



Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2023

I, Madeleine King, Minister for Resources and Minister for Northern Australia, make the following Guidelines.

Dated

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1 Name

This instrument is the *Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2023*.

2 Commencement

These Guidelines commence the day after they are registered on the Federal Register of Legislation.

3 Authority

This instrument is made under regulation 13GF of the *Customs (Prohibited Exports) Regulations 1958*.

4 Definitions

Note: A number of expressions used in these Guidelines are defined in the definitions section of the Regulations, including the following:

- (a) authorised officer;
- (b) Collector;
- (c) domestic shortfall quarter;
- (d) permission;
- (e) Resources Department;
- (f) Resources Minister.

In these Guidelines:

ACCC means the Australian Competition and Consumer Commission.

AEMO means the Australian Energy Market Operator.

ADGSM means the Australian Domestic Gas Security Mechanism.

gas supply has the meaning set out in subsection 8(6).

LNG is short for liquefied natural gas.

LNG project means the entity, or group of entities, which own, control or operate an LNG facility and its associated upstream operations, and any related bodies corporate.

Minister's determination means a determination made by the Minister in accordance with regulation 13GE of the Regulations.

Minister's notification means a notifiable instrument made by the Minister in accordance with paragraph 13GE(2)(c) of the Regulations.

Q1 is the first quarter of the calendar year. That is, the period commencing 1 January and concluding on 31 March.

Q2 is the second quarter of the calendar year. That is, the period commencing 1 April and concluding on 30 June.

Q3 is the third quarter of the calendar year. That is, the period commencing 1 July and concluding on 30 September.

Q4 is the fourth quarter of the calendar year. That is, the period commencing 1 October and concluding on 31 December.

Regulations means the *Customs (Prohibited Exports) Regulations 1958*.

related bodies corporate has the same meaning as in the *Corporations Act 2001*.

shortfall means an insufficient supply of natural gas for Australian consumers.

5 Purpose

- (1) The purpose of these Guidelines is to set out the requirements, indicative timing, processes, and considerations associated with the operation of the ADGSM. This includes in relation to decisions by the Minister under Division 6 of Part 3 of the Regulations regarding the determination of a domestic shortfall quarter, and the granting of permissions.
- (2) These Guidelines are subject to, and do not replace or amend the requirements of, the Regulations and the *Customs Act 1901*, which should be read in conjunction with these Guidelines.
- (3) These Guidelines are not a legislative instrument. The Minister may depart from the Guidelines where justified by the circumstances. Where the Minister proposes to depart from the Guidelines, procedural fairness will be afforded to any adversely affected persons.

6 Overview of the ADGSM

- (1) The objective of the ADGSM is to ensure that there is a sufficient supply of natural gas to meet the forecast needs of Australian gas consumers by controlling, if necessary, LNG exports.
- (2) The ADGSM applies Australia wide. In practice, the ADGSM:
 - a. establishes a process for the Minister to determine whether there will be significantly insufficient supply of natural gas for Australian consumers in the forthcoming quarter (a **domestic shortfall quarter**); and
 - b. prohibits exports of LNG during a domestic shortfall quarter, unless written permission has been granted by the Minister or an authorised officer (a **permission**); and
 - c. establishes a permission regime, whereby the Minister or an authorised officer may grant a permission to an LNG project.
- (3) Division 6 of Part 3 of the Regulations came into effect from 1 July 2017 and will be automatically repealed on 1 January 2030.

7 Summary of timeframes

Minister to be advised of forecast domestic gas supply and demand

- (1) The Minister's decision to consider activating the ADGSM will be based on forecast domestic gas supply and demand. The decision will be based on forecasts and advice provided by the Department, ACCC, AEMO and any other sources of information the Minister considers relevant.

Minister's notification

- (2) The Minister's notification of intent to consider determining a domestic shortfall quarter must be issued at least three months prior to the commencement of the domestic shortfall quarter.
 - a. For Q1, this is 1 October the previous calendar year.
 - b. For Q2, this is 1 January the same calendar year.
 - c. For Q3, this is 1 April the same calendar year.
 - d. For Q4, this is 1 July the same calendar year.

Consultation

- (3) Following the Minister's notification, the Minister will consult with LNG projects on whether to determine a domestic shortfall quarter.
- (4) Those consulted will have 30 calendar days from the Minister's notification to provide any information that would impact on the shortfall forecast.

Minister's determination

- (5) The Minister's determination will be made within 45 days of the Minister's notification.

Permissions

- (6) The Minister will grant the initial permissions to an LNG project no less than 30 days before the domestic shortfall quarter commences. This may be followed by the granting of additional permissions, or variations to permissions.
- (7) A permission can be traded on and from the date it is issued.
- (8) In accordance with paragraph 13GC(1)(a) of the Regulations, a permission will be required for all LNG exported in a domestic shortfall quarter.

8 Determining a domestic shortfall quarter

Advice to Minister

- (1) The Minister will be advised of Australia's forecast domestic gas supply and demand. This advice may be provided by the Department, ACCC, AEMO and other government agencies.
- (2) A forecast of domestic gas supply will be based on information collected from Australia's gas producers and LNG projects.

Minister's notification

- (3) Before the Minister may determine that a quarter will be a domestic shortfall quarter, the Minister must first, by notifiable instrument, notify the Minister's intention to determine whether the forthcoming quarter will be a domestic shortfall quarter.
- (4) The notice will set out, in petajoules, the forecast domestic:
 - a. demand; and
 - b. supply; and
 - c. shortfall.

Consultation with LNG projects

- (5) The Minister will write to LNG projects to:
 - a. alert them to the Minister's notification; and
 - b. invite views on the Australian domestic gas market outlook; and
 - c. for LNG projects for which the Minister is considering issuing limited volume permissions—request confirmation of their gas supply for the quarter as at the date of the Minister's notification; and
 - d. invite proposals for an industry-led solution to prevent the forecast shortfall.
- (6) **Gas supply** is the LNG project's:
 - a. gas production volume;
 - b. plus its domestic gas purchased volume.
- (7) The Minister may request information on how the LNG project calculated gas supply, including the LNG project's:
 - a. gas production volume; and
 - b. domestic gas sales volume; and
 - c. domestic gas purchased volume.

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- (8) An LNG project may update the information it provided to the ACCC and AEMO on the quarter the Minister is considering determining is a shortfall quarter when responding to the Minister's notification consultation.

Determining a domestic shortfall quarter

- (9) The Minister may exercise discretion and judgement in considering all relevant and available information to decide whether to determine a quarter as a domestic shortfall quarter.
- (10) For the Minister to determine a quarter as a domestic shortfall quarter, the Minister must have reasonable grounds for the Minister's belief that there will not be a sufficient supply of natural gas for Australian consumers unless exports of LNG are controlled and that exports of liquefied natural gas would contribute to that lack of supply.
- (11) When considering whether there are reasonable grounds to believe that there will not be a sufficient supply of natural gas for Australian consumers unless exports are controlled, and that exports of LNG would contribute to that lack of supply, the Minister may take into account a range of factors. These may include, but are not limited to, the following.

- a. The extent to which limiting exports could be expected to reduce a shortfall.
- b. External factors influencing the gas market.

Example: This may include natural disasters, infrastructure malfunctions or closures, or a sudden rise in demand.

- c. The materiality of a shortfall. The Minister may choose not to determine a domestic shortfall quarter, even where the Minister determines there will be a shortage of gas in the market, if the Minister considers the likely shortfall volume to be small compared to forecast demand.

Example: The Minister may consider a shortfall immaterial where the costs of imposing export controls are likely to be greater than the benefit to Australian consumers affected by a shortfall.

- d. Limitations in the ability for LNG projects to redirect gas to the domestic market. The Minister may consider the practical impact of export controls in the event that the Minister determines a domestic shortfall quarter.

Example: The Minister may consider whether market impediments (such as transport and storage infrastructure constraints) are likely to prevent export controls from resulting in the additional supply of gas to Australian consumers affected by a shortfall.

- e. The availability of an industry-led solution to an identified shortfall. The Minister may consider whether a person has entered into commitments to voluntarily deliver volumes to Australian consumers in the relevant part of the Australian domestic gas market which would be sufficient to avoid the occurrence of a shortfall;
- f. The past performance of all participants in the Australian domestic gas market, including any strategic behaviour or 'gaming' of the ADGSM.

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- (12) The Minister may determine a domestic shortfall quarter for a quarter in which a shortfall is not forecast, if doing so could prevent a shortfall in a subsequent quarter.

Example: The Minister may determine a domestic shortfall quarter in advance of a peak demand period in which a shortfall is forecast to prevent the shortfall, especially where prevention requires accounting for limitations in gas transport and storage.

- (13) The Minister's determination will specify the shortfall volume and be accompanied by a statement of reasons. The statement of reasons will be published on the Department's website and on the Federal Register of Legislation. The Minister will determine the shortfall volume based on the ACCC's and AEMO's advice, any updates from LNG projects during consultation on the Minister's notification, and any other relevant information.
- (14) The Minister may choose not to determine a domestic shortfall quarter, even where the Minister determines there will be a shortfall, based on consideration of the factors set out in this section. The Minister may issue a statement that outlines the reasons for this decision.
- (15) The Minister may revoke a Minister's determination at any time. In such circumstances, the Minister will make a new notifiable instrument to repeal the Minister's determination, and write to each LNG Project to notify them of the decision.

Shortfalls which only impact consumers in part of Australia

- (16) In deciding whether to make the Minister's determination, the Minister will consider Australian consumers in each part of the Australian domestic gas market, including each of the major gas markets that together comprise the Australian domestic gas market (that is, the Western, Northern, and Eastern gas markets).
- (17) The Minister may determine a domestic shortfall quarter if Australian consumers in a part of the Australian domestic gas market will be affected by a shortfall, notwithstanding that consumers in other parts of the Australian domestic gas market will not be affected by a shortfall.

Example: The Minister may determine a quarter as a domestic shortfall quarter where the Minister has reasonable grounds to believe that there will not be a sufficient supply of natural gas for Australian consumers in the Eastern gas market during the quarter unless exports are controlled, despite that consumers in the Northern and Western gas markets will not be affected by a shortfall.

- (18) Where the Minister determines a quarter as a domestic shortfall quarter, all LNG Exporters will receive one of two types of permissions, which enables a distinction between those LNG Exporters within the shortfall market, and those in other domestic gas markets.

9 Permission types

- (1) In a domestic shortfall quarter, the export of LNG from Australia is prohibited unless the LNG project:
- a. has a permission; and

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- b. the permission is produced to the Collector.
- (2) Permissions will be issued for a domestic shortfall quarter and will expire at the end of the domestic shortfall quarter.
- (3) Without limitation, the Minister may grant permissions for an unlimited volume (UV), or for an allowable volume (AV).

Unlimited volume (UV) permissions

- (4) A UV permission allows an LNG project to export an unlimited volume of LNG in a domestic shortfall quarter. However, other limitations, apart from the provisions of the ADGSM, may influence the volume of gas an LNG Exporter can export, including as a result of state-based agreements.
- (5) The Minister may grant a UV permission to an LNG project that is in a part of the Australian domestic gas market where Australian consumers are unaffected by the shortfall.

Example: The Minister may issue UV permissions to LNG Projects in the Western and Northern gas markets during a domestic shortfall quarter where consumers in the Eastern gas market would be impacted by the shortfall.

Allowable volume (AV) permissions

- (6) AV permissions will be issued to LNG projects not granted UV permissions.
- (7) AV permissions will be expressed in tonnes of LNG, converted from petajoules using the following formula. 1 petajoule = 18,382 tonnes.
- (8) The allowable volume in an AV permission will be:
- the LNG Project's gas supply for the domestic shortfall quarter;
 - minus any gas already committed to the domestic market;
 - minus the LNG project's shortfall alleviation contribution.

Note: Shortly after making the Minister's notification, the Minister will write to LNG projects requesting confirmation of their gas supply for the quarter and the amount of gas they have contracted domestically as at the date of the Minister's notification. See section 8(5) of these Guidelines.

The Minister may consider any contributions to the domestic market, or withdrawals of gas from the domestic market, in the calculation of the alleviation contribution.

- (9) The **shortfall alleviation contribution** is:
- the shortfall volume specified in the Minister's determination;
 - divided by the number of AV permissions.

Trade of AV permissions

- (10) The Department will keep an up-to-date register of AV and UV permissions.
- (11) LNG projects issued AV permissions may trade their AV permissions, in whole or in part. For the avoidance of doubt:

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- a. any person not issued an AV permission in accordance with subsection 9(1) of these Guidelines may not trade an AV permission; and
 - b. UV permissions may not be traded.
- (12) The terms and conditions of AV permission trades will be a commercial matter for the buyer and seller.
- (13) The buyer and seller of an AV permission, or part thereof, must notify the Department of a trade within two business days of the completion of the trade. The buyer and seller's notice must include:
- a. the LNG project selling the AV permission, or part thereof;
 - b. the LNG project buying the AV permission, or part thereof;
 - c. the volume of the AV permission traded.

Permissions conditions

- (14) The Minister may grant a permission to an LNG project subject to whatever conditions the Minister deems necessary and appropriate.
- (15) If an LNG project does not comply with an permission condition, the Minister may in writing:
- a. revoke the permission;
 - b. vary the permission (including in relation to type, volume, and other conditions); and/or
 - c. issue a new permission.

10 Protecting long-term contract gas

- (1) If the allowable volume in an AV permission is less than the LNG project's long-term contract gas, the LNG project may apply to the Minister to increase the allowable volume in the AV permission.
- (2) ***Long-term contract gas*** is the minimum supply volume the LNG project must supply under a protected long-term contract.
- (3) For the purposes of determining long-term contract gas, a ***protected long-term contract*** is a contract which underpinned the final investment decision of the LNG project.
- a. A protected long-term contract may be executed before or 12 months after the LNG project's final investment decision.
 - b. The Minister may consider a renewed long-term contract to be a protected long-term contract.

Minister to determine long-term contract gas annually

- (4) To provide certainty to LNG projects on the volume of gas protected for a given calendar year, an LNG project may apply to the Minister for a determination of long-term contract gas for an upcoming calendar year.
- (5) The Minister will have 60 days from receipt of a long-term contract gas application to determine the applicant's long-term contract gas.
 - a. This period may be extended should the Minister request further information from the applicant.
- (6) In recognition that a protected long-term contract may have a seasonal profile (where the timing of the delivery is specified in the protected long-term contract), long-term contract gas will be disaggregated by month in a long-term contract gas determination.
- (7) Long-term contract gas for a domestic shortfall quarter will be the sum of the monthly long-term contract gas volumes for the domestic shortfall quarter.

Relevant criteria for increasing the allowable volume in the AV permission

- (8) When considering an application to increase the allowable volume in an AV permission, the Minister will only consider the following criteria.
 - a. Whether the LNG project has exhausted all available commercial solutions to fulfil its contractual obligations, including but not limited to its protected long-term contracts. Commercial solutions include increasing the allowable volume in an AV permission through trade and purchasing LNG on the global market to meet a contractual obligation.
 - Note: Subsections 9(11) to 9(14) of these Guidelines relate to the trade of AV permissions.
 - b. The economic and social impacts of a shortfall in Australia equivalent to the increase in the allowable volume under consideration.

Schedule 1—Repeals

Customs (Prohibited Exports) (Operation of the Australian Domestic Gas Security Mechanism) Guidelines 2020

1 The whole of the instrument

Repeal the instrument

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