled to, giving them the opportunity to plan and maximise their returns, rather than have to rush exports. However, as set out in the impacts for Option 1, this may not be effective for honey. Due to the small size of the TRQ (equating to roughly only 5-6 consignments) allocating risks exporters receiving unviable amounts. This in turn risks sub-optimal utilisation of the quota (principle 1), even though there is high demand. Despite the likelihood of the quota being used extremely quickly under the FCFS model, the outcome is more likely to deliver better results.

Similarly, this would not guarantee better outcomes for the Japan EBO TRQ. During consultation exporters explained that due to the type of product (a commodity that did not rely on market development like other products), the best conditions were those where they could be responsive to the market. They expressed concern that an allocation system would be limiting for access, which would impact on the market.

Option 3 made adjustments to the FCFS with high fill trigger mechanism with the intent to better align allocation processes between models. The intent of the post-trigger allocation was to give exporters certainty by applying for the quota they need for the remainder of the year, and preventing trading was intended to deter speculative behaviour[21].

However, as detailed during consultation, this does not properly recognise the difference in TRQs, and that this is unlikely to work as well as it does in fully allocated TRQs. Exporters may have to estimate their request amount weeks prior to the trigger occurring, meaning it is not likely to be accurate. If they underestimate they may not cover their commercial needs, while if they overestimate they risk penalties for not using quota. Additionally, if the TRQ is oversubscribed it will be allocated proportionately; this is highly unlikely to match exporter needs, but there will be no way to optimise the distribution without transfers. Regarding the principles, this means that there is additional regulatory intervention but a reduced likelihood of optimising commercial value and use.

US FTA butter and cheddar cheese TRQs would see a range of benefits under the allocation mechanism of Option 3. The expansion of eligibility conditions to include non-manufacturers would improve access (principle 4), maximising the number of potential exporters and therefore improving competition. Competition breeds innovation and efficiency, so should be encouraged. As detailed in consultation, the department did not agree with some stakeholders' position that non-manufacturer access should be capped. This does not align with wider industry feedback that the industry had changed over time and that non-manufacturers formed an important part of exports. It is a barrier to trade for parts of the industry, and should be removed.

Allocations only being based on shipping history to the TRQ market (that is, the removal of global shipments) is expected to have a marked impact on the two dairy TRQs. The dairy industry feedback made it clear that diversification was not a necessary consideration for the dairy TRQs so there were

[20] Taylor, Donal & Welsman (2005, p. 34)
[21] D. N. Harris & Associates (2011, p16)

not concerns with this change. Allocations will be reflective of previous quota use and therefore be more likely to be allocated to those who will use it. In conjunction with the expanded eligibility rules, this will reduce the likelihood of 'hoarding'. This enables rewarding market development (principle 6) which provides better opportunity for smaller and specialised manufacturers and traders.

The revised reallocation process will enhance the access and distribution to the dairy TRQs. By including penalty provisions there is a disincentive for exporters to request additional quota that they won't use (this is lacking under the status quo where dairy exporters can request allocations of unused quota without risking penalties). This does risk being a deterrent to reapplying for some exporters, but the potential reduction in quota used as a result of this is far smaller than the reduction caused by the anti-competitive behaviour explained above. The result is a greater likelihood of quota being available to those who can use it, which will help optimise the use of quota.

The most significant impact on EU HQB is the change to new entrant access. The increase in the new entrant cap ensures that the access is commercially viable for exporters, removing what has been a barrier to trade (Principle 4). Applying FCFS to the new entrant process also improves access as a new entrant does not have to apply for an allocation at a set point in time. The reallocation process for new entrants is introduced to provide the same certainty that standard quota holders are afforded. Despite disagreement from the meat industry, this process is still viewed as the best approach. Alternatives put forward by industry did not resolve the issue relating to viability and would be likely to result in an increase in speculation.

Option 3 uses penalty provisions and potential exclusion to mitigate the risk of speculation by new entrants. This is consistent with the allocation system, however, concerns were raised that this may not be effective given new entrants are not necessarily committed to the market yet, and the result could be quota going unutilised, despite demand.

The introduction of FCFS processes where TRQs are undersubscribed will resolve the issues surrounding access. Where all applicants have received their request amount, and therefore have been catered for, it should be recognised that a reduction in demand has occurred, and that the remaining quota should be accessible to other potential exporters. This can enhance the use of the quota and result in greater value being gained (per principle 1), rather than the quota remaining inaccessible and unused.

Several rules were removed for being excess to the system's needs as the policy intent could be achieved without them. This reduction in complexity contributes to a more accurate, transparent system, in line with principle 3.

The rationale for Option 3 to have a single allocation mechanism was to reduce the complexity of the system and enhance understanding. It was also thought that this mechanism could deliver better results in line with quota principles. However, as highlighted during consultation, this system would be less likely to complement the sheepmeat export market.

While the system may allocate more closely with quota usage, it takes away a valuable function of the 80:20 rule in encouraging diversification, which industry have expressed reduces market distortion that is inherent with the quota (principle 2). It also means that incentive for maintaining EU accreditation diminishes. This could result in fewer establishments being accredited, reducing export options and therefore flexibility. Limiting transfers also has this effect. This is negative as it is this flexibility which has contributed to exporters being able to make the best financial decision for their exports, and maximise returns. Sometimes this is not to the quota market, so less pressure on maintaining quota access 'in case' is more beneficial. Therefore in the instance of sheepmeat, the allocation mechanism in Option 3 does not give due consideration to commercial arrangements, per principle 5, and changing the system would risk introducing uncertainty for businesses. The flow on is that this option is not likely to be better at optimising the value and use of the quota for EU sheepmeat.

The new entrant provision in Option 3 would provide sheepmeat exporters faster access than the status quo, however as demonstrated in consultation the ability to build a quota entitlement would be diminished. Of the two possibilities, it is far more favourable for exporters to be able to build a larger entitlement (despite the initial delay). This reinforces that the use of global shipments for allocation calculations is more beneficial for the sheepmeat industry.

Finally, the inclusion of the process to review and (if necessary) change a TRQ’s allocation mechanism means the system will be responsive to changes in quota usage over time and will not continue to apply an allocation mechanism that is no longer the best option. This will help ensure the most appropriate mechanism is applied in each instance, so efficient outcomes can be achieved and unnecessary regulatory intervention will not be applied.

Option 4

Option 4 creates a balance between the streamlining of Option 3 and meeting quota-specific needs of Option 1 which is reflected in the impacts of this option.

FCFS will apply to 17 of the 19 dairy TRQs and six of the eight JAEPA TRQs, resulting in the same impacts as specified in Option 3, above. Option 4’s greater consideration of quota-specific needs recognises that not all highly utilised TRQs should be allocated. This is applied to Japan honey, which will operate under FCFS arrangements. Even though the quota is likely to be utilised quickly (resulting in reduced opportunity for considering the greatest value), this approach ensures that viable consignment loads can be made, so quota won’t be unused despite demand. This delivers better results regarding principle 1.

Including the FCFS mechanism operating quarterly offers another option to quota management, catering for the needs of different TRQs. There was consensus from consultation that this can be an effective approach for some TRQs with higher use. This allows Japan EBO to remain consistent with the status quo, which stakeholders explained was the preferred approach. The impacts of this are consistent with those set out in Option 1, above.

In recognition of consultation feedback on the FCFS with high fill trigger mechanism, Option 4 applies the same allocation rules as Option 1. This approach means exporters can be advised of potential allocations earlier, providing more time to plan. As proportional allocations are unlikely to reflect exporters’ exact needs, transfers are included to ensure there is a pathway for optimal quota distribution.

However, Option 4 introduces unrestricted transfers rather than applying the 10 day transfer window. Transfers introduce a small chance of opportunistic trading, but this is offset by the greater benefit of exporters being able to respond to the market and transfer quota if they are not well-placed to use it (or seek transfers if they are). This allows an exporter who is better placed to use the quota and so contributes to the principle of optimising the value and use of the quota. Unrestricted transfers removes an artificial pressure that the 10 day window had created. As a result exporters are more likely to be able to source transfers at a reasonable price.

In general terms, if this mechanism is applied to new TRQs with medium usage (or those that tend to fluctuate) there will regularly be years where the trigger is not reached. As a result the minimum level of regulation will be applied for the entire quota year, delivering the most cost-efficient outcome, per principles 2 and 3. The benefits of a FCFS system will also be realised. Where the trigger is reached and allocations occur there is an increase in regulatory costs due to allocations and potential transfers. However these costs are offset by the benefit of the certainty created in receiving an allocation, and reduces the distortionary effect the quota can have on the market when highly utilised.

The benefits of the rationalised allocation mechanism for US FTA butter and cheddar cheese under Option 4 are very similar to Option 3. The impacts of non-manufacturer access, the removal of the global exports parameter for allocation calculations, and improved reallocation and penalty provisions are all consistent, set out above in Option 3.

This mechanism offers similar benefits for EU HQB as Option 3, with slight amendments regarding new entrant access providing improvements regarding equity and optimising quota use. Option 4 provides the same benefits for new entrants by offering FCFS access for the first eight months, and certainty for the final four months by being able to receive an allocation. The impacts of this are consistent with Option 3.

However, Option 4 provides improved equity by limiting new entrant allocation amounts commensurate with their use throughout the year (and still with consideration to the access cap). This means that new entrants cannot receive an amount they are unlikely to use, which minimises speculation. In turn, quota will be redistributed to standard quota holders in a position to use it. This limitation allows for the removal of penalty and exclusion provisions on new entrants. The small risk of underutilised quota is offset by the benefit of reducing the complexity of the system, per principle 3.

The introduction of FCFS arrangements where quota is undersubscribed has the same impacts as described in Option 3. Similarly, the removal of rules excess to needs reduces complexity, contributing to a more accurate, transparent system. Option 4 includes a slight reduction in the minimum usage cap compared to the status quo and Option 3. The reduction to 90 per cent provides a slightly larger buffer for exporters to help cater for commercial realities.

Consultation feedback demonstrated that the existing EU sheepmeat quota system was more beneficial to the sheepmeat industry overall than that proposed in Option 3. However, as set out in the impacts of Option 1, there are still problems. Option 4 achieves the same benefits of Option 1 in being relatively effective for industry needs by rewarding diversification, rewarding investments contributing to improved access, and providing flexibility to seek out more commercially favourable deals. Option 4 differs by addressing issues that would continue under Option 1.

Industry feedback highlighted the importance placed on certainty regarding quota access. Introducing the ability to request additional quota (rather than just retaining quota already allocated) will help provide this certainty to sheepmeat exporters, rather than having to take risks regarding access through the FCFS pool. This creates conditions where quota is more likely to be utilised and value gained, per principle 1.

Both sheepmeat exporters and the department saw issues with providing consignment information in order to retain quota. Option 4 replaces the need to provide consignment information with the application of penalty provisions. The impact of this is that the policy intent (to encourage exporters to only retain or request quota they are able to use) is maintained, while reducing the regulatory burden and providing exporters greater flexibility. The sheepmeat industry do not support the introduction of penalties, believing their impact can be too significant on businesses. However, if neither consignment information nor penalties were included the purpose of the 'retain and reallocation' process—to encourage highly sought-after quota to be available to those who can use it—would be compromised. Additionally, including the rule that exporters are not penalised if they use over 90 per cent of their allocation mitigates the risk of penalising unnecessarily.

Regulatory Burden Measure

The regulatory burden measurement show that there is very little difference in regulatory cost between each option. As a result these impacts are of secondary importance. It is estimated that 95 per cent of total direct compliance costs for exporters arise from the activity of applying for export certificates under one or more of the 33 TRQs. The compliance costs arising from applying for the certificates do not vary across options. Differences between options are therefore limited to changes in entitlement management costs. These costs are estimated to represent only five (5) per cent of total costs under Option 1.

This RIS has considered each option and the benefits and costs to business, community organisations and individuals. The regulatory cost and savings have been calculated using the Commonwealth Regulatory Burden Measure (RBM). The RBM calculates the compliance costs of regulatory proposals on business, community organisations and individuals using an activity-based costing methodology.

Table B1. Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Option 1. Retain all current regulations, business as usual (status quo)	-$0	$0	$0	$0
Option 2. Remove Regulation – First Come, First Served (except the certification required by importing country governments)	-$0.027M	$0	$0	-$0.027M
Option 3. Tiered Management System	$0.009M	$0	$0	$0.009M
Option 4. Industry-tailored Tiered Management System	-$0.003M	$0	$0	-$0.003M
Are all new costs offset? ☐Yes, costs are offset ☐No, costs are not offset ☒Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) = $0				

Table B1 (extracted from Appendix B) summarises the change in Average Annual Regulatory Costs for each option for Business and in total. Option 1 (Status Quo) is the baseline cost on which the other options are compared and consequently is reflected as having zero change in annual regulatory cost. The total cost and the Business cost are identical as it is assumed there are no costs to community or individuals.

The main outcome is that Option 3 (Tiered Management System) has the highest burden, while Option 2 (Remove Regulation) has the lowest burden. Option 4 (Industry-tailored Tiered Management System) has a reduced regulatory burden compared to both Options 1 and 3. However, for the significant reasons already detailed above, Option 2 is not the preferred option as it would result in far more costs outside of the regulatory costs.

Full details regarding the regulatory burden measure are contained in Appendix B.

6. Recommendations

It is recommended that Option 4 be adopted as it best resolves the stated problems with the current system and delivers better results in line with the quota principles. Several TRQs have been streamlined, reducing the overall complexity of the system and improving consistency. Improvements have been made regarding equity such as removing restrictions and enhancing access for exporters. Reduced restrictions are expected to contribute to better quota utilisation for some dairy TRQs. It reduces the regulatory burden on exporters by not requiring consignment information and adjusting many low-use TRQs to FCFS systems. Importantly, Option 4 caters best for industry-specific needs determined through the consultation process.

Overall Option 4 is supported by stakeholders. While there were some elements of the option that did not receive full support, in these instances the department has provided justification for the ultimate position. In particular, this focused on the need to ensure that outcomes were aligned with quota principles as much as possible. This includes ensuring viable access is delivered for new entrants, and that the combination of rules contribute to (and do not undermine) the policy intent of quota management.

With respect to the regulatory burden, Option 4 reduces costs compared to both Option 1 and Option 3. Of the three options that involve entitlement management, Option 4 involves the lowest level of management across TRQs. This is because it has the highest proportion of TRQ volumes that are not subject to entitlement processes. This means there is a reduction in the regulatory burden across the various quota management activities.

Option 2 (first come, first served) has the lowest regulatory burden of all the options considered. This is because no entitlement management costs are incurred. However, Option 2 is not consistent with the quota management principles, in particular principle 1 (optimise the commercial value and use of the quota), principle 5 (consider commercial arrangements), and principle 6 (reward market development). For markets where demand for quota is high, this system would lead to a high level of uncertainty regarding quota access and therefore market access. Under these conditions the benefits from greater certainty in market access exceed the higher regulatory burden. Therefore despite having the lowest regulatory burden, Option 2 is not a more beneficial approach than Option 4.

The analysis of the RIS assumed that past behaviour was the best indicator of future behaviour. However, some rule changes may result in unforeseen changes in behaviour which would have impacts on the identified costs and benefits. Additionally, unless differing advice was received during consultation, the department assumes that the written responses provided on behalf of the meat and dairy industry bodies are representative of the position of the industry members. This is because each industry body conducted internal discussions with their members when developing their written responses.

7. Implementation and evaluation

Implementation

The proposed changes will require the creation of replacement regulations (in the form of an Order). It is intended that drafting will occur in 2018. Leading to and during this time, discussions will be held with stakeholders to clarify any outstanding details.

The implementation of the legislation will need to be aligned with the necessary updates to the information technology systems underpinning quota management. The transition for each TRQ will be timed to align with the start of respective quota years. The exception to this may be JAEPA TRQs. As these TRQs will continue to operate under FCFS arrangements, they could be transitioned at the most convenient time following passage of the legislation.

In consultation the department agreed that, where sought by the relevant sectors and where changes are significant, the changes to arrangements would not occur less than 12 months from stakeholders being informed of the decision. This was to ensure stakeholders are given sufficient time for necessary transitions. Given the timeframes required for necessary IT updates, it is unlikely that any change could occur in less than 12 months. Should it be possible, the department would liaise with stakeholders to determine if a shorter transition timeframe could be accommodated.

The department would use its existing communication channels and platforms to ensure transition timelines and practical implications are conveyed to exporters in a timely manner. As a minimum, this would include the following:

- A formal notice informing exporters of the final outcome of the present RIS process and the implementation timeline and major milestones.
- The administrative matters on which the department would seek further discussion with exporters in the lead up to the transition.
- Various administrative communications in the lead up to the transition as well as change over to the new IT system.
- Closely monitoring and responding to exporter feedback on the new arrangements, to ensure that any problems or difficulties are promptly identified and dealt with.

In addition, the recommended option will be a platform for potential future TRQs. If TRQs are established under new free trade agreements and are to be managed by Australia, then the mechanisms under Option 4 will form the basis of their management. This will streamline the implementation process for new TRQs, minimising the legislation changes required and minimising changes to IT systems. It also means a timelier implementation, ensuring there is no delay to quota access when an agreement comes into force.

Evaluation

The department will evaluate the effectiveness of the changes to quota management, including impacts on quota usage and whether there are any unintended consequences. An internal review of the effect of the changes to quota management will be conducted three years after the start of any transition to the new arrangements.

This review will determine the extent to which regulatory costs have reduced and whether the quota administration principles are being met. This would include comparing the results to those expected in the RIS. In this respect, the review would compare actual outcomes in regulatory burdens compared with the estimates in Appendix B. To ensure consistency and comparability, the same framework would be applied and the OBPR’s Regulatory Burden Measurement tool would be used.

In addition, the department will focus on the following elements which did not receive full support during consultation:

- The impact of opening allocation access to dairy non-manufacturers.
- The effectiveness of the revised new entrant process for the allocated system; in particular, how EU HQB has operated compared to the previous process.
- The impact of replacing consignment information with penalties for EU sheepmeat.
- Where possible the review will also consider the effectiveness of the revised system in introducing new TRQs from new bilateral or multilateral agreements.

It is expected that a reduction in the regulatory burden under any of the change options would reduce department administrative costs. For example, under Option 4, there is a significant reduction in the administration of entitlement management activities by the department. Any reduction in departmental administrative costs would be fed into the next review of fees and charges conducted by the department.

Appendix A - Consultation process

In line with the Australian Government Guide to Regulation on consultation, the department undertook a targeted consultation process. This was in recognition that there is a well-defined business sector directly affected by the proposed regulatory changes. At the time of consultation there were approximately 106 exporters in Australia utilising export TRQs.

The following groups were considered the key stakeholders and were consulted with during the process:

- Australian Dairy Products Federation (Melbourne)
- Dairy Australia (Melbourne)
- Australian Meat Industry Council (Sydney)
- Australian Honey Bee Industry Council (Brisbane)
- Australian Pork Limited (Canberra)
- Australian Chicken Meat Federation (Sydney)
- Australian Beverages Council (Sydney)
- Red meat quota holders and exporters identified in our system
- Dairy quota holders and exporters identified in our system
- Japan quota exporters identified in our system

In addition, the department consulted with the Department of Foreign Affairs and Trade (DFAT) to ensure they were informed of proposed changes, and so that any unforeseen international treaty or trade agreement implications could be raised.

The formal consultation process was initiated by the publication of the *Regulation Impact Statement; export tariff rate quota regulatory streamlining*, on 31 March 2017. The document was made available on the department's website, as well as being provided directly to all relevant stakeholders identified by the department in accordance with the RIS consultation plan.

On 6 and 7 April the department held meetings or teleconferences with industry body representatives to provide clarification on any matters ahead of the face-to-face consultation sessions. These were attended by Australian Meat Industry Council (AMIC), Dairy Australia, the Australian Dairy Products Federation (ADPF), the Australian Chicken Meat Federation, the Australian Beverages Council and the Australian Honey Bee Industry Council.

First round of consultation

Three consultation workshops were held in Brisbane (4 May), Sydney (9 May) and Melbourne (11 May).

Sectors represented at the workshops included:

- Meat industry (exporters and industry representatives)
- Dairy industry (manufacturers, exporters and industry representatives)
- Honey industry (exporter)

The following table lists the attendees.

Brisbane	Sydney	Melbourne
• Stephen Martyn - AMIC • John Langbridge - Teys Australia	• Stephen Martyn - AMIC • Patrick Hutchinson - AMIC	• Robert Pettit - Dairy Australia • Peter Stahle – Australian Dairy Products Federation

• Ian Ball - John Dee Warwick • Evelyn Telford - Capilano Honey	• David Larkin - Thomas Foods International • Keiran McLean - Fletcher International Exports • Debbie Fotiadis - Dunnett & Johnston	• Peter Hurst - Australian Meat Group • Michael White – Warrnambool Cheese and Butter/Saputo • Gibbs Woreta – Warrnambool Cheese and Butter/Saputo • Phil Green – JBS Australia • Matt Luttick - Luttick Australia • Bill Luttick - Luttick Australia • Matt Cooper - Ausfine Foods (dairy/meat) • James Taylor - Warmoll Foods (via teleconference)
• Ian Cattle - DAWR • Damien Gibbons - DAWR • Matthew Arthur - DAWR • Simon Orme - Sapere • Howard Zhang - Sapere	• Ian Cattle - DAWR • Damien Gibbons - DAWR • Simon Orme - Sapere • James Swansson - Sapere	• Ian Cattle - DAWR • Damien Gibbons - DAWR • Matthew Arthur - DAWR • Simon Orme - Sapere • James Swansson - Sapere

The agenda consisted of the following:

- Overview of the RIS and proposed streamlining options.
- Discussion – using the questions in the RIS (see below).
- Final questions and wrap up.

Consultation was to conclude on 30 May 2017 but was initially extended at the request of stakeholders until 30 June 2017. A further extension was granted following requests from the industry body representatives with the consultation period formally concluding on 16 August 2017.

Following the workshops, a written submission on the RIS was received from AMIC on 22 May 2017.

Second round of consultation

In response to stakeholder feedback at the workshops and AMIC's written submission in May 2017, the department developed a fourth option in May. This was provided in the form of a set of quota-specific papers presented to relevant stakeholders (see Appendix E). A dairy quota paper was provided to dairy industry stakeholders via email on 22 May 2017. Three meat quota papers were provided to meat industry stakeholders via email on 2 June 2017. The department requested stakeholders review and comment on the proposals. As the fourth option did not propose changes to the other TRQs, no papers were developed regarding these.

The respective industry bodies held discussions with their stakeholders and coordinated responses on their behalf. The following responses were received:

- AMIC (second submission) on behalf of meat stakeholders on 7 August 2017,
- ADPF on behalf of dairy stakeholders on 11 August 2017.

In addition, JBS Australia provided a separate response in the form of marked up comments on AMIC's second submission on 7 August. JBS Australia is not a member of AMIC.

On 16 August, the department sought and received clarification on aspects of the ADPF submission. The consultation period closed following the receipt of this final information.

Consultation topics

The topics provided for discussion during the consultation phase are set out below. This is separated into high level considerations of the proposed systems and more targeted, system-specific questions.

Option 1

Parameter	Question
General	• What are the primary issues for exporters within the current systems? • What are the favoured elements of the current systems and why?

Option 2

Parameter	Question
General	• Is deregulation a favoured option?
	• What are the favoured elements within a FCFS system and why?

Option 3

Parameter	Question
Eligibility	• Are there concerns with expanding the eligibility of accessing dairy quota from manufacturers to anyone who wishes to export?
Tiered Allocation system	• Are there concerns with this approach being able to effectively administer quotas?
Review Mechanism	• Is there support for the inclusion of a review mechanism? Are there concerns with how it would function? Is there support for including discussion with Industry and where possible, consideration of forecasts for future use, prior to any decision? • Are the proposed values to trigger the review appropriate? (low = <80%, medium = 80-90% and high = >90%)

First come, first served

Parameter	Question
Transition	• Would there be concerns with any low-use quotas currently under an allocation process changing to a fully FCFS system? If so, why?

First come, first served with high fill trigger

Parameter	Question
Trigger	• What timeframe and percentage should be applied for the allocation trigger? (recommending 85 per cent prior to reaching 3 months from the end of the quota year)
Post trigger allocation	• Should applications be made, or should the department issue notional allocations to be accepted or declined by exporters? • What shipping history period is preferred in calculating allocation? • Should it include the current year? (this would have flow-on effects depending on preferred options above)
Transfers	• Should transfers be allowable? (Need to discuss the range of implications depending on preference).

Penalties	• What penalty provisions should apply? (Dependent on transfer discussions) • How should they be applied in future years?

Full allocation mechanism

Parameter	Question
New entrant	• Industry feedback on mandatory new entrant provision. • What percentage should be considered for the new entrant provision? • What should the maximum new entrant allocation be? • How many years should exporters be considered 'new entrants'? (Proposing 3 years)
Allocation	• Industry feedback on not including a global shipments provision (for those quotas that currently have one)? • What time period should be applied for the shipping history parameter and why? • What should the minimum allocation be?
Unused/unallocated quota	• What should the reclaim date be? (proposing 4 months) • Should there be forced returns when underutilised? (proposing < 25 per cent used)
Transfers	• Should transfers be allowed for standard issue quota? For reallocated quota? • If so, what controls should be included in each case? - Should there be a maximum transfer limit? - Should there be penalties?
Penalties	• Should there be penalties for: - new entrants who do not use allocation (post-reallocation)? - unused quota that is not returned by reclaim date? - unused quota by the end of the quota year? • What percentage of allocation should be considered 'fully utilised' and so not receive penalties? By what date? (enough time is needed to allow penalty calculations for the next quota year).

RBM estimate questions

Parameter	Question
Overall estimate	• Are the total regulatory burden estimates for entitlement management activities under each option broadly accurate for your business?
Time used	• Are the estimates of the duration of these activities too high or too low for your business (Table A6, Appendix A)? Please provide evidence to support your views.
Volume of activities	• Is there any foreseeable change in terms of the level of usage for each TRQ?
Labour cost	• Are the unit labour cost estimates too high or too low? • Is the mix of different types of labour appropriate?

Relinquish or retain entitlements	• In your experience, what is the likelihood your business will need to make a decision on whether to retain or relinquish a TRQ entitlement?
US Beef TRQ	• Do you agree with the assumption that the US beef TRQ entitlement allocation threshold would not be triggered (usage level > 85 per cent) in coming years? Note this is not relevant to Option 2.
EU Sheepmeat TRQ	• Under Option 3, is it reasonable to assume the level of transfer activity will decrease to a quarter of the current level? Please provide evidence or reasons.
Japan Honey and EBO TRQs	• What is your view on the estimate of the additional regulatory burden under Option 3 compared with Option 1 (or 2)?
Other entitlement management costs	• In order to be able to apply for and manage TRQ entitlements, are there any significant costs other than the types of (activity) costs identified in Appendix A?

Appendix B. Regulatory Burden Measure calculations

Introduction

All regulatory costs, whether arising from new regulations, or changes to existing regulation, must be quantified using the Commonwealth Regulatory Burden Measurement framework. All Regulation Impact Statements need to be accompanied by a regulatory costing.

This Appendix sets out the regulatory costing under the framework. The framework is supported by the Regulatory Burden Measure (RBM), a cost calculator tool available from the Office of Best Practice Regulation (OBPR) website. The tool calculates the compliance costs of regulatory proposals on business, individuals and community organisations, using an activity-based costing method.

The costs must be presented in real terms (also referred to as constant prices) as average annual figures in all cases. The default regulatory costing is for a ten year duration. Shorter timeframes require agreement from the OBPR. Ten year results are presented in both gross (nominal) and present value terms; in the latter case using the OBPR's default seven per cent discount rate.

Regulatory costings of $2 million per annum and above need to be agreed by the OBPR. Where the OBPR agrees that a proposal is likely to involve average costs of less than $2 million per annum, agencies can self-assess these costs.

Regulatory costing

In Table B1 below we provide summary of the regulatory burden estimate (RBE) tables, including the changes in regulatory cost from Option 1 (status quo).

Table B1. Regulatory burden and cost offset estimate table

Average annual regulatory costs (from business as usual)				
Change in costs	**Business**	**Community organisations**	**Individuals**	**Total change in costs**
Option 1. Retain all current regulations, business as usual (status quo)	-$0	$0	$0	$0
Option 2. Remove Regulation – First Come, First Served (except the certification required by importing country governments)	-$0.027M	$0	$0	-$0.027M
Option 3. Tiered Allocation System	$0.009M	$0	$0	$0.009M
Option 4. Revised Tiered Allocation System	-$0.003M	$0	$0	-$0.003M
Are all new costs offset? ☐Yes, costs are offset ☐No, costs are not offset ☒Deregulatory—no offsets required				
Total (Change in costs – Cost offset) ($million) = $0				

All Options are well under the OBPR's $2 million materiality threshold.[22]

Table B2 summarises results in gross and present value (discounted) terms over 10 years.

Table B2: Compliance cost summary table

	Total gross compliance cost (10 years)	Present value (10 years)	Gross change from Option 1 (10 years)	Present value change from Option 1 (10 years)	Percentage of Option 1
Option 1	$5.04M	$3.788M	$0	$0	100%
Option 2	$4.77M	$3.585M	-$0.27M	-$0.20M	95%
Option 3	$5.11M	$3.840M	$0.07M	$0.05M	101%
Option 4	$5.01M	$3.765M	-$0.03M	-$0.02M	99%

Note: numbers may not add due to rounding.

In comparison with Option 1, there is a slightly reduced regulatory burden under Option 4. Option 3 (Tiered allocation) is assessed to have the highest burden. Option 2 (Remove regulation) has the lowest burden. The differences between the regulatory costings are small.

It is estimated that 95 per cent of total direct compliance costs for exporters arise from the activity of applying for export certificates under one or more of the 33 Tariff Rate Quotas (TRQs) operating under various international trade instruments for different products and markets. The compliance costs arising from applying for export certificates do not vary across options.

Differences between options are limited to changes in entitlement management costs. These costs are estimated to represent five (5) per cent of total costs under Option 1.

Under Option 2 the compliance cost is 95 per cent of the cost under Option 1. This is because there would be no entitlement related costs under this option; there are only certificate application costs.

Under Option 3, the compliance cost is 102 per cent of the cost under Option 1. While the number of TRQs that are subject to entitlement allocation is reduced from 21 to 5, for two TRQs (Japan honey and Japan EBO), entitlements would move from FCFS to allocation under Option 3.

While the volume of certificates for the two specified JAEPA TRQs is modest, the impact is significant for entitlement management costs. This is because of the large number of businesses operating under these TRQs. For entitlement management costs, additional activities arise for each participating business. The number of businesses is therefore a major cost driver. Excluding the two JAEPA TRQs, Option 3 would have a lower regulatory cost than Option 1.

The value differences between the options are very small. This reflects the estimate that certificate application activities and costs represent 95 per cent of the total regulatory burden under Option 1. This in turn is because:[23]

- Only a minority of exporters are assumed to require entitlement allocation; and
- For those TRQs where entitlement allocation is assumed, the additional cost of managing entitlements represents 37 per cent of the total direct burden (entitlement management and certificate application) of obtaining export certificates.

If these assumptions are varied, such that certificate application costs represent a lower proportion of the total burden (lower than the estimated 95 per cent), then the differences between the options would be greater than estimated above. Alternatively, if the certificate application costs

[22] See page 2 of the OBPR's Regulatory Burden Measurement framework, February 2016.

[23] More details are provided in the Key results drivers section below.

represent a higher proportion of the total burden, then the differences between the options would be lower than estimated above.

The RBM calculator output does not consider or take into account possible efficiency benefits under each option. Among other things, these may include reduced department costs and lower department fees and charges. It may also include improvements in the value of quota trading benefits and increased quota utilisation.

Key results drivers

The key results drivers are not explicitly reported under the RBM calculator. These relate to the volume of TRQ certificates that require entitlement management activity, and the amount of additional activity required for TRQs with entitlement management.

Under Option 1, managing entitlements is estimated to represent around 5 per cent of the overall cost of acquiring an export certificate. This is shown in Table B3 below.

Table B3: Option 1 compliance costs

Apply for TRQ certificates	$477,000 (95% of total)
Total entitlement management cost	$27,000 (5% of total)
Total cost	$504,000

As shown in Table B4 below, 70 per cent of TRQs require entitlement management, but these represent only 6 per cent of the total export certificates issued. Then, as shown in Table B5, for this 6 per cent, the estimated entitlement management cost represents 37 per cent of the total cost for this group.

Table B4: Cost division between TRQs

	TRQs with entitlement management (per cent of total)	TRQs with no entitlement management (per cent of total)
TRQs	70%	30%
No. of certificates	6%	94%

Table B5: Cost division of TRQs with entitlement management

	Cost of applying for certificates	Entitlement management cost
For TRQs with entitlement management	62%	38%

Notes on method, data and assumptions

The framework includes consideration of the following regulatory costs:

1) Compliance costs:
    i) Administrative costs – costs incurred to demonstrate compliance with regulation (for example record keeping and reporting costs).
    ii) Substantive compliance costs – costs incurred to deliver the regulated outcomes being sought (usually purchase and maintenance costs).
2) Delay costs:
    i) Application delay and
    ii) Approval delay.

The following costs are excluded from the RBM framework and are not required to be considered in a regulatory costing.

1. Opportunity costs (unless they relate to a delay)

2. Business as usual costs (costs that would be incurred in the absence of the regulation)
3. Non-compliance and enforcement costs

The calculator was populated using departmental data (typically to 30 June 2016, except for fill rate data which may be up to 31 October 2016). Where data do not exist, or are so far not available, inputs to the calculator are based on explicit assumptions.

These assumptions are liable to change drawing on new information and data emerging from stakeholder consultation. Accordingly, outputs from the RBM calculator, as set out below, should be seen merely as indicative and liable to change as assumptions are replaced or modified following stakeholder consultation.

Box B1: general methodology of the RBM calculator

Total activity cost is:

- number of businesses affected by activity; multiplied by
- number of staff per business performing activity; multiplied by
- number of times activity performed per staff; multiplied by
- average time of each staff to do activity (in hours); multiplied by
- labour cost ($/hr) (which is wage plus non-wage labour costs)

Departmental transaction data and estimates of volumes for different types of transactions are used for RBM inputs. For the purpose of applying the RBM calculator exporter activities (transactions associated with managing TRQ entitlements and acquiring TRQ certificates) are divided into four components/activities:

- Apply for TRQ certificates → **Applying for certificates**
- Apply for TRQ entitlements
- Relinquish or retain entitlements and associated decision making
- Entitlement transfers

Managing entitlements

Inputs and assumptions

In line with the Regulatory Burden Measurement Framework Guidance Note, dated February 2016, fees and charges payable to the department are excluded from the RBM calculations. This means any reduced department costs, and lower fees and charges payable by business, from a more efficient TRQ entitlement and allocation system, are excluded from the RBM results. It is assumed that exporting businesses bear the entire regulatory burden relating to TRQ entitlement allocation. Therefore it is assumed there is no cost incurred by individuals and communities. The calculator is limited to compliance costs, while all enforcement costs are excluded.

Table B6 below sets out the assumptions used to derive cost for each component/activity.

Table B6: Time taken for each activity

Apply for TRQ Certificates				
Type	**Quota**	**Description of Process**	**Time taken**	**Assumptions**
FCFS	Non Prescribed Goods: Japan - Honey, Orange Juice, Apple Juice	Exporters do no need to be registered and lodge application through EXDOC. Exporters complete an online application form and email it to quota unit. They receive electronic certificate and send to importer via email.	Admin staff - 10 minutes	1 staff member applies via email. Once the certificate is received, 1 staff member emails it on to importer.
	Japan - Bovine Offal, Preserved & Prepared Meats 1 &2, Poultry, Pork	Exporter lodges Request for Permit through EXDOC. They receive electronic certificate and send to importer via email.	Admin staff - 15 minutes	1 staff member applies via EXDOC. Once the certificate is received, 1 staff member emails it on to importer.
FCFS with Trigger	USA Beef	Exporter lodges Request for Permit through EXDOC. They receive electronic certificate and send to importer via email.	Admin staff - 15 minutes	1 staff member applies via EXDOC. Once the certificate is received, 1 staff member emails it on to importer.
Allocated	Dairy - USA WTO & FTA	Exporter lodges Request for Permit through EXDOC. They receive electronic certificate and send to importer via email.	Admin staff - 15 minutes	1 staff member applies via EXDOC. Once the certificate is received, 1 staff member emails it on to importer.
	Dairy - EU, EU Sheepmeat, EU HQB & Buffalo, EU Grainfed	Exporter lodges Request for Permit through EXDOC. They receive a paper certificate and post it to the importer.	Admin staff - 25 minutes	1 staff member applies via EXDOC. Once the certificate is received, 1 staff member organises for posting paper certificate to the importer.

Apply for TRQ Entitlements				
Type	**Quota**	**Description of Process**	**Time taken**	**Assumptions**
Allocated	Dairy - USA WTO & FTA, Dairy - EU, EU HQB & Buffalo	Determine required volumes and complete application form and submit to quota unit.	Admin staff - 40 mins Senior staff - 30 mins	To determine required quota volumes, exporters would need to hold discussions, including with senior staff. This estimates an average of 2 staff for 30 minutes each. To complete the form will require 1 staff member to print, fill in, scan and email the completed form.
	EU Sheepmeat	Complete application form and submit to quota unit.	Admin staff - 10 mins	As exporters are not required to provide a requested volume of quota, only a signed declaration form needs to be provided.
FCFS with Trigger	US Beef	Provision trigger entitlement notice is sent and exporters need to respond to this detailing	Admin staff - 40 mins Senior staff - 30 mins	To determine required quota volumes, exporters would need to hold discussions, including with

		how much quota they will use		senior staff. This estimates an average of 2 staff for 30 minutes each. To complete the form will require 1 staff member to print, fill in, scan and email the completed form.

Relinquish or Retain Entitlements and Associated Decision Making				
Type	**Quota**	**Description of Process**	**Time taken**	**Assumptions**
Allocated	Dairy - USA WTO & FTA, Dairy - EU, EU Sheepmeat	Exporters estimate shipping and quota utilisation for the rest of the year. Notify quota unit if they relinquish or keep quota, including consignment details. FCFS approach for residual.	Admin for 3 hrs, Senior staff for 1 hr	To estimate shipping exporters would need to hold discussions and confirm planned shipments. This estimates 2 staff members discussing for 1 hour each; 1 staff to then collate consignment details, complete the required form and provide to the department - estimated to take 2 hour.
	EU HQB & Buffalo	Exporter advises if they wish to retain quota. Apply for FCFS for unallocated quota.	Admin for 1 hr 15 min, Senior Staff for 1 hr	To estimate shipping exporters would need to hold discussions and confirm planned shipments. This estimates 2 staff members discussing for 1 hour each; 1 staff to then complete the required form and provide to the department - estimated to take 15 minutes (consignment information is not required for EU HQB).

Entitlement Transfers				
Type	**Quota**	**Description of Process**	**Time taken**	**Assumptions**
Allocated	Dairy - USA WTO & FTA, Dairy - EU, EU Sheepmeat, EU HQB & Buffalo	Exporter with quota negotiates transfers with other exporters and then completes a template and sends it to quota unit	1 hr 20 mins	1 staff member for discovery - estimate 15 minutes. 1 staff member for each exporter negotiating volume and price for transfer - estimate 2x 20 minutes. 1 staff member from the seller creating an invoice/request for payment - estimate 10 minutes 1 staff member from the buyer to pay the invoice estimate 10 minutes. 1 staff member to complete and submit transfer form to the department - estimate 5 minutes.
FCFS with Trigger	USA Beef	Exporter with quota negotiates transfers with other exporters and then completes a template and sends it to quota unit	1 hr 20 mins	

A weighted average of time taken (for each activity) is calculated. For example, if 30 certificates are applied for under a given TRQ (and each certificate takes 15 minutes to apply under the rules of such TRQ) and 20 certificates are applied for under another TRQ (each certificate takes 40 minutes to apply under the rules of that TRQ), then the total time is 1250 minutes for 50 certificates -- the weighted average time taken is 25 minutes per certificate.

Similarly, if three businesses are applying for entitlements under a TRQ (each spends 40 minutes to apply for TRQ entitlements), whereas one business accesses entitlements under another TRQ (and the business spends 60 minutes to apply for TRQ entitlements), then the total time required is 180 minutes for four businesses. Hence, the weighted average of time taken applying for entitlements is 45 minutes for each business. Using department data, the weighted averages are as set out in table below.

Table B7: Weighted average time taken for each activity

Activity	Time taken
Apply for TRQ certificates	Admin staff: 16 min (0.27 hour)
Apply for TRQ entitlements	Admin staff: 27 min (0.45 hour) Senior staff: 17 min (0.28 hour)
Relinquish or retain entitlements and associated decision making	Admin staff: 139 min (2.32 hour) Senior staff: 60 min (1 hour)
Entitlement transfers	General staff: 80 min (1.33 hour)

The business total compliance cost is calculated by summing up the cost of each activity. Additional general assumptions include the following:

- A labour wage rate of $43.70 per hour is applied for a senior staff member and $30.40 per hour is applied for an "administrative" staff member. Otherwise, a general wage rate of $39.31 per hour is applied.
- All labour costs also include a non-wage component, which is 75 per cent of the labour wage rate.
- The number of staff per business performing the activities is normalised to one administrative staff member, and in some cases an additional senior staff member. This representative staff member is assumed to be constant (that is the representative staff undertake relevant tasks multiple times).
- The number of affected businesses is calculated using the most recent three year average (or fewer years if data is not available) of department data for TRQ certificate volumes. All businesses need to apply for TRQ certificates, but not all businesses are involved in quota entitlement management.
- Some businesses may use more than one TRQ. If a business operates in two markets, using for example, both sheep and beef TRQ, it is counted as two separate businesses for the purpose of the RBM calculation.

Below we discuss more specific assumptions. There are broadly two groups of assumptions:

- assumptions about the cost of applying for TRQ certificates; and
- assumptions about the cost of managing entitlements

The cost of applying for TRQ certificates

The estimate of the volume of certificate applications is derived by averaging the past three years' historical data (or fewer years if data is not available). The exception is JAEPA TRQs. For TRQs to Japan, the estimation was based on 2015 data only, because in 2014 the quota was in a transitional phase and is not a useful guide to future outcomes.

The total number of certificate applications is estimated to be 33,131. The per-unit cost of applying for certificates is based on Table B7.

A placeholder assumption of 210 businesses has been used (reflecting businesses being counted multiple times if using multiple TRQs). This assumption is required by the design of the RBM calculator. This is an estimation using averaged historical data.

The cost of managing entitlements

Table B8 provides a summary of the assumptions on which the estimate of the volume of entitlement management is derived:

Table B8: Summary of assumptions – volume of entitlement management

	Apply for TRQ entitlements		**Relinquish or retain entitlements**		**Entitlement transfers**	
	No. of businesses affected	**Average No. of activities per business**	**No. of businesses affected**	**Average No. of activities per business**	**No. of businesses affected**	**Average No. of activities per business**
Option 1	64	1	64	1	30	4
Option 2	0	0	0	0	0	0
Option 3	111	1	111	1	87	1.2
Option 4	56	1	56	1	30	4

The number of businesses involved in distinct quota entitlement management activities is calculated using averaged historical data. The major exception is the US beef TRQ. Here, it is assumed that the recent historical data is not a useful guide to future outcomes. In 2015, due to a combination of factors—for example exchange rate, the US supply shortage caused by a severe draught—the allocation phase of the US beef TRQ was triggered for the first time. Based on past experience and independent analysis,[24] entitlement allocation is unlikely to be triggered again in the near future. Thus, it is assumed no entitlement management is required for this TRQ in the future.

No change in entitlement transfers is assumed. The proposed changes to the transfer rules under Option 4 are assumed not to have a significant impact on the volume of entitlement transfers for either EU sheepmeat or EU HQB. While many dairy TRQs move from allocated to FCFS, there were negligible transfers in dairy TRQs previously. Option 4 would leave Japan EBO as FCFS.

Supporting assumptions

Other assumptions relative to each process step include:

- Costs, activity levels and quota utilisation levels do not vary over the ten year forecast period.
- There are no transition costs or timing matters to consider.
- The number of unsuccessful applications for certificates and entitlements is zero.
- Businesses apply for entitlements once per year.
- Relevant businesses only need to make a decision to relinquish or retain an entitlement once per year for each TRQ.
- All the businesses involved in the quota entitlement allocation process will also be involved in relinquish-or-retain quota activity.
- There is no, or negligible, delay costs arising from a transition from Option 1.
- No attempt has been made to estimate the burden for businesses operating within the new entrant arrangements.

[24] For more information on beef imports in the US refer to https://www.fas.usda.gov/data/review-us-tariff-rate-quotas-beef-imports

Generation of Option 1 (Retain all current regulations)

The general methodology is described in the previous section. In Box B2 below an example is provided which applies the methodology to calculate "Quota transfer" cost under Option 1.

Box B2: Calculation for quota entitlement transfer cost under Option 1

Using 2014 and 2015 data (where full year data is available) as the baseline value, there were on average 120 quota entitlement transfers by 30 businesses (under EU sheepmeat quota and EU HQB quota). We do not include 2016 data in the calculation because full year data was not available at the time the analysis was undertaken, and transfer activities are likely to be more frequent towards the end of the year.

Steps in the RBM calculator:

Step 1: number of businesses affected by activity: 30
Step 2: number of staff per business performing activity: it is assumed one staff person performs the activity multiple times. Where possible we have separated admin staff and senior staff to get a more accurate result, however in this case the process could be more or less informal (or relationship based) so we assumed one representative personal is responsible for the process.
Step 3: number of times activity performed per staff: the (averaged) number of transfers is 120 per year and the (averaged) number of businesses is 30, so this number is 120/30 = 4 times
Step 4: average time to do a quota transfer: 1 hour and 20 minutes (1.3 hours) is the assumed average, as in Table A7 above
Step 5: Labour cost ($/hr): general wage rate is used here ($39.31), plus a non-wage component ($39.31 * 75% = $29.48), gives a per hour labour cost of $68.79.

Following the format of the RBM calculator, the total quota entitlement transfer cost for a representative year (in Option 1) is expected to be 30 businesses * 1 staff * 4 times per business * 1.3 hours * $68.69 = $10,715.

The result of the calculation is for a representative year. The gross cost is derived by multiplying the cost for the representative year by ten. For the purpose of calculating the present value over a ten year forecast period, a discount rate of 7 per cent is applied which is the default rate for the RBM calculator.[25]

Generation of variances from Option 1

Variances from Option 1 are driven by changes to entitlement management costs. Under Option 2 there would be no entitlements and no associated activities and costs. Table A9 summaries the change from Option 1 to Option 3 and Option 4.

Table B9: TRQs – entitlement vs no entitlement

	TRQs (Option 1)	TRQs (Option 3 proposed)	Change (Option 3)	TRQs (Option 4 proposed)	Change (Option 4)
No entitlement	8	23	15	25	17
FCFS with trigger	1	2	1	1	0
Entitlement	21	5	-16	4	-17
Total[26]	30	30		30	

[25] For more information on the discount rate refer to https://rbm.obpr.gov.au/help.aspx?path=%2FSee+report(s)%2F2.Compliance+Cost+Calculator+present+value+report.txt

[26] 30 is the number of active TRQs which the department manage their actual allocation.

Feedback on Appendix B assumptions

In the consultation workshops, and in subsequent correspondence, there appears to be broad agreement that the assumptions listed above are accurate.

Appendix C. Summary of tariff rate quota Order rules

Order Provision	Dairy Produce Regulations	High Quality Beef Export EU	Sheepmeat and Goatmeat Export EU	Beef Export USA	Export Control Japan
Allocation parameters for determining tariff rate quota entitlements	*Preliminary allocation:* Historical export-weighted calculation (with set-aside amount): $GAA \times \left(\left(\frac{ARME}{TRME} + \frac{AGE}{TGE}\right) \div 2\right)$ where - GAA is the access amount for the quota year minus the set-aside amount - ARME is the weight of an exporter's regulated market exports for a category of dairy produce during the previous 3 financial years - TRME is the total weight of regulated market exports for a category of dairy produce during the previous 3 financial years - AGE is the weight of an exporter's global exports for a category of dairy produce during the previous 3 financial years - TGE is the total weight of global exports for a category of dairy produce during the	*Preliminary allocation:* Historical export-weighted calculation: $(AA - 500\text{ tonnes}) \times \frac{ERS}{TRS}$ where - AA is the access amount for the quota year; - ERS is the total weight of an exporter's exports of HGB to the EU over the previous 38 months prior the start of the quota year - TRS is the total weight of all exporters' exports of HGB to the EU over the previous 38 months prior the start of the quota year Standard quota allocations are calculated from the above formula. New entrants are allocated *non-standard* TRQ entitlements from the set-aside access amount (equal to 500 tonnes).	*Preliminary allocation* Historical export-weighted calculation $0.8 \times AA \times \frac{TE}{TA} + 0.2 \times AA \times \frac{EU}{TU}$ where - AA is the access amount for the quota year; - TE is the weight of the exporter's quota meat exports in the previous quota year - TA is the total weight of all quota meat exports in the previous quota year - EU is the weight of the exporter's exports of sheepmeat and goatmeat from an EU-accredited establishment in the previous quota year - TU is the total weight of exports of sheepmeat and goatmeat from an EU-accredited establishment in the previous quota year Calculated allocations under 12 tonnes are void and	*Pre trigger threshold (<85%):* First-come first served - Tariff quotas must be allocated on request, subject to: a) the total weight allocated is not more than the access amount; b) the trigger threshold has not been met; and c) approving allocation will not result in the trigger threshold being reached *Post trigger threshold:* Export-weighted calculation $0.15 \times AA \times \frac{TE}{TA}$ where - AA is the access amount for the quota year; - TA is the total of all eligible exports in the quota year;	First-come first-served - Tariff quotas are available as FCFS on an annual basis with the exception of Edible Bovine Offal which divides the access amount to be available on a quarterly basis.

	previous 3 financial years Exporter allocations less than 60 tonnes are considered *small applicants*. The set-aside amount is divided between small applicants who received less than their requested amount and/or 60 tonnes. If there is any set-aside amount remaining after allocating to all small applicants, allocate the remainder to eligible applicants that have not reached their max allocation. Historical export-weighted calculation (with zero set-aside amount) $AA \times \left(\left(\frac{ARME}{TRME} + \frac{AGE}{TGE}\right) \div 2\right)$ where - TAA is the access amount for the quota year - ARME is the weight of an exporter's regulated market exports for a category of dairy produce during the previous 3 financial years - TRME is the total weight of regulated market exports for a category of dairy produce	Standard quota holders are also eligible for additional non-standard quota allocations, subject to a number of qualifying conditions (section 13) *Subsequent allocation:* Supplementary - Any unallocated quota (including any remaining set aside amount) becomes supplementary. - Supplementary quota entitlements are equal to an exporter's application for standard quota allocation less the actual standard quota allocated to the exporter - Only standard quota holders, which were not eligible for non-standard quota entitlements, are eligible for supplementary allocations. First-come first-served - Unallocated tariff quota entitlements are available for allocation to those who apply before 16 February in the quota year. This is allocated proportionally based the number of exporters who requested it and the amounts	redistributed proportionally to eligible applicants. *Subsequent allocation* First-come first served All unused quota allocation after 31 October in a quota year which has not been identified to be used is considered lapsed and eligible for reallocation on a FCFS basis.	TE is the total of the exporter's eligible exports in the quota year Exporters are notified of allocation. - If they want all or part of the allocation they must advise - If the exporter does not confirm they want the quota, it is not issued - If the exporter advises they do not want all or part of the quota, that amount is returned. Any amount not claimed or returned becomes uncommitted and is available as FCFS (to those with no remaining allocation).	

	during the previous 3 financial years - AGE is the weight of an exporter's global exports for a category of dairy produce during the previous 3 financial years - TGE is the total weight of global exports for a category of dairy produce during the previous 3 financial years *Subsequent allocation:* First-come first-serve - Unallocated tariff quota entitlements are available at any time during the year where unallocated quota exists. Consignment information is required (but not the consignment application(s)).	requested – not a true FCFS process.			
Minimum allocation	For a US WTO category – minimum application is 10 tonnes.	Minimum allocation of 1 tonne	Minimum allocation of 12 tonnes	Post trigger – minimum allocation of 1 tonne	N/A
Eligibility requirements	A dairy manufacturer may apply for an allocation of annual quota in relation to a category of dairy produce. For the purposes of this instrument, a dairy manufacturer means a person that:	An eligible exporter must hold a meat export licence allowing the holder to export high quality beef to the EU. An exporter is not eligible to be allocated a quota entitlement if: - in any of the 3 preceding quota years, the exporter transferred 50% or more of its combined	An eligible exporter must hold a meat export licence allowing the holder to export sheep meat and/or goat meat to the EU.	An eligible exporter must hold a meat export licence, issued under Section 10 of the Australian Meat and Live-Stock Industry Act 1997, that permits the holder to export beef product to the USA.	An eligible exporter intending to export a consignment of a kind of quota goods to Japan must apply for a tariff rate quota certificate to the Secretary, no more than 3 weeks before the export goods leave Australia.

	- collects milk from farms and processes it; or - purchases dairy produce and subjects it to a process that changes it from one kind of produce to another; or - owns dairy produce and sub-contracts for the produce to be processed or transformed; or - purchases dairy produce and repackages it. Anyone may apply for unallocated quota available under FCFS.	standard quota and supplementary quota entitlements; or - in any 2 consecutive years of the 4 preceding quota years, the exporter transferred 33% or more of its combined quota entitlements.			
New entrant provisions	Yes, set aside amount of 2% for small exporters for all commodities except US FTA Non-fat Dried Milk Powder and Skim Milk Powder. Maximum new entrant allocation of 60 tonnes. No limit if available under FCFS	500 tonnes of quota entitlement is set aside for new entrants as non-standard allocation. - Non-standard quotas are allocated on request, subject to a number of rules. Entitlements cannot exceed 36 tonnes. Considered new entrant for the first 3 years.	Has the 20:80 split for global/in-quota shipments. 20% allows new entrants to get an allocation.	N/A	N/A
Quota transfer arrangements	Tariff quota entitlements may be transferred in part or full to another exporter for a quota year, but not after 15 June in a quota year. There are no provisions to allow the transfer of FCFS entitlement.	Standard tariff quota entitlements may be transferred in part or full to another exporter for a quota year. Non-standard and FCFS tariff quota entitlements cannot be transferred.	Tariff quota entitlements may be transferred in part or full to another exporter for a quota year.	Under the post trigger threshold exporters may advise if they wish to transfer part or all of their provisional entitlement. Once allocated, no more transfers can be done.	Tariff quota entitlements are not transferable.

		New entrants cannot transfer any quota entitlements transferred to it. If an exporter who holds standard quota requests FCFS quota, they may no longer transfer any of the standard quota.			
Measures employed to deal with unused quota (including incentives and/or penalties)	*Penalties* A penalty is imposed to a quota holder if: - The total available quota for a category is less than 3,000 tonnes; and - The dairy manufacturer's *surplus quota* is more than 2 per cent of their annual quota OR - The total available quota for a category is at least 3,000 tonnes; and - The dairy manufacturer's *surplus quota* is more than 1 per cent of their annual quota Surplus quota is the sum of: - Unused quota at 31 December - Allocated quota returned by an exporter after 15 June - Allocated quota transferred to a non-dairy manufactured	*Penalties* If an exporter has on 16 May in a quota year an unused portion of quota entitlement more than 7.5%, the unused portion is the *preceding year penalty amount* for the following quota year. Entitlements are reduced by the amount of the preceding year penalty *Loss of allocation* Exporters must, before 16 February, provide the Secretary with details for how any unused quota will be dealt with. If notice is not given, any unused quota lapses at the start of that day.	*Loss of allocation* Exporters must, before 18 October in a quota year, provide the Secretary with details for how any unused quota will be dealt with. If an exporter does not either: a) make an application for approval; or b) provide relevant intended export information, by 1 November, all unused quota is lapsed.	No penalty provisions. *Loss of allocation* Exporters must provide notice to the QA Unit if an export consignment cannot be completed by the export deadline. If notice is given, the Secretary may: a) vary quota amount; or b) cancel tariff quota. If notice is not given before the deadline, the Secretary may cancel the allocated tariff quota	*There is no allocation*

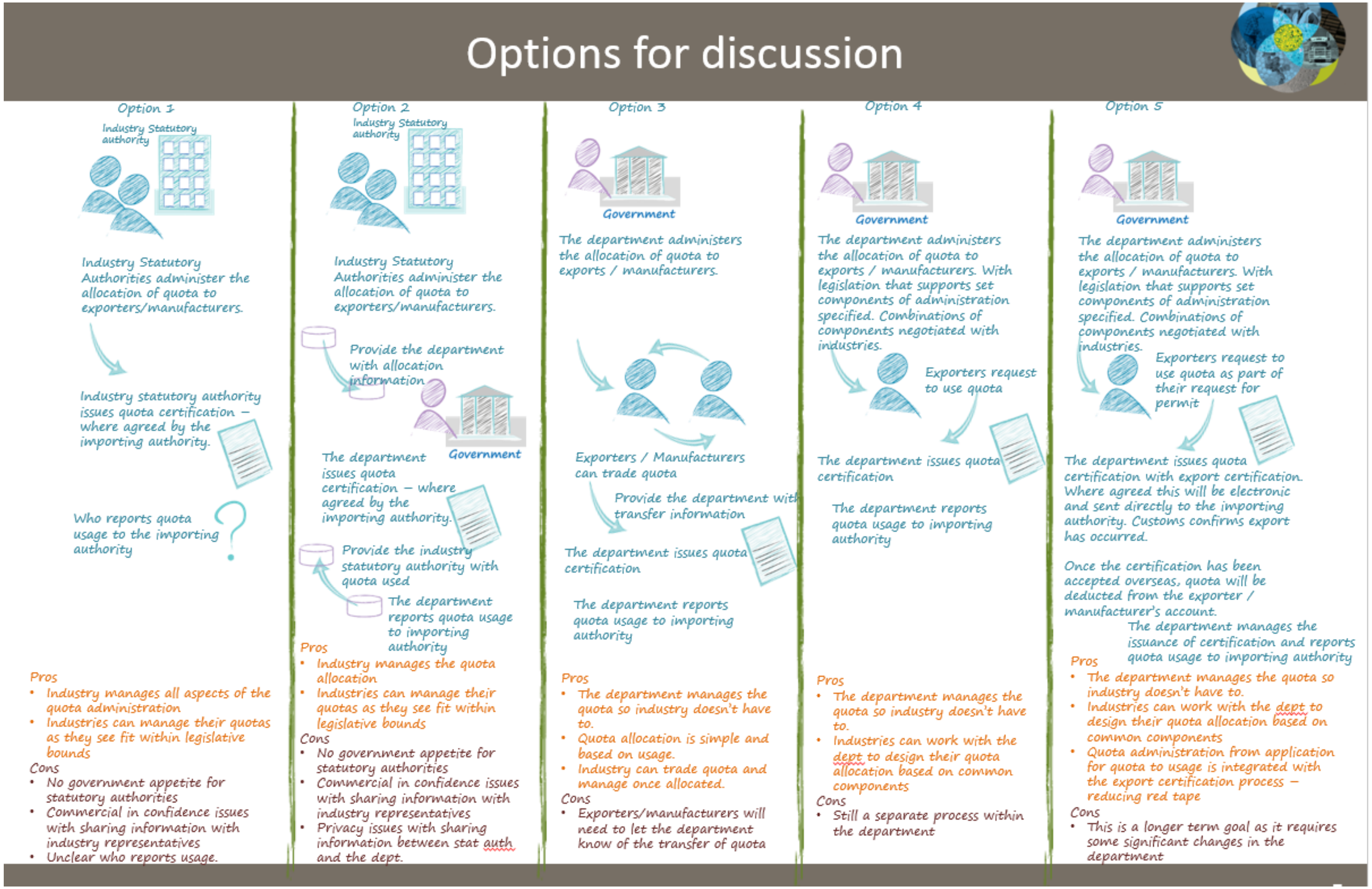
	- Unused quota allocation transferred (held by the transferee) at 31 December The penalty amount is equal to the surplus quota. The penalty applies to the *next* allocation which will be the year after next at the earliest. *Loss of allocation* Exporters must, before 15 June, provide the Secretary with details for how any unused quota will be dealt with. If notice is not given, any unused quota is revoked at the start of that day.	If less than 25% of entitlement is used by 16 February, all unused quota entitlement is forfeited. If an exporter was allocated more than 1 tonne, and exported less than 1 tone of quota entitlement by 16 February, all unused quota entitlement is forfeited.			

Appendix D. Stages of the process

As part of initial discussions surrounding the future of quota management, held between September and November 2015, the department proposed five options to industry, ranging from fully industry-run to government-run (see Figure D1, below. Note, these options are separate from the options set out in the RIS). While there was interest for each industry to manage their own quotas, it was deemed unviable to split the quotas off to each industry. It was therefore agreed that the department would continue to manage all quotas. This led to discussion on the legislative structure. It was agreed that initially the current regulations should remain but should be consolidated under the Export Control Act 1982 (as outlined in Table 3 of the Background section) and that the department would hire an independent consultant to prepare a RIS on proposed options, to identify potential benefits.

In February 2016 the Minister for Agriculture was advised of the intent to conduct the RIS which he noted. The department subsequently prepared a Preliminary Assessment Form that set out the proposal for the RIS. OBPR assessed this in March 2016 and advised the department that a Standard Form RIS would need to be completed. The department has complied with OBPR's assessment advice.

Figure D1. TRQ management options discussed with industry



Appendix E. Option 4 proposal papers

The following papers were provided to stakeholders based on the feedback received during consultation on Options 1-3.

Export tariff rate quota regulatory streamlining – Revised ruleset for Dairy Quotas

The Regulation Impact Statement (RIS) presented to industry for consultation set out three options for the management of export tariff rate quotas (TRQs). These were the status quo, a first come first served (FCFS) system, and a tiered allocation system.

Following initial consultation the department received valuable feedback on the proposals. Based on this feedback and discussions with industry it was agreed that the department would make amendments to the proposal and provide industry with a fourth option, including greater specifics for each quota group.

During consultation dairy industry participants highlighted that the industry has significantly changed over time and that changes to the current quota management processes would be welcome in order to better align with their needs.

The following document sets out the proposed rules for a tiered allocation system (amended from Option 3) with regards to the current dairy export quotas. Of particular note for dairy:

- the change to eligibility rules which would allow non-manufacturers to receive quota entitlements for allocated quotas.
- the adjustment of allocation calculations to remove the 50:50 split which includes global shipments, and only calculate allocations based on in-quota shipments.
- the recommendation of changing most underutilised quotas to be managed under an FCFS model.

Included below are primary questions for dairy industry stakeholders to discuss and wherever possible provide an agreed position along with justification. If a position cannot be agreed the arguments for each perspective should be provided to the department.

Option 4 – Tiered Allocation System (Revised)

Each TRQ would operate under one of three mechanisms, the chosen mechanism per quota being guided by the level of quota usage. The following is summary of how each mechanism would work:

- First come, first served.
  - Quota certificates are issued (and quota is allotted) when an RFP or equivalent reaches completion. There is no other form of regulation.
  - There is no limitation on who can apply.
  - This is generally most applicable to quotas that are always underutilised.
- First come, first served with high-fill trigger.
  - At least the first 85 per cent of the quota is managed as FCFS, as set out above.
  - If less than 85 per cent of the quota is used with 3 months remaining in the quota year, the quota will remain as FCFS for the remainder of the year.
  - If 85 per cent of the quota is used before 3 months from the end of the quota year, the remaining 15 per cent will be allocated based on previous shipping history.
  - When allocated, quota will be freely transferable.

- Allocation system.
    - The quota is allocated at the start of the year.
        - There would not be limitations on eligibility.
        - Allocations would be calculated based on historical shipments under quota.
    - A new entrant provision would be included.
    - A reclaim and reallocation process would be included.
        - Exporters can relinquish or retain quota, and can request more as an allocation.
        - If any quota remains unallocated it will be available as FCFS (see process above).
    - Initial quota allocations will be transferable; quota requested or retained during the reallocation process cannot be transferred.
    - Penalties will be incurred if less than 90 per cent of a quota allocation has been used six weeks from the end of the quota year.
        - Penalties will be applied to the next quota allocation for the exporter.

The model also proposes the ability to change the chosen mechanism; if usage significantly changes in a quota a review could be conducted to consider if one of the other mechanism is more suitable.

First come, first served

This mechanism represents a non-regulatory management process. There is no regulatory burden on exporters and therefore no additional costs with the exception of applying for quota certificates, which are importing country requirements. The department would issue all quota certificates on the basis of completed RFPs (or equivalent); this is considered a true first come, first served process unlike the current FCFS in dairy quotas which is actually a form of allocation.

Rationale

In regards to the 19 dairy quotas it is suggested that the vast majority of the quotas should be managed under the FCFS mechanism. With the exception of US FTA butter and cheddar cheese quotas (and possibly the Other Dairy Products quota) none of the other quotas have consistently high usage.

A review of the historical usage (see consultation handout) shows that in recent year these quotas have only had a handful of years when they have recorded high usage (almost all occurring in 2009 or earlier).

FCFS generally applies best where there is little-to-no likelihood of a quota being filled and therefore no risk of competition for access that acts outside of market signals. The main benefits for dairy quotas would be:

- that it removes any barriers to market access as any exporter can access it.
- that the quota is only allocated to a completed consignment application so it is not possible for one party to block the access of another party.
- that it does not favour a particular business model, so allows the market to dictate usage.

A complication for the dairy quotas is for the four US WTO quotas; a requirement of the United States legislation is that importers be nominated before the start of the quota year, including the percentage of each quota that they can access. Currently this would prevent the use of the FCFS mechanism for these quotas. However, if FCFS would be the preferred mechanism for these quotas the department is willing to discuss the nominated importer requirement with the US and whether this can be changed to cater for FCFS management.

Which dairy quotas should be managed under FCFS arrangements and why?
Are there particular factors which would deter industry from choosing a FCFS mechanism?

First come, first served with high-fill trigger

This mechanism is seen as a practical option for quotas which are normally underutilised, but would benefit from greater certainty when higher usage does occur. This is effectively the system currently applied to the US beef quota. Following initial consultation sessions the model has been slightly adjusted from the RIS proposal to better meet exporter needs.

Initially this system functions exactly as the FCFS mechanism, set out above. There are then two possibilities:

1. nine months of the quota year passes without reaching 85 per cent usage, or
2. 85 per cent of the quota is used before nine months of the quota year passes.

In the first case, the quota would remain as FCFS for the remainder of the quota year; no allocations would occur. In the second case the department would allocate the remaining 15 per cent of the quota.

If the trigger is reached it suggests that quota is highly sought-after, so it is likely exporters will wish to use it. The certainty of an allocation is therefore desirable. Therefore, the allocation process is proposed to work as follows:

- If it appears that the trigger may be reached the department will advise exporters what their *notional* allocation would be.
    - Only those who have exported during the current quota year will be offered allocations.
- Final allocations will be issued the day the trigger is reached, being when 85 per cent of the quota is used before nine months of the quota year has passed (that is, before 1 October for dairy quotas).
- Allocations will be calculated proportionally, using quota shipment history from the previous two or three quota years (please see discussion question below).
- Allocations will only be given to those who have exported during the current quota year.
    - Exporters will advise the department if they accept or decline their allocation.
    - Any quota that is returned will re-enter a FCFS pool.
- Exporters can return unwanted quota at any time.
- The allocations will be freely transferable.
- There will not be penalty provisions.

Rationale

This mechanism may be a viable option for the US FTA butter and cheddar cheese quotas. Usage of these quotas can fluctuate from year to year; a review of historical usage shows that the butter quota has had more than 85 per cent of its quota used four times in the last five years, while the cheddar cheese quota has had more than 85 per cent used in the past two years. Conversely, in the past six years no other year for these quotas has reached 40 per cent use:

Dairy Quota Usage 2006-2016 (%)											
Product	**2016**	**2015**	**2014**	**2013**	**2012**	**2011**	**2010**	**2009**	**2008**	**2007**	**2006**
Butter	88	99	32	90	98	35	83	84	54	98	98
Cheddar Cheese	85	93	39	19	8	17	38	77	89	59	88

If the trigger mechanism had applied in the years of higher usage, allocations would have been triggered on two occasions for the butter quota, but none for cheddar cheese (that is 85 per cent was reached after 1 October in most instances). However, it should be noted that if FCFS had applied these results may have differed; easier access to the quota (including for non-manufacturers) would have increased the likelihood of more quota being used, and therefore the likelihood of the trigger being reached.

It is proposed that this mechanism may be an ideal middle ground as it would not add a regulatory burden or limit access in low use years by allocating quota; whereas it would still offer a level of surety of access in years where quota is highly sought-after.

Regarding allocations, the department would propose to only allocate to exporters that have used quota that year as it is more likely the quota will be allocated to those who will use it. The allocation process does not ask exporters to request a quota amount as it is unlikely they will be in a position to estimate their needs accurately, and there is no guarantee that they will receive their request amount. For example, if a request amount were asked for and the total volume requested across all exporters was more than the 15 per cent (which is likely if 85 per cent had already been used) it would be allocated proportionally anyway. Therefore, requiring a request amount would likely add regulation with no benefit.

For similar reasons it is proposed to allow returns and transfers. An exporter may receive a quota amount that is not commercially viable for them, or they may have a change in circumstance; allowing returns and transfers makes it possible for the quota to be redistributed to another exporter who can use it.

The department would not propose to apply penalties. This is for several reasons:

- If the trigger is reached it suggests quota is sought-after so exporters are unlikely to not use it (or transfer it).
- Due to the overall infrequency of a trigger being reached, the penalty may not be applied for several years (if at all). It therefore does not act as an effective disincentive to not use quota.

There are a number of elements of the above system that the dairy industry will need to consider in deciding whether this mechanism will work effectively for its quotas.

Which dairy quotas should be managed under the FCFS with trigger arrangements? Why?
Is there support for the 85 per cent at nine months? Are other percentages or timings preferred?
Is a two year or three year quota shipment history preferred?
Should exporters that have not shipped during the current quota year, but have a shipping history, be able to receive an allocation? If so, why?
Do you support not applying penalties? Why or why not?

Allocation system

All dairy quotas currently operate under an allocation mechanism, and the industry may wish for some quotas to remain so. If participants decide that the FCFS with high-fill trigger mechanism cannot provide the level of certainty required, US FTA butter and cheddar cheese quotas may be best managed under this mechanism. Additionally, the US WTO quotas may have to remain allocated due to US regulation requirements regarding nominated importers.

The RIS has recommended a change to the allocation system for dairy quotas. Following initial consultation this proposal has been refined and is set out below for consideration.

Some aspects of the allocation process do not change:

- Exporters will still need to apply for quota by a set date and must specify the request amount.
- If the quota is undersubscribed all applicants will receive their request amount.
- If the quota is oversubscribed the quota will be proportionally allocated, based on shipping history.

However, there are several important changes proposed which are set out below.

Eligibility

Firstly it is proposed that allocation requests will not be limited to manufacturers; non-manufacturers will also be able to apply for an allocation. During initial consultation dairy participants were supportive of this approach citing that the industry had changed in the past 15 years and that non-manufacturers played a larger role in marketing and exports.

Should eligibility for allocations be expanded to allow non-manufacturers to apply? Why or why not?

Shipping history used for calculating allocations.

The current dairy rules include global shipment when calculating quota allocations. Any exports of quota-eligible products to any foreign country contribute to 50 per cent of the allocation.

This would be changed so that only quota shipments would be used in calculating allocations. The intent of this change is to optimise the distribution of the quota by allocating to those who use it. This also ensures that those exporting to the quota market are being rewarded for their market development.

This also addresses a current issue in calculating global shipments. The department does not hold the required information for determining the eligible global shipments and must source the information from Customs. However, the information provided by Customs only distinguishes products to 6-digit AHECC codes. As quota eligibility is determined down to 8-digit AHECC codes the department must rely on product descriptions in determining what shipments should be included in calculations. This relies on interpretation; this sort of discretionary decision-making is not ideal and should be avoided where possible in quota management rules.

For a more rational approach the timeframe would also be adjusted; instead of being based on previous financial years it is proposed to change this to previous shipping years. A shipping year is the period in which the majority of shipments occur for a particular quota year; for EU and US dairy this would be 16 November through to the following 15 November. The benefit of this is that the majority of quota shipments for the previous quota year can be included in calculating the next year's allocations. Consideration will need to be given as to whether it is better to use the previous two or three years.

Are there any concerns or issues in changing the allocation calculations to remove global shipments?
Are there any concerns in changing the shipping history from financial year to shipping year?

Would industry prefer a two or three year shipping history for allocation calculations?

Minimum Allocations

In dairy quotas minimum allocations currently only apply to US WTO categories, set at 10 tonnes. It is recommended that a minimum allocation should be applied to all quotas to avoid the potential of allocating volumes too small to be viable. During initial consultation participants generally thought that 10 tonnes may be appropriate, but it could be less for small companies. For flexibility it is therefore proposed to set a minimum allocation at one tonne by default, unless industry recommend otherwise.

What should the minimum allocation be if a quota is allocated? Are there any circumstances where minimum allocations should differ between quotas? If so, which quotas and why?

New Entrant

Dairy quotas currently include a set-aside amount for small applicants. The proposed option would change this to be a New Entrant provision accessible to new entrants for the first three years.

The new entrant provision would be accessed under FCFS arrangements. This approach is based on the experience that allocations to new entrants are generally underutilised and a more efficient approach is only providing quota when a consignment has been prepared, demonstrating a real intent to use it. The process would work as follows:

- Exporters would be considered new entrants to a market for the first three years of accessing quota to the market.
- The new entrant provision would be available as FCFS until the reclaim date is reached.
- A capped access amount would be applied to ensure fair opportunity for access and so existing quota holders are not disadvantaged.
- Once the reclaim date is reached new entrants will have first preference for any unused volume of the new entrant provision (maximum access cap still applying). This would be allocated quota.
- To dissuade potential misuse of allocated quota the following would apply:
    - Only new entrants that have shipped during the quota year would be eligible to apply.
    - New entrants would not be permitted to transfer their quota allocation, nor any quota transferred to them by another exporter.
    - Penalties will apply for unused quota.

Are there concerns with the functionality of the proposed New Entrant provision? If so, what is a preferred alternative?
What is an appropriate set-aside amount for the New Entrant Provision? (currently 2 per cent across quotas). Should it differ between quotas? At a minimum please provide responses for US FTA butter and cheddar cheese, and the four US WTO quotas.
What is a viable amount for a New Entrant Cap? Does it differ between quotas/commodities?

Reclaim & Reallocation Process

Dairy quotas reclaim process currently occurs six months into the quota year. Under the current arrangements where non-manufacturers cannot receive allocations this timeframe is preferred as it provides longer to use the quota once access improves. However, if the eligibility rules are changed to allow non-manufacturers to receive allocations the reclaim could be adjusted.

It is proposed to change this to eight months into the quota year; this provides a longer period for exporters to utilise their allocation, while still providing sufficient time for reallocated quota to be used. As transfers are not allowed and penalties are applied for unused quota the shortened period also creates a more reasonable timeframe for an exporter to estimate their needs.

Exporters would still be able to return unused quota prior to the reclaim date without incurring a penalty. They would also continue to be able to retain any portion of their unused allocation. It is also proposed that if less than 25 per cent of a quota allocation has been used, the full allocation must be returned.

The primary change for dairy in this space is the revised reallocation process. Currently the dairy quota legislation refers to the allocation of FCFS entitlements, which issues quota as an allocation. This process would be replaced with the following reallocation process:

- As part of the 'relinquish and retain' process, exporters could request an additional volume of quota to be allocated to them.
  - If the available quota is more than the total requested, exporters will receive their request amount.
  - If the available quota is less than the total requested, the quota will be allocated proportionally across the applicants, using the same parameters as the initial allocations.
- Exporters would not be required to provide any consignment details.
- As for retained quota, reallocated quota cannot be transferred and any unused volume would receive penalties.

In addition to this, a true FCFS process would be included. This would be available when there is unallocated quota available following the reallocation process. This quota would only be allotted to consignment applications that have reached 'Complete' status (as per the FCFS mechanism, above) and would only be available to exporters once they have used any remaining allocated quota.

Does industry support changing the reclaim date to be after eight months of the quota year, rather than the current six months? Why or why not?
Does industry support forced returns of quota where less than 25 per cent of an allocation has been used? Are there circumstances where this would not be functional?
Does industry support allowing applications for additional quota?
Does industry support the introduction of a true FCFS process for unallocated quota?

Transfers

This model represents a small change to transfer rules from the current dairy processes. Transfers will still be permitted for allocated quota prior to the reclaim date. An adjustment to this is the proposed application of a cap on the percentage of an allocation that can be transferred. It is proposed to allow transfers of up to 50 per cent of an allocation in a single year. However if more than 50 per cent is transferred, the exporter will be ineligible to receive an allocation for the next two quota years. The purpose of this is to deter exporters requesting quota they have no intention of using.

As per the existing rules, exporters will not be permitted to transfer retained or reallocated quota after the reclaim date.

New entrants will not be permitted to transfer quota at any time. This is because the intent of the new entrant provision is to provide a fair and reasonable avenue for market entry, not to encourage speculative behaviour that would diminish the value and usage of the quota. Similarly, new entrants may accept transfers, so they can export and build their shipping history, but will not be able to transfer to others.

Is the 50 per cent cap on transferring allocated quota suitable? Should it be higher/lower?

Penalties

Under the current rules for dairy quotas, penalties for unused quota are applied after two quota years. This is because allocations for the next quota year are completed prior to the end of the current quota year, before the penalties are calculated.

Under the proposed allocation model this would be adjusted to calculate penalties earlier and apply them to the next quota year. This is the approach currently applied to EU high quality beef.

Penalties will be incurred on a 1-for-1 basis for unused quota that was either retained or reallocated to exporters. However, exporters will only receive penalties if they have not used at least 90 per cent of their allocation six weeks from the end of the quota year (that is, 16 November).

Under this approach the penalties are calculated ahead of the next year's quota allocations so are able to be applied to these allocations rather than having a gap of a year.

Are there any concerns with calculating penalties six weeks from the end of the quota year (using the 90 per cent threshold)? If so, why?
Does industry support a process that applies penalties to the next quota year, rather than having a gap of a year?

Overall, industry should also consider the following:

Should any dairy quotas remain managed under an allocation mechanism and why?
Are there particular factors which would deter industry from choosing the proposed allocation mechanism?

Export tariff rate quota regulatory streamlining – Revised ruleset for EU High Quality Beef Quotas

The Regulation Impact Statement (RIS) presented to industry for consultation set out three options for the management of export tariff rate quotas. These were the status quo, a first come first served (FCFS) system, and a tiered allocation system.

Following initial consultation the department received valuable feedback on the proposals. Based on this feedback and discussions with industry it was agreed that the department would make amendments to the proposal and provide industry with a fourth option, including greater specifics for each quota group.

Overall, the initial proposal did not recommend significant change to the function of EU high quality beef (HQB). Following the consultation workshops and the feedback received the department has made some amendments to the Option 3 proposal which are set out below.

To ensure the Regulation Impact Statement clearly sets out the rationale for either remaining with current arrangements or implementing changes, please include the justification in any responses (including evidence wherever possible).

Option 4 – EU High Quality Beef: Allocation Model

Allocation process

The existing EU HQB allocation process has functioned effectively and it is not proposed to change this. However, the department asked whether the shipping history timeframe being used was the most appropriate and whether there was any interest in adjusting it from three years to two.

Some feedback was provided by one exporter that three years was preferred due to the better level of surety it provided them. Industry should discuss if this is the consensus, or whether two years can offer an acceptable level of surety while being more responsive to changes in needs.

What is the industry-preferred timeframe for shipment history – two or three years? Why?

New Entrant

Under the current rules for EU HQB the New Entrant provision is allocated to new entrants at the start of the year. A first year new entrant can only receive up to 12 tonnes, and second and third year new entrant can receive up to 36 tonnes depending on their shipping history.

In the RIS the department noted the low level of use of the new entrant provision, and suggested that this was likely due to exporters having to speculate at the start of the quota year on whether they would want to access the quota, and then not using it. Feedback during consultation has suggested that the greater issue at play is that the new entrant access amount is unviable.

Based on this the department has adjusted the proposal to suggest the New Entrant provision be managed under FCFS arrangements and that the maximum access amount for new entrants be increased.

The following process is therefore proposed:

- Exporters would be considered new entrants to a market for the first three years of accessing quota to the market.
- The new entrant provision would be available as FCFS for the first eight months of a quota year.
- A maximum allocations of 100 tonnes would be applied.
- Once the reclaim date is reached (four months from the end of a quota year) new entrants will have first preference for any unused volume of the new entrant provision (maximum allocation still applying). This would be allocated quota.
- To dissuade potential misuse of allocated quota the following rules would apply:
    - Only new entrants that have shipped in the first eight months would be eligible to apply.
    - New entrants would be limited to allocations of no more than the volume already shipped during the quota year, for example if a new entrant had shipped 24 tonnes in the first eight months, they could not receive more than 24 tonnes as an allocation. The 100 tonne cap continues to apply.
    - New entrants would not be permitted to transfer their quota allocation, nor any quota transferred to them by another exporter.

This proposed approach will reduce the administrative process and create greater flexibility for new entrants.

Does industry support the proposed New Entrant provision? If not, what are the concerns and what is a preferred alternative?
Is the revised maximum access amount viable? If there are objections to the change, what are they? What is an appropriate alternative?

Reclaim and Reallocation Process

A relatively minor change is proposed regarding the reclaim process to reduce unnecessary complexity to the rules. Currently quota is cancelled on the reclaim date where an exporter has either used less than 25 per cent of their allocation or 'used less than 1 tonne when allocated more than 1 tonne'. If an allocation is greater than four tonnes the 25 per cent rule already applies, therefore the latter rule only applies to allocations of less than 4 tonnes which are very rare. A review of recent years also shows that for small allocations either the majority of the quota will be used or none at all. Therefore it is proposed to remove the 'less than 1 tonne' element to simplify the process.

Are there any concerns with simplifying the reclaim rules to only force returns where less than 25 per cent of a quota allocation has been used?

Division 4 of the current legislation refers to the 'Allocation of FCFS tariff rate quota entitlements'. Despite the reference to FCFS it is actually a reallocation process and it does not allocate on a first come, first served basis.

It is proposed to redraft the relevant section regarding this process so the language reflects that it is a reallocation process which occurs in conjunction with the reclaiming and relinquishing of quota.

Are there any concerns with redrafting this section of the legislation?

The flow-on from the above is the recognition that EU HQB lacks a true FCFS process. When raised during consultation the department was advised that it was industry's understanding that this should always have been part of the quota rules, and that this would therefore be supported.

Therefore, it is proposed to amend the rules so that where the quota is undersubscribed (that is the total volume requested is less than the access amount) the remaining volume will be made available as FCFS, assigned when an RFP reaches 'complete'.

Does industry support formalising the FCFS process? Why or why not?

Transfers

The department does not propose to change the transfer rules which allow transfers up until the reclaim process, and does not allow transfers post-reclaim.

The proposal does consider whether the transfer limit of '33% in two consecutive years' can be removed, and just maintain the limit of 50 per cent in any year. The rationale for its inclusion initially was that a pattern of selling 33 per cent or more of an entitlement would suggest a partial trading strategy which is not appropriate for maximising the value of the quota. However, as an allocation would be diminishing significantly by such a practice it cannot be maintained, so it is seen as unnecessary to include additional regulation. Removing it simplifies the process, making it easier to understand while still maintaining the policy intent through the 50 per cent rule.

Are there concerns with simplifying the transfer limit rule to just include the 50 per cent limit?

Penalties

The proposal includes a minor change to the process for determining if penalties will apply. It is suggested to drop the penalty trigger from 92.5 per cent of a quota allocation used to 90 per cent. The rationale for this is that it provides a slightly larger buffer for exporters.

Are there concerns with reducing the penalty trigger from 92.5 to 90 per cent?

Export tariff rate quota regulatory streamlining – Revised ruleset for EU Sheepmeat and Goatmeat Quota

The Regulation Impact Statement (RIS) presented to industry for consultation set out three options for the management of export tariff rate quotas. These were the status quo, a first come first served (FCFS) system, and a tiered allocation system.

Following initial consultation the department received valuable feedback on the proposals. Based on this feedback and discussions with industry it was agreed that the department would make amendments to the proposal and provide industry with a fourth option, including greater specifics for each quota group.

The feedback from stakeholders using the EU sheepmeat quota was that overall the existing system was working effectively and there was very little appetite for change. In particular was the support for the existing 80:20 allocation model and the range of benefits the sheepmeat industry gained overall. On this basis the department has significantly reduced the proposed changes for the EU sheepmeat quota. Set out below is a summary of the rules that would remain unchanged, as well as options for other rules where there was agreement that there are potential benefits to be gained by adjusting them.

To ensure the Regulation Impact Statement clearly sets out the rationale for either remaining with current arrangements or implementing changes, please include justification in any responses (including evidence wherever possible).

Option 4 – EU Sheepmeat and Goatmeat: Allocation Model

Allocation Calculation

The existing EU sheepmeat quota rules calculate quota allocations based on an 80:20 split between an exporter's quota exports and their accredited exports (eligible meat through EU-accredited establishments). Based on industry feedback this process would remain in place.

During the consultation sessions the timeframe used for the calculations was raised. The current system uses one performance year in the calculations. The benefit of using one year is that exporters can affect an increase in their allocation faster, which is useful for those growing their business, particularly new entrants. However, it does not provide any buffer to changes in the market or commercial circumstance which can present a greater risk for business. A timeframe of two years begins to have the reverse effect; it helps smooth the impact of changed conditions, but will make building an allocation take longer.

There was interest in each approach during consultation, so industry should discuss what timeframe will provide the greatest overall benefits.

> What is the industry-preferred timeframe for shipment history – one, two or three years? Why?

Minimum Allocation

The 12 tonnes minimum allocation was viewed as a balance between limiting the number of very small allocations, while still catering for new entrants in the process of building an allocation. However, it was stated that 12 tonnes is not a viable amount for any exporter. Consideration should therefore be given to whether the minimum allocation could be raised to a more viable amount, for example three or four containers, or 50 tonnes.

> Is there an alternative minimum allocation volume to consider?

Reclaim and Reallocation Process

Under the current system EU sheepmeat quota enacts a reclaim process two months from the end of the quota year. During the consultation sessions this was raised as a concern by stakeholders, citing that it lacks time to respond and use the quota; given shipping times, there is effectively only a two week window.

In Option 3 it was proposed to change this to four months from the end of the quota year, as this would provide a level of surety earlier. The longer timeframe would also relieve the pressure of a small window to use the quota, as currently exists. However, feedback provided was that four months would be too far out to estimate effectively, particularly given sheepmeat exports are skewed toward Christmas trading.

Based on this an appropriate middle ground may be setting the reclaim process to three months from the end of the quota year. This would extend the remaining time for shipping to roughly six weeks, while being a more reasonable timeframe to estimate the volume of quota needed.

> Does industry support changing the reclaim date to be earlier in the quota year? If so, what timeframe is preferred and why? If not, why not?

The quota reclaim process currently only allows exporters to either retain or relinquish their allocated quota. This means that where quota is relinquished it can only be accessed via FCFS arrangements. The department regularly fields queries regarding expected FCFS availability during this time, demonstrating the desire by exporters to use it. During consultation this was raised as an issue, citing that FCFS lacks certainty and exporters will not prepare a consignment if they risk missing out on quota. As a result there is likely to be unused quota even though there is still demand.

An alternative is to add an option for exporters to be able to request additional quota to be allocated to them. For instance an exporter could advise the department they wish to retain their unused quota and wish to apply for more. This would provide exporters with greater certainty in preparing their consignments, rather than having to access additional quota as FCFS.

> Does industry support allowing applications for additional quota as part of the reclaim process? Why or why not?

Additionally, current rules require exporters to provide consignment information covering any volume of quota they wish to retain after 31 October. The rules further state that if a quota certificate is not applied for ahead of the specified shipment date (or does not cover the full volume as specified earlier) that volume of quota lapses on the day of the intended shipment; that is the exporter loses that volume of allocated quota.

The intent of this rule is that exporters will only retain quota if they actually intend to use it. However, the approach is not practical; realistically exporters cannot provide information with this accuracy as things like shipping times frequently change. It is also burdensome for both exporters and the department to monitor.

This would be compounded should the reclaim date be shifted forward to three months from the end of the quota year. During consultation it was raised that it would not be possible to provide shipment details three months out.

An alternative to this is to remove the requirement to provide consignment information and instead apply a penalty regime. This provides greater flexibility to exporters and reduces the regulatory burden on them, while still maintaining the policy intent of encouraging only those exporters in a position to use the quota to apply. It would be proposed that penalties would be a 1:1 ratio, applicable to the next quota years' allocation. Penalties would be applied where an exporter had used less than 90 per cent of their allocated quota six weeks from the end of the quota year (being closely aligned with the shipping year).

Would the industry prefer to remain with the current requirement to provide consignment information or to substitute this for a penalty regime? Why?

Additional Information

If industry are supportive of a change to penalties instead of providing consignment information the department would recommend adjusting the dates of the performance year to rationalise the process. As penalties are best calculated six weeks from the end of the quota year (being approximately 16 November) it is recommended to adjust the performance year dates to align; this would shift the performance year to be 16 November to 15 November instead of 1 November to 31 October.

Entitlement transfers were discussed during consultation and there was no appetite for change. Transfers are currently not allowed after the reclaim date and this would continue under any future model. Performance transfers were also discussed; similarly there is no desire for this to be changed.

Export tariff rate quota regulatory streamlining – Revised ruleset for US Beef Quota

The Regulation Impact Statement (RIS) presented to industry for consultation set out three options for the management of export tariff rate quotas. These were the status quo, a first come first served (FCFS) system, and a tiered allocation system.

Following initial consultation the department received valuable feedback on the proposals. Based on this feedback and discussions with industry it was agreed that the department would make amendments to the proposal and provide industry with a fourth option, including greater specifics for each quota group.

Overall, the initial proposal did not recommend significant change to the function of the US beef quota. Following the consultation workshops and the feedback received the department has made some amendments to the Option 3 proposal regarding US beef, set out below.

To ensure the Regulation Impact Statement can clearly set out the rationale for either remaining with current arrangements or implementing changes, please include the justification in any responses (including evidence wherever possible).

Option 4 – US Beef: FCFS with High-fill Trigger Model

To summarise the revised Option, it is proposed to inform exporters of provisional entitlements prior to the trigger point, based on their shipping history (previous two quota years). Once the trigger point is reached quota will be allocated and exporters can continue to ship, transfer or return their allocated quota as they wish. This is explained in detail, below.

Post-trigger Allocation Process

In the initial proposal the department had suggested changes to the post-trigger allocation process; it was suggested that exporters should nominate a request amount so that allocations would better align with exporter needs (changed transfer and penalty arrangements were also proposed in order to complement this).

However, feedback during consultation demonstrated that the current process was more favourable from a commercial perspective and in regards to quota principles. Provisional entitlements that are purely proportional can be calculated at any time and the exporters advised. Whereas, requesting allocation from exporters would have to be done earlier to provide sufficient time for exporters to respond so that calculations could be completed, then exporters advised of the outcome. If this occurs too early, exporters will not be in a position to make accurate estimates, so allocations may be no more accurate than had exporters just received their proportional allocation anyway. This would be additional regulation with no benefit.

Transfers

During consultation there was agreement across all participants that the current rule providing a 10 day transfer window was not effective. The experience from 2015 was that the transfer window forced exporters to speculate on the amount of quota they might need, increasing demand and leading to inflated prices for quota. The RIS proposal had recommended not allowing transfers (along with applying penalties) as this would encourage more accurate allocation requests. However, if allocation requests are less favourable (as discussed above) and are not implemented, this removes the reason for not allowing transfers. Instead, it is suggested a better approach would be to allow unrestricted transfers for the remainder of the quota year as it has two particular benefits:

- It removes the pressure created by a transfer window, and
- It provides a process for quota to be able to reach the exporters best placed to use it.

Penalties

As explained above, the initial option had proposed to include penalty provisions in conjunction with allocation requests and not allowing transfers. This had been to act as a disincentive to request more quota than needed. As the revised option is no longer proposing to request allocation amounts, penalties would no longer be necessary. On the contrary, if exporters are being issued proportional allocations, they may receive more quota than they need; transfers provide a process to encourage quota to flow to others where there is demand. However, if for whatever reason demand drops exporters should be able to respond to the market. If there is not value in shipping under quota they should not be placed in a position where they have to use the quota purely to avoid a penalty.

Does industry support the streamlined allocation process? Are any changes preferred?
Does industry support changing to an unrestricted transfer process? Why or why not?
Does industry support maintaining the current process of not applying penalties?

References

D. N. Harris & Associates, 2013, 'Effective administration of agricultural tariff quotas', Rural Industries Research and Development Corporation, Canberra.

McQueen, J, Welsman, S & Harris, D 2008, 'Report of the 2008 dairy quota review panel on administrative arrangements for EU and USA dairy quotas managed by Australia', Canberra.

Taylor, J, Donal, R, & Welsman, S 2005, 'Report of the 2005 beef quota review panel on administrative arrangements for the US beef quota', Canberra.