

Dairy Industry Restructuring Amendment Bill (No 2)

Government Bill

As reported from the Primary Production Committee

Commentary

Recommendation

The Primary Production Committee has examined the Dairy Industry Restructuring Amendment Bill (No 2) and recommends that it be passed with the amendments shown.

Introduction

The Dairy Industry Restructuring Act 2001 established designated dairy markets, which generally operate where importing countries have country-specific tariff quotas for New Zealand products. This regime allowed Fonterra Co-operative Group Limited exclusive access to these markets for fixed periods. This bill amends the Act to provide for rights to export markets for which the restrictions are about to expire.

The bill removes export restrictions from some markets or parts of some markets, allows the Minister of Agriculture to allocate export licences from other markets to multiple participants on a periodic basis and sets out the rules for doing so, and introduces penalties for false declarations of information used for allocating export licences. The bill also amends the regulation-making powers in the Act relating to the New Zealand Dairy Core Database.

This commentary outlines the key issues we have considered and the main amendments we recommend to the Bill.

Removal of export restrictions

We heard opposing views regarding the removal of restrictions on the exporting of cheese to Japan and to various markets in the United States of America. We believe that access to these markets should be opened up to a number of New Zealand-based exporting companies. This would give these companies the opportunity to expand into wider markets, and to increase volumes in out-of-quota trade.

We considered the option of providing allocation licences to allow multiple participants to access these markets. However, we understand that such licences may not be legally enforceable as they may not be acceptable to importing countries' authorities and therefore the Government could not guarantee applicants that they would be able to exercise export rights granted to or transferred to other holders.

Restrictions on exports to designated markets

We recommend an amendment to clause 7 to make it explicit that a person exporting to a designated market must be the holder of a current export licence, and export product in accordance with that licence. The provision as drafted would not prevent a licence holder allowing another entity to export to a designated market using that licence holder's export licence, with the exception of Fonterra's historical arrangements. We believe that this would have the effect of an unregistered transfer. We are concerned that allowing such transfers to occur might prevent the Ministry of Agriculture and Forestry, the New Zealand Food Safety Authority, and the New Zealand Customs Service from effectively tracking quota usage against licence holders.

Allocation period for licences

Clause 20 inserts new Schedule 5B, which sets out the rules for the allocation of export licences to multiple participants in the designated markets in new Schedule 5A. These export licences will be allocated on the basis of a proportion of the milksolids collected from New Zealand dairy farmers, with a minimum threshold of 0.1 percent of the total milksolids collected. The bill proposes that export rights that become available between 2008 and 2010 will be allocated on a yearly basis, and those that become available from 2011 will be allocated on a three-yearly basis.

We heard opposing views on the allocation period for export rights as from 2011. Some submitters argued for a shorter timeframe to enable them to increase their market share, whereas others argued for a longer allocation period. We believe that if companies have a clear understanding of the rules for allocation they should be able to predict their allocation, whatever the term of tenure. We believe that there is no compelling reason for export licences to be allocated for three years. We recommend an amendment to clause 6 of new Schedule 5B to require that export licences be allocated annually.

Reference period for determining allocations

The bill provides that each participant must submit milk collection data from the most recent season, and data from the previous season (if a participant wishes to use the average of the two most recent seasons for the purpose of assessing their share of export licences). We believe that the timeframe of the two most recent seasons does not provide the best indicator of milk production collected over time, given seasonal fluctuations. We believe that the option of a timeframe of three recent seasons would be more realistic.

We have considered the advantages and disadvantages of allowing the use of data from the three most recent seasons and believe that the compliance costs would be minimal. We recommend an amendment to clauses 2 and 3 of new Schedule 5B to provide for participants to submit data from either the most recent season or the average of the previous two or three seasons.

We note that the term “season” is defined in the principal Act, and therefore recommend an amendment to clause 3(a), (b) of new Schedule 5B to delete the term “dairy season” and insert the term “season”. We also recommend consequential amendments.

Later allocation of export licences

Clause 10 sets out the process by which the Minister may allocate export licences to multiple participants for the designated markets listed in new Schedule 5A. Under new section 26(3), licences are allocated according to the rules in new Schedule 5B. However, in some circumstances the Minister may be unable to allocate export licences under new section 26(3), in which case new section 26(6) would allow the use of an Order in Council to allocate or reallocate licences.

We recommend the insertion of new section 26(3A) to provide that the Minister may recommend to the Governor-General that an Order

in Council be made to allocate or reallocate export licences under new section 26(6) if the Minister is satisfied that an allocation under new section 26(3) is not appropriate. We also recommend an amendment to new section 26(3) in clause 10 to provide that the Minister must allocate licences on the basis of the rules in new Schedule 5B, unless new section 26(3A) applies. However, we believe that the allocation or the reallocation of export licences by Order in Council should be used only in exceptional circumstances.

Filling of quota

New section 29A in clause 14 provides that a quota is considered to be “filled” when all holders of export licences for quota trade declare to the competent authority that 95 percent of the quantity under the holder’s export licence has been cleared by the customs administration in the importing country. We are concerned that this provision may not be workable, because it is the importing country that notifies clearances. We believe that it would be prudent to define the quota as being “filled” when export certificates have been issued to all licence holders for 95 percent of the licence that each holds. We recommend an amendment to new section 29A(3) to provide that a quota is to be treated as filled when the competent authority has issued export certificates to all licence holders for at least 95 percent of each export licence holder’s quantity of export licences. Consequentially we also recommend that new section 29A(4) be deleted.

Access to export licence register

Clause 14 inserts new section 29B which provides for a register of export licences. We recommend an amendment to new section 29B to allow a holder of an export licence, on receipt of a written request, to inspect information on a register pertaining to his or her licence.

Some submitters argued for unrestricted access to the register, on request. We note that the allocation of export licences is published in the *Gazette*. We believe that, as export licences will be allocated on an annual basis, publication in the *Gazette* is sufficient to meet reasonable information requirements.

Powers of entry, search and seizure

We sought clarification of the rationale for the wide powers conferred on the chief executive by new sections 29C to 29J in clause

14, which pertain to powers of entry, search and seizure. We were told that these powers were necessary for the purpose of determining and monitoring compliance with the rules set out in new Schedule 5B, and that powers of entry and search without a warrant would be used only to inspect business premises and to view business information during business hours.

Powers of chief executive

We recommend the insertion of new section 29BA to allow that the chief executive may authorise a person to exercise a power under new sections 29C to 29J only if that person has had the appropriate training, experience, or qualifications in the exercise of those powers. This amendment should ensure that only appropriate individuals are empowered to exercise these law enforcement powers.

We also recommend the insertion of new section 29BB to allow that the chief executive or a person authorised under new section 29BA may call upon any person for assistance in the exercise of any or all of the powers under new sections 29C to 29J.

Power of entry without a search warrant

We recommend an amendment to new section 29C(1) to insert the words “during business hours” to make clear the times when the chief executive or a person authorised by the chief executive may enter any place (other than a house or a marae) without a search warrant.

Power to examine

We recommend an amendment to new section 29E to make new paragraph (b) consistent with the stated purpose of the section.

We recommend the insertion of new section 29E(b)(iii) to require an occupier to identify and hold any item until the lawful direction of the chief executive or a person authorised by the chief executive has been complied with. We also recommend the insertion of new paragraph (b)(iv) to allow for photographs to be taken.

Search warrants

We recommend the deletion of proposed new section 29D and the insertion of new section 29HA as a newly-drafted provision giving entry and search powers when executing a search warrant. New section 29HA would allow the chief executive or a person authorised by the chief executive to use reasonable force to enter an area that is to be searched, and to break open or to access an item to

be seized. In the process of the lawful execution of the search warrant the chief executive or the person authorised by the chief executive may seize any item he or she believes to be evidence of an offence under this Act. Items may also be removed for the purpose of examination or processing to determine whether they may be seized.

We recommend an amendment to new section 29H(1)(a) to make it clear that the search warrant regime applies only to the offence of making a false declaration of milk collection data under the rules of new Schedule 5B. New section 29I(2) requires a copy of the warrant and contact details of the person executing the search warrant to be left, while new subsection (3) requires a written inventory of the seized items to be provided within 10 working days. We recommend an amendment to new section 29I to allow the person executing the search warrant to apply for a waiver (for up to 12 months) from new subsections (2) and (3) if there are reasonable grounds to believe that compliance with those subsections would unduly prejudice any ongoing or subsequent investigations, or the safety of that person. Furthermore, we recommend including new subsection (3C) providing that the person executing the search warrant must provide information to anyone that has had items seized regarding access to and disposition of the seized items, and these people have a right to access documentation pertaining to the search warrant and the exercise of a search power.

Power to require information

New section 29F in clause 14 allows the chief executive of the ministry to require an eligible participant to provide any relevant document or information, including oral information, relating to compliance with the rules set out in new Schedule 5B. The purpose of this clause is to allow the ministry to obtain information on milk collection data to determine whether a false declaration has been made. Employees and agents of potential eligible participants would also be required to provide such information if requested. The information would be used to prosecute the commercial entity in question for making a false declaration, or an individual other than the individual who made the disclosure.

We recommend that new section 29F be amended to make it clear that information that may be required under this section includes answers to questions about compliance with the rules in new Schedule 5B. Furthermore, we recommend an amendment to clarify that a

person is not able to refuse to answer questions by claiming the privilege against self-incrimination. In addition, we recommend an amendment to clarify that any incriminating answer cannot be used in civil or criminal proceedings against the person who gave this information.

We recommend an amendment to clause 15 to increase the penalty for not disclosing information or a document from \$10,000 to \$200,000. This would ensure that the penalty was consistent with section 67(3) of the Act. We also recommend the insertion of new paragraph (b) to provide for daily penalties for as long as the offence continues.

Control of core database

Some submitters argued that the Crown or a Crown-owned entity should retain control of the New Zealand Dairy Core Database should Livestock Improvement Corporation Limited cease to solely manage the core database. We believe that the current legislation provides sufficient safeguards to ensure that the core database would revert to the Crown until arrangements could be made for it to be taken over by an appropriate dairy industry body, which could include a Crown-owned entity.

There were some submitters who contended that the current access arrangements to the database are not serving the dairy industry's best interests. They contended that current commercial arrangements effectively stifle access to the database. This matter, however, is outside the scope of the bill, but needs further investigation.

Definition amendments

We believe the words "in an allocation round" in the definition for "eligible participant in an allocation round" to be superfluous as this term is not used in the bill, and should therefore be removed from clause 4.

Definition of milksolids

We consider that the term "milk solids" should be defined. We understand that two definitions of "milk solids" are used in the industry. The term "milksolids" (one word) is defined as milk-fat and protein and is commonly used by the industry for payment to farmers, and payment of the industry-good levy. The term "milk

solids” (two words) means all the solid components of milk, not just milk-fat and protein.

We recommend an amendment to clause 4 to include a definition of “milksolids” (following the normal usage in the industry), with consequential amendments to reflect this definition.

Minor amendments

We recommend a number of other minor amendments to clarify the intention of the bill, to address omissions or drafting errors, and to make other improvements.

Appendix

Committee process

The Dairy Industry Restructuring Amendment Bill (No 2) was referred to the committee on 21 August 2007. The closing date for submissions was 14 September 2007. We received and considered nine submissions from interested groups and individuals. We heard four submissions.

We received advice from the Ministry of Agriculture and Forestry, the Ministry of Foreign Affairs and Trade, and Parliamentary Counsel.

Committee membership

Hon David Carter (Chairperson)

Dr Ashraf Choudhary (Deputy Chairperson)

Nathan Guy

Phil Heatley

Moana Mackey

Hon Mita Rinui

Eric Roy

Hon Dover Samuels

**Dairy Industry
Restructuring Amendment (No 2)**

Key to symbols used in reprinted bill

As reported from a select committee

Struck out (unanimous)

Subject to this Act,

Text struck out unanimously

New (unanimous)

Subject to this Act,

Text inserted unanimously

(Subject to this Act,)

Words struck out unanimously

Subject to this Act,

Words inserted unanimously

Hon Jim Anderton

Dairy Industry Restructuring Amendment Bill (No 2)

Government Bill

Contents

		Page
1	Title	2
2	Commencement	3
Part 1		
Amendments to Dairy Industry Restructuring Act 2001		
3	Principal Act amended	3
4	Interpretation	3
5	Purpose	5
6	Overview	5
7	Restrictions on exports to designated markets	6
	23 Restrictions on exports to designated markets	6
8	Continuation and reduction of licences in respect of designated markets in European Communities after initial period	6
9	New section 25A inserted	7
	25A Export licence conferred on Board by section 24 or 25 must be recorded in register of export licence holders	7
10	New section 26 substituted	7
	26 Later allocation of export licences	7
11	New section 27A inserted	9
	27A Increases or reductions in rights to export to designated markets after initial period	9
12	New heading and section 28A inserted	9
	<i>Transferring export licences</i>	
	28A Transferring export licences	9
13	New heading inserted	10
14	New headings and sections 29A to 29J inserted	10
	<i>Quota trade completed before trade over normal tariff</i>	
	29A Quota trade completed before trade over normal tariff	10

**Dairy Industry Restructuring
Amendment (No 2)**

	<i>Maintaining register of licence holders</i>	
29B	Register of export licence holders	11
	<i>Powers of chief executive</i>	
29BA	Power to authorise persons	12
29BB	Power to require assistance	12
29C	Power of entry without search warrant	12
29E	Power to examine, etc	13
29F	Power to require information	14
29G	Power to audit milk collection data	15
	<i>Search warrants</i>	
29H	Issue of search warrant	15
29HA	Entry and search powers when executing warrant	16
29I	Requirements when executing warrant	17
29J	Disposal of property seized under search warrant	18
15	Offences	19
16	Overview	19
17	New section 65A inserted	20
	65A Regulations relating to dairy industry entity other than LIC	20
18	Information to be supplied to chief executive	20
19	Schedule 5 amended	20
20	New Schedules 5A, 5B, 5C, and 5D inserted	20
	Part 2	
	Amendment to Animal Products Act 1999	
21	Principal Act amended	21
22	New section 115A inserted	21
	115A Application of section 115(1) to assurances in respect of export licences issued under Dairy Industry Restructuring Act 2001	21
	Schedule	22
	New Schedules 5A, 5B, 5C, and 5D inserted	

The Parliament of New Zealand enacts as follows:

- 1 Title**
This Act is the Dairy Industry Restructuring Amendment Act (No 2) **2007**.

2 Commencement

This Act comes into force on the day after the date on which it receives the Royal assent.

Part 1
Amendments to Dairy Industry Restructuring Act 2001 5

3 Principal Act amended

This **Part** amends the Dairy Industry Restructuring Act 2001.

4 Interpretation

- (1) Section 5(1) is amended by inserting the following definitions in their appropriate alphabetical order: 10

“**allocation period** means the quota year or years for which export licences are allocated in accordance with section 26

“**competent authority** means the department of State that is for the time being responsible for the administration of the Animal Products Act 1999 15

Struck out (unanimous)

“**dairy season** means a period of 12 months beginning on 1 June and ending on 31 May in the following year

“**eligible participant** (*in an allocation round*) means a person who— 20

“(a) is eligible to hold an export licence; and

“(b) collects at least 0.1% of total milk solids collected from farmers in New Zealand based on the most representative data of total milk solids collected in New Zealand in the latest year that data is available prior to an allocation period 25

“**general export licence** means an export licence allocated under **section 26(4)**

New (unanimous)

“**holder**, in respect of an export licence, means the person recorded in the register of export licence holders kept under **section 29B**

“**interim licence** means, in respect of exports to designated markets in— 5

“(a) Canada, the licence for the period beginning on the commencement of the Dairy Industry Restructuring Amendment Act **2007** and ending on 31 December 2007 for a quantity of butter not exceeding 2 000 tonnes; and

“(b) the Dominican Republic, a licence for the period beginning on the commencement of the Dairy Industry Restructuring Amendment Act **2007** and ending on 31 December 2007 for a quantity of milk powder not exceeding 4 800 tonnes; and 10

“(c) the European Communities— 15

“(i) as described in section 25(2)(a), a licence for the period beginning on 1 January 2008 and ending on 31 December 2008 for the quantities described in that section; and

“(ii) as described in section 25(2)(b), a licence for the period beginning on 1 January 2009 and ending on 31 December 2009 for the quantities described in that section; and 20

“(iii) as described in section 25(2)(c), a licence for the period beginning on 1 January 2010 and ending on 31 December 2010 for the quantities described in that section 25

“**interim period** means the period for which an interim licence is valid

“**marae** includes the area of land on which all buildings such as wharenui (meeting houses), wharekai (dining rooms), ablution blocks, and any other associated buildings are situated 30

New (unanimous)

“**milksolids** means the milk-fat and protein components of raw milk

- “**Ministry** means the department of State that, with the authority of the Prime Minister, is for the time being responsible for the administration of this Act
- “**person eligible to hold an export licence** means a natural person, unincorporated body, or body corporate who (*satisfies the requirements for registration as a dairy exporter under*) is registered to export under Part 5 of the Animal Products Act 1999 5
- “**quota year** means, for designated markets in—
- “(a) the European Communities, the United States of America, and the Dominican Republic, a period of 12 months beginning on 1 January and ending on 31 December; and 10
- “(b) Japan, a period of 12 months beginning on 1 April and ending on 31 March in the following year”. 15
- (2) Section 5(1) is amended by repealing the definition of **chief executive** and substituting the following definition:
“**chief executive** means the chief executive of the Ministry”.
- (3) Section 5(1) is amended by repealing the definition of **designated market** and substituting the following definition: 20
“**designated market** means,—
- “(a) for the initial and interim licences, a market listed in Schedule 5; and
- “(b) for the licences that apply following the initial and interim licences, a market listed in **Schedule 5A**”. 25
- (4) The definition of **export licence** in section 5(1) is amended by repealing paragraph (b) and substituting the following paragraph:
“(b) a licence allocated under section 25, **26**, or 29”.
- (5) The definition of **initial licence** in section 5(1) is amended by omitting “and continued under section 25”. 30
- 5 Purpose**
Section 21(3) is amended by omitting “Schedule 5” and substituting “Schedules 5 and **5A**”.
- 6 Overview** 35
Section 22 is amended by repealing subsection (3) and substituting the following subsection:

“(3) Sections 26 to 42 contain provisions relating to further export licences, restrictions on dealing with export licences, transferring export licences, enforcement, cost recovery, Ministerial directions on international obligations, and other miscellaneous provisions.”

5

Struck out (unanimous)

7 Restrictions on exports to designated markets

(1) Section 23 is amended by omitting “Schedule 5” and substituting “Schedules 5 and **5A**”.

(2) Section 23 is amended by adding the following subsection as subsection (2):

10

“(2) No export restrictions apply to a designated market listed in Schedule 5 after the expiry of the applicable initial and interim periods unless that designated market is listed in **Schedule 5A**.”

New (unanimous)

7 Restrictions on exports to designated markets

Section 23 is repealed and substituted by the following section:

15

“23 Restrictions on exports to designated markets

“(1) A person must not export directly or indirectly to a designated market any dairy product that is described in Schedules 5 and **5A** for that market unless he or she—

20

“(a) is the holder of a current export licence; and

“(b) exports product in accordance with that licence in respect to the product and market.

“(2) No export restrictions apply to a designated market listed in Schedule 5 after the expiry of the applicable initial and interim periods unless that designated market is listed in **Schedule 5A**.”

25

8 Continuation and reduction of licences in respect of designated markets in European Communities after initial period

(1) Section 25 is amended by omitting the heading and substituting the following heading: “**Reduction of licences in respect**

30

	of designated markets in European Communities during the interim period”.	
(2)	Section 25 is amended by repealing subsection (1) and substituting the following subsection:	
“(1)	The Board holds the interim licences to export to designated markets in the European Communities for the periods and the reduced amounts specified in subsection (2).”	5
(3)	Section 25(2) is amended by omitting “initial” and substituting “interim”.	
9	New section 25A inserted	10
	The following section is inserted after section 25:	
	“25A Export licence conferred on Board by section 24 or 25 must be recorded in register of export licence holders	
“(1)	The chief executive must record an export licence conferred on the Board by section 24 or 25 in the register of export licence holders in accordance with section 29B as soon as reasonably practicable after the commencement of the Dairy Industry Restructuring Amendment Act 2007 .	15
“(2)	The Board must supply all necessary information to the chief executive for the purpose of subsection (1) .”	20
10	New section 26 substituted	
	Section 26 is repealed and the following section substituted:	
	“26 Later allocation of export licences	
“(1)	The following are vested in or revert to the Crown:	
“(a)	any rights in respect of designated markets that become available as a result of the expiry of the initial period under section 24:	25
“(b)	any rights in respect of designated markets in the European Communities listed in Schedule 5A that become available as a result of reductions under section 25:	30
“(c)	any quantities that become available as a result of increases in rights in respect of designated markets listed in Schedule 5A after the initial periods, except where the quantities are reallocated in accordance with section 27A(2) :	35

- “(d) any rights in respect of designated markets listed in **Schedule 5A** that become available at the expiry of any other allocations.
- “(2) Following the expiry of the initial and interim licences, export licences for the designated markets listed in **Schedule 5A** must be allocated or reallocated by, or on behalf of, the Crown. 5
- “(3) The Minister (*may*) must, in accordance with the rules set out in **Schedule 5B**, allocate export licences to multiple participants for the designated markets listed in **Schedule 5A** unless subsection (3A) applies. 10
- New (unanimous)**
- “(3A) If the Minister is satisfied that an allocation under **subsection (3)** is not appropriate, having regard to the purpose in section 21(1), the Minister may recommend to the Governor-General that an Order in Council is made to allocate or reallocate export licences under **subsection (6)**. 15
- “(4) The Minister may allocate a general export licence for trade over the normal tariff (outside the terms of the quota), in respect of a designated market listed in **Schedule 5A**, that may be used by any person eligible to hold an export licence for any quantity of the product for which the licence applies. 20
- “(5) **Subsection (4)** applies subject to **section 29A**.
- “(6) The Governor-General may, by Order in Council made on the recommendation of the Minister, allocate or reallocate export licences in respect of designated markets listed in **Schedule 5A**.
- “(7) Before making an allocation under **subsection (4)**, the Minister must— 25
- “(a) be satisfied that an allocation is appropriate in the circumstances; and
- “(b) have regard to the purpose in section 21(1).
- “(8) **Subsection (1)** does not limit the Minister’s power under **subsection (3) or (4)**, or the Governor-General’s power under **subsection (6)**, to allocate new licences in respect of those rights or quantities to the Board or new co-op.” 30

- 11 New section 27A inserted**
The following section is inserted after section 27:
- “27A Increases or reductions in rights to export to designated markets after initial period**
- “(1) This section applies if, after the initial period, there is an increase or reduction in rights to secure economic benefits from designated markets that are not allocated in an existing export licence. 5
- “(2) An increase in a right to export to a designated market during the course of an allocation period accrues on a pro rata basis to the registered holders of export licences at the time the increase first becomes available for use. 10
- “(3) A reduction in a right to export to a designated market during the course of an allocation period applies on a pro rata basis to the registered holders of export licences for that designated market at the time the volumes reduce. 15
- “(4) In the case of interim licences held by the Board, the allocation period for any licence for a specified quantity is the period for which the licence is valid for that quantity.
- “(5) An accrual under **subsection (2)** and a reduction under **subsection (3)** applies only for the remainder of the allocation period. 20
- “(6) An accrual or reduction referred to in **subsection (5)** must be recorded in the register of export licence holders that is kept in accordance with **section 29B.**”
- 12 New heading and section 28A inserted** 25
The following heading and section are inserted after section 28:
- “Transferring export licences*
- “28A Transferring export licences**
- “(1) The Governor-General may, by Order in Council, made on the recommendation of the Minister, make regulations for the purpose of governing the transfer of export licences or parts of export licences. 30
- “(2) Export licences may be transferred only in accordance with regulations made in accordance with **subsection (1)**. 35
- “(3) The chief executive is responsible for administering the transfer of export licences.

“(4) **Subsection (1)** applies subject to section 28.”

13 New heading inserted

The following heading is inserted before section 29: “*Revocation of initial licences*”.

14 New headings and sections 29A to 29J inserted

5

The following headings and sections are inserted after section 29:

“*Quota trade completed before trade over normal tariff*”

“29A Quota trade completed before trade over normal tariff

“(1) This section applies to trade over the normal tariff (outside the terms of the quota) for the following markets: 10

“(a) prepared edible fat to Japan:

“(b) milk powder to the Dominican Republic.

“(2) For the markets listed in **subsection (1)**, in any quota year, holders of export licences for trade over the normal tariff may not use those export licences until the quota for the market is filled in that quota year. 15

Struck out (unanimous)

“(3) A quota is considered filled when all holders of export licences for quota trade declare to the competent authority that 95% of the quantity under the holder’s export licence for the relevant product traded within the quota has been cleared by the customs administration or other authority responsible for the administration of the tariff quota in the importing country. 20

New (unanimous)

“(3) A quota is to be treated as filled when the competent authority has issued export certificates to all licence holders for at least 95% of each export licence holder’s quantity of export licences. 25

Struck out (unanimous)

“(4) The competent authority may require holders of export licences for quota trade to make a declaration under **subsection (3)** in any manner that the competent authority considers fit.

“(5) The competent authority must publicly notify the industry when a quota is filled in accordance with **subsection (3)**. 5

“(6) When a quota is filled, the competent authority must, as soon as is reasonably practicable,—
“(a) publish a notice in the *Gazette*; and
“(b) notify the eligible participants in any manner that the competent authority considers effective and appropriate, including electronically. 10

“(7) An export licence holder may use the export licence for trade over the normal tariff only for the remainder of the quota year in which publication and notification are made in accordance with **subsection (6)**. 15

“Maintaining register of licence holders

“29B Register of export licence holders

“(1) The chief executive must—
“(a) keep and maintain a register of export licence holders; and
“(b) make the register available to the competent authority; and 20

New (unanimous)

“(c) on receipt of a written request, allow a holder of an export licence to inspect information on the register that relates to his or her licence. 25

“(2) The register must contain the following information:
“(a) the full name and address of the export licence holder:
“(b) each designated market for which the holder holds an export licence:
“(c) the volume of quota rights held in respect of each export licence for each quota year: 30
“(d) the following dates for each export licence:
“(i) date of registration:

- “(ii) date of commencement:
“(iii) date of expiry:
“(e) the date of transfer, if any, of the export licence or part of the export licence:
“(f) the full name and address of the previous holder of the export licence. 5
- “(3) If a person holds more than 1 export licence for a designated market for the same quota year, each export licence must be registered separately.
- “(4) This section does not apply to general export licences allocated under **section 26(4)**. 10

“*Powers of chief executive*

New (unanimous)

“**29BA Power to authorise persons**

The chief executive may only authorise a person to exercise a power under **sections 29C to 29J** if that person has appropriate training, experience, or qualifications in the exercise of that power. 15

“**29BB Power to require assistance**

The chief executive, or a person authorised by the chief executive, may call on any person for assistance in the exercise of any or all of the powers under **sections 29C to 29J**. 20

“**29C Power of entry without search warrant**

“(1) For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a person authorised by the chief executive, may (*at any reasonable time*) during business hours enter any place (other than a dwellinghouse or marae) without a search warrant. 25

“(2) (A person who enters) Before entering any place under **subsection (1)**, the chief executive or person authorised by the chief executive must— 30

“(a) give the owner or occupier reasonable notice of his or her intention to enter the place, unless to do so would defeat the purpose of the entry; and

- “(b) if notice under **paragraph (a)** is not or cannot be given, leave in a prominent location at the place a written statement of—
- “(i) the time and date of the entry; and
 - “(ii) the purpose of the entry; and
 - “(iii) the name of the person; and
 - “(iv) the address of the office to which inquiries should be made.
- “(3) A person who exercises any power under this section must produce his or her evidence of authorisation—
- “(a) on first entering the place; and
 - “(b) subsequently whenever reasonably required to do so by a person appearing to have charge of the place or any part of the place.

Struck out (unanimous)

- “**29D Power to search and seize evidence with search warrant**
- For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, and subject to any conditions imposed on the warrant, a search warrant issued under **section 29H** authorises the chief executive, or person authorised by the chief executive, who is executing the warrant—
- “(a) to enter the place, dwellinghouse, or marae on one occasion within 14 days after the date of the issue of the warrant at any time that is reasonable in the circumstances; and
 - “(b) to use such force as is reasonable in the circumstances, both for making entry and for breaking open anything on the premises; and
 - “(c) to search for and seize any documents or records (including documents and records in electronic or other form) that the chief executive or authorised person has reasonable grounds to suspect may provide evidence of the commission of an offence under this Act.

- “**29E Power to examine, etc**
- For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a

person authorised by the chief executive, may, at any place entered in accordance with **section 29C**,—

- “(a) examine all things, and open containers, packages, and other things to inspect their contents:
- “(b) examine, inquire about, and copy any documents or other records (including records held in electronic or other form) *(relating to the obligations and duties under this Act, and for this purpose may)* and may—
 - “(i) remove documents or records to another place for a reasonable time for the purpose of copying them, or require the person having control of the documents or other records to forward them or a copy of them to the officer by way of post, courier post, fax, or other means acceptable to the chief executive or authorised person; and
 - “(ii) require a person who has control of or knowledge of the documents or records to reproduce or assist in reproducing in usable form information recorded or stored in a computer or other device or system; and

New (unanimous)

- “(iii) direct the occupier to identify and hold any equipment, package, container, or document until any lawful direction of the chief executive, or a person authorised by the chief executive, has been complied with; and
- “(iv) take photographs of any container, package, equipment, or thing.

“29F Power to require information

- “(1) For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a person authorised by the chief executive, may require an eligible participant or an employee or agent of an eligible participant to provide any relevant information or documents or answer any relevant questions.

New (unanimous)

- “(2) Any information, documents, or answers required under **subsection (1)** must be provided within a reasonable time to a person or place as directed by the chief executive, or a person authorised by the chief executive.
- “(3) An eligible participant or an employee or agent of an eligible participant may not refuse to answer a question under **subsection (1)** on the ground that the answer would be likely to incriminate the eligible participant. 5
- “(4) An incriminating answer under this section—
- “(a) may be used in civil or criminal proceedings against the eligible participant if it is a body corporate; but 10
- “(b) may not be used in civil or criminal proceedings against the employee or agent of the eligible participant who gave the incriminating answer.

“29G Power to audit milk collection data 15

- “(1) For the purpose of determining and monitoring compliance with the rules set out in **Schedule 5B**, the chief executive, or a person authorised by the chief executive, may audit the milk collection data received from an eligible participant.
- “(2) Participants must be notified of the possibility of an audit on a cost-recovery basis at the time of an application for an export licence. 20
- “(3) Participants may be charged a fee for an audit carried out under **subsection (1)**.

“Search warrants 25

“29H Issue of search warrant

- “(1) A District Court Judge, Community Magistrate, Justice of the Peace, or Registrar may issue a search warrant in the form set out in **Schedule 5D** in respect of any place *(including any dwellinghouse or marae or other place that the chief executive, or authorised person, has no power to enter under **section 29C**)* if satisfied, on application in writing made on oath, that there are reasonable grounds for believing that there is at that place any thing— 30

- “(a) in respect of which an offence under *(this Act)* section 31(3) has been or is being committed; or
- “(b) that has been, is being, or is intended to be used by any person for the commission of an offence under *(this Act)* section 31(3); or 5
- “(c) that is *(or may be)* evidence of the commission of an offence under *(this Act)* section 31(3) by any person.
- “(2) The District Court Judge, Community Magistrate, Justice of the Peace, or Registrar may impose any reasonable conditions on the warrant that he or she thinks fit. 10
- “(3) A search warrant must be directed to a member of the police by name or to every member of the police or to the chief executive or to a person authorised by the chief executive by name, but, in any of these cases, the warrant may be executed by any member of the police. 15

New (unanimous)

- “29HA Entry and search powers when executing warrant**
- “(1) The chief executive or authorised person who executes the warrant may use any force that is reasonable to—
- “(a) enter an area that is to be searched; or
- “(b) break open or access an item that is to be seized. 20
- “(2) The chief executive, or person authorised by the chief executive, who executes a search warrant may seize any item that—
- “(a) he or she has reasonable grounds to believe is evidence of an offence under this Act; or
- “(b) is found while he or she is lawfully— 25
- “(i) exercising a search power; or
- “(ii) in the place in which the item is found.
- “(3) **Subsection (2)(b)** applies even if the seizure of the item is not authorised by the search warrant.
- “(4) If it is not reasonably practicable to determine whether an item may be seized in accordance with a search warrant, the chief executive or authorised person may remove the item for the purpose of examination or processing to determine whether it may be seized. 30

“29I Requirements when executing warrant

- “(1) The chief executive, or a person authorised by the chief executive, who executes a search warrant must carry the warrant with him or her, and produce it for inspection, along with evidence of his or her identity,— 5
- “(a) on first entering the place specified in the warrant, to the person appearing to be in charge of the place; and
- “(b) whenever subsequently required to do so, at the place specified in the warrant, by any other person appearing to be in charge of the place or any part of the place. 10
- “(2) If the occupier of the place is not present at the time the search warrant is executed, the chief executive or authorised person must leave in a prominent location at the place a written statement of the time and date of the search, a copy of the search warrant, the name of the chief executive or authorised person, and the address to which inquiries may be made. 15
- “(3) If anything is seized in the execution of a search warrant, the chief executive or authorised person executing the search warrant must leave in a prominent location at the place, or deliver or send by registered mail to the occupier within 10 working days after the search, or a later date if an extension is approved by a District Court Judge, a written inventory of all things seized. 20

New (unanimous)

- “(3A) The chief executive or authorised person may make an application, at the time of making an application for a search warrant, for a waiver from **subsections (2) and (3)** if he or she believes that there are reasonable grounds for believing that compliance with those subsections would unduly prejudice any ongoing or subsequent investigations or endanger the safety of any person. 25 30
- “(3B) A waiver under **subsection (3A)** may only be issued for a specified period up to 12 months.
- “(3C) The chief executive or authorised person who executed the search warrant must provide information to persons from whom items have been seized regarding— 35
- “(a) access to and the disposition of the seized items; and

New (unanimous)

“(b) the right to access documentation relating to the application for a search warrant and the exercise of a search power under the Official Information Act 1982.

“(4) The chief executive or authorised person who is exercising a power of entry in relation to a marae, or a building associated with a marae, must have regard to the kawa of the marae so far as is practicable in the circumstances. 5

“29J Disposal of property seized under search warrant

Section 199 of the Summary Proceedings Act 1957 applies to any property seized by a member of the police under a search warrant and, with any necessary modifications, to property seized under a search warrant by the chief executive, or a person authorised by the chief executive, subject to the following provisions: 10

“(a) where a member of the police seized the item in question, it may be retained by the Commissioner of Police pending the trial of the person for the offence in respect of which the item was seized: 15

“(b) where the chief executive, or a person authorised by the chief executive, seized the item in question, it may be retained by the chief executive pending the trial of the person for the offence in respect of which the item was seized: 20

“(c) the item in question must be returned to the person from whom it was seized— 25

“(i) if no proceedings are taken in respect of an offence to which the item relates within *(2 years)* 6 months after its seizure; or

“(ii) if proceedings are completed in respect of such an offence and no order of forfeiture is made in respect of the item: 30

“(d) if any person is convicted of an offence to which the item relates, the Court may, if it thinks fit, order that the item be forfeited to the Crown or disposed of as the Court directs at the expense of the convicted person, and may order that the person pay any reasonable costs 35

incurred by the Commissioner of Police or the chief executive in retaining the item.”

15 Offences

Section 31 is amended by adding the following subsections as subsections (2) and (3):

5

- “(2) Every person commits an offence against this Act and is liable on summary conviction to (a fine not exceeding \$10,000) the following fines who does not provide the information or document required under **section 29F**:

New (unanimous)

“(a) a fine not exceeding \$200,000; and

10

“(b) a further fine not exceeding \$10,000 for every day or part of a day during which the offence is continued.

- “(3) Every person commits an offence against this Act, and is liable for the following, who provides a false declaration in relation to milk collection data contrary to **Schedule 5B**:

15

“(a) a declaration by a court of competent jurisdiction that the person is not eligible for further allocations of export licences for a period determined by the court; and

“(b) a fine not exceeding \$200,000 or a term of imprisonment not exceeding 3 months, or both.”

20

16 Overview

Section 43 is amended by repealing subsection (2) and substituting the following subsection:

- “(2) Sections 62 to **65A** contain regulation-making powers relating to herd testing, the provision of information to the core database, access to the core database, disclosure of information by LIC, and regulations relating to a dairy industry entity other than LIC, *and regulations relating to transferring export licences*.”

25

30

- 17 New section 65A inserted**
The following section is inserted after section 65:
- “65A Regulations relating to dairy industry entity other than LIC**
- “(1) The Governor-General may, by Order in Council made on the recommendation of the Minister, make regulations for all or any of the purposes set out in sections 62 to 65 in respect of any dairy industry entity, other than LIC, nominated by the Crown to manage the core database. 5
- “(2) Regulations may be made under **subsection (1)** only— 10
- “(a) if the core database reverts to the Crown under section 68(2); or
- “(b) if provisions of the constitution of LIC are amended or revoked in accordance with section 51; or
- “(c) if LIC makes an application under section 52(2).” 15
- 18 Information to be supplied to chief executive**
- (1) Section 66(1) and (3) are amended by omitting “LIC” in each place where it appears and substituting in each case “LIC or any other dairy industry entity nominated by the Crown to manage the core database”. 20
- (2) Section 66 is amended by repealing subsection (2) and substituting the following subsection:
- “(2) The chief executive may request (in writing) information, statements, or reports from LIC or any other dairy industry entity nominated by the Crown to manage the core database to monitor LIC’s or that other dairy industry entity’s compliance with regulations made under section 65.” 25
- 19 Schedule 5 amended**
The heading to Schedule 5 is omitted and the following heading substituted: “**Designated markets for initial and interim licences**”. 30
- 20 New Schedules 5A, 5B, 5C, and 5D inserted**
The **Schedules 5A, 5B, 5C, and 5D** set out in the Schedule of this Act are inserted after Schedule 5.

Part 2
Amendment to Animal Products Act 1999

- 21 Principal Act amended**
This **Part** amends the Animal Products Act 1999.
- 22 New section 115A inserted** 5
The following section is inserted after section 115:
- “115A Application of section 115(1) to assurances in respect
of export licences issued under Dairy Industry
Restructuring Act 2001** 10
Section 115(1) does not apply to assurances given in respect
of export licences issued under the Dairy Industry Restructur-
ing Act 2001 until the financial year beginning 1 July 2010.”
-

s 20 **Schedule**
New Schedules 5A, 5B, 5C, and 5D inserted

ss 21(3), 23, 26 **Schedule 5A**
**Designated markets following expiry of initial and
interim licences** 5

Market	Product	Further product description	
European Commu- nities	Butter	Destined for import into the European Communities under the tariff quota for butter of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	10
		Destined for import into the European Communities under the tariff quota for cheddar cheese of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	15
European Commu- nities	Cheddar cheese	Destined for import into the European Communities under the tariff quota for cheddar cheese of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	20
		Destined for import into the European Communities under the tariff quota for cheese for processing of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	25
European Commu- nities	Cheese for process- ing	Destined for import into the European Communities under the tariff quota for cheese for processing of New Zealand origin, as provided for in the Current Access Quotas part of Section I-B of Schedule CXL/European Communities of the World Trade Organization (this being the document circulated as WTO document G/L/65), including any amendment or any successor to that schedule.	30
			35

Schedule 5A—continued

Market	Product	Further product description	
United States of America	Cheddar cheese	Product that falls within the product description provided in headnote 16 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for cheddar cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.	5
			10
United States of America	Low-fat cheese	Product that falls within the product description provided in headnote 21 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for low-fat cheese of New Zealand origin, not including product destined for import into the United States of America other than under the terms of that tariff quota.	15
			20
United States of America	NSPF cheese	Cheese and substitutes for cheese that fall within the product description provided in headnote 14 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.	25
			30
			35

**Dairy Industry Restructuring
Amendment (No 2)**

Schedule 5A—continued

Market	Product	Further product description	
United States of America	Other American-type cheese	Product that falls within the product description provided in headnote 17 of Schedule XX/United States of America of the World Trade Organization for entry under the tariff quota for other American-type cheese of New Zealand origin, only including those quantities for which designated importer import licences are issued in accordance with United States of America law, and not including product destined for import into the United States of America other than under the terms of that tariff quota.	5
			10
Japan	Prepared edible fat	Product falling within HS code 2106.90 that falls within the product description provided in Schedule XXXVIII/Japan of the World Trade Organization for entry under the tariff quota for prepared edible fat of New Zealand origin, including trade outside the terms of the quota.	15
			20
Dominican Republic	Milk powder	Product that falls within the product description provided in Schedule XXIII/Dominican Republic of the World Trade Organization for entry under the tariff quota for milk powder of New Zealand origin, including trade outside the terms of the quota.	25

Schedule 5B

s 26(3)

Rules for allocation of export licences to multiple participants for designated markets in Schedule 5A

- 1 Export licences are allocated to eligible participants on the basis of the percentage of total *(milk solids) milksolids* collected by eligible participants, or their employees, contractors, or agents, directly from dairy farmers in New Zealand in the most recent season for which data is available, or the average of the 2 or 3 most recent seasons. 5
- 2 To be eligible to receive a share of export licences, participants must collect (or a participant's employees, contractors, or agents may collect) and acquire legal title in at least 0.1% of total *(milk solids) milksolids* collected from dairy farmers in New Zealand, based on— 10
- (a) the most representative data of total *(milk solids) milksolids* collected in New Zealand, in the latest year for which data is available prior to an allocation period; and 15
- (b) *(milk solids) milksolids* collection data submitted by each eligible participant by statutory declaration for— 20

New (unanimous)

- (i) the most recent season; and
- (ii) the previous season (if a participant wishes to use an average of the most recent 2 seasons for the purpose of assessing his or her eligibility to receive a share of export licences); and 25
- (iii) the season immediately prior to the season referred to in subparagraph (ii) (if a participant wishes to use an average of the most recent 3 seasons for the purpose of assessing his or her eligibility to receive a share of export licences). 30

- 3 For the purposes of assessing the share of export licences, each participant must submit milk collection data to the chief executive or a person authorised by the chief executive by statutory declaration (as set out in **Schedule 5C**), including— 35
- (a) data from the most recent *(dairy)* season; and

Schedule 5B—*continued*

- (b) data from the previous (*dairy*) season (if a participant wishes to use an average of the most recent 2 seasons for the purpose of assessing his or her share of export licences); and

New (unanimous)

- | | |
|--|---|
| (c) data from the season immediately prior to the season referred to in paragraph (b) (if a participant wishes to use an average of the most recent 3 seasons for the purpose of assessing his or her share of export licences). | 5 |
|--|---|

- 4 Each eligible participant receives an export licence in a market only if that participant's share of export licences in that market equates to a volume of 20 tonnes or more of product. Any volume of export licences that is available as a result of this rule will be allocated pro rata to the remaining eligible participants. 10
- 5 The Minister must ensure all allocations of export licences are notified in the *Gazette*. 15

Struck out (unanimous)

- | | |
|--|----|
| 6 For allocations made in— | |
| (a) 2007, 2008, and 2009 (applying to quota years beginning in 2008, 2009, and 2010 respectively), export licences are to be allocated for a period of 1 quota year: | 20 |
| (b) 2010 (applying to the quota year beginning in 2011) and all later allocations, export licences must be allocated for a period of 3 quota years. | |

Schedule 5B—*continued*
New (unanimous)

- 6 An export licence is to be allocated for a period of 1 quota year.

Schedule 5B **Schedule 5C**
Form of statutory declaration

Form
Form of statutory declaration

- I, [*full name*], of [*address*], being the chief executive officer*/director* of [*name of company*], solemnly and sincerely declare that to the best of my knowledge, having made all reasonable inquiries,—
- (a) the information attached to this declaration is a true copy of information that complies with the requirements of **Schedule 5B**; and 10
 - (b) the [*specify statement(s), report(s), or information*] attached to this declaration is/are* the [*statement(s), report(s), or information*] required to be supplied by the chief executive under **Schedule 5B**. 15

*Delete if inapplicable.

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Act 1957.

Declared at [*place*] on [*date*] 20

.....
Registrar
or Justice of the Peace
or Solicitor
or other person authorised to take a 25
statutory declaration

Schedule 5D
Search warrant

s 29H

Form
Search warrant

Section 29H, Dairy Industry Restructuring Act 2001 5

To every member of the police

or

To [full name], the chief executive officer of the Ministry of Agriculture and Forestry*/person authorised by the chief executive*/member of the police* 10

*Delete if inapplicable.

I am satisfied on an application in writing made on oath by [full name], the chief executive (or an authorised person under the Dairy Industry Restructuring Act 2001), that there is reasonable ground for believing that there is (or are) at [describe place, dwellinghouse, or marae] the following thing(s): 15

- in respect of which an offence against section 31(3) of the Dairy Industry Restructuring Act 2001 has been (or may have been) committed; or
- that is (or may be) evidence of the commission of an offence against section 31(3) of the Dairy Industry Restructuring Act 2001; or 20
- that is (or may be) intended to be used for the commission of an offence under section 31(3) of the Dairy Industry Restructuring Act 2001. 25

[Describe thing or things and, in respect of each, reference to offence concerned.]

I authorise you to enter and search that place on one occasion at any reasonable time within 14 days of the date of this warrant.

I also authorise you to exercise all of the powers of the chief executive, or a person authorised by the chief executive, under **sections 29(D)C to 29(G)J** of the Dairy Industry Restructuring Act 2001 (or such of those powers as are specified). 30

This warrant is issued subject to the following conditions: [specify conditions]* 35

*Delete this sentence if no conditions apply.

Schedule 5D—*continued*
Form—*continued*

Issued at [*place*] on [*date*]

.....
District Court Judge
or Community Magistrate
or Justice of the Peace 5
or Registrar (not being a member
of the police)

Legislative history

14 August 2007	Introduction (Bill 142–1)
21 August 2007	First reading and referral to Primary Production Committee
