



Commodity Levies (Feijoas) Order 2001

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 6th day of August 2001

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting on the recommendation of the Minister of Agriculture and on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Feijoas) Order 2001.

2 Commencement

This order comes into force on the 28th day after the date of its notification in the *Gazette*.

3 Interpretation

In this order, unless the context otherwise requires,—

association means the body that, on the commencement of this order, was known as New Zealand Feijoa Growers Association Incorporated

collection agent means a person whose business is or includes—

- (a) buying feijoas from a commercial grower (except through another collection agent) for processing, resale, or export; or
- (b) selling or exporting feijoas on behalf of a commercial grower

commercial grower or **grower** means a person whose business is or includes producing feijoas and who has more than 50 feijoa trees

feijoa means the fruit that has the scientific name *Feijoa sellowiana* or any fruit that is a hybrid of that species

FOB value means the free on board value of any quantity of feijoas set out in the declaration attached to, or forming part of, the customs entry made in respect of the feijoas exported from New Zealand

GST means goods and services tax payable under the Goods and Services Tax Act 1985

levy means the levy imposed by clause 4

levy money means money paid under this order as levy

levy year—

- (a) means a period of 12 months that begins on 1 November and ends on 31 October in the following year; and
- (b) includes the period beginning on the commencement of this order and ending on 31 October 2002

person includes a body corporate

processed, in relation to feijoas, means feijoas that are bottled, canned, dehydrated, dried, freeze-dried, frozen, or preserved; and includes fejoa concentrate, pulp, puree, or essence (whether alone or with other ingredients).

4 Levy imposed

- (1) A levy is imposed on all feijoas produced in New Zealand for commercial purposes.
- (2) The levy is payable to the association.

5 Commercial growers primarily responsible for paying levy

Commercial growers of feijoas are primarily responsible for paying the levy.

6 Collection agents must pay levy on feijoas bought or sold, but may recover it from growers

- (1) A collection agent who buys feijoas from a grower (otherwise than through another collection agent), or sells or exports feijoas on a grower's behalf,—
 - (a) must pay the levy on the feijoas; and
 - (b) may recover the levy (and any GST paid in respect of it) from the grower by reducing the amount otherwise payable to the grower for the feijoas bought from the grower, or sold, or exported on the grower's behalf.
- (2) Before paying the levy to the association, a collection agent may deduct from the levy a collection fee of not more than 10% of the amount of levy (exclusive of GST) plus the GST payable on the fee.

7 Levy paid at single rate

The levy is to be paid at a single rate.

8 Basis of calculation of levy

The levy payable in a levy year is calculated,—

- (a) in the case of feijoas sold by, or on behalf of, the grower in New Zealand, by reference to the price of the feijoas at the first point of sale (excluding GST):
- (b) in the case of feijoas grown and processed by the grower, by reference to the value of the unprocessed fruit (excluding GST) set by the association at its annual general meeting in the current levy year:
- (c) in the case of feijoas that are exported by, or on behalf of, the grower, by reference to the FOB value of the feijoas (excluding GST).

9 Maximum rate of levy

The maximum rate of levy is 2% of—

- (a) the price of the feijoas (excluding GST) at the first point of sale if the feijoas are sold by, or on behalf of, the grower in New Zealand:
- (b) the value of the feijoas (excluding GST) fixed by the association if the feijoas are grown and processed by the grower:
- (c) the FOB value of the feijoas (excluding GST) if the feijoas are exported by, or on behalf of, a grower.

10 Association must fix actual rate of levy

- (1) The association must fix the actual rate of levy for the levy year ending on 31 October 2002 in accordance with its rules.
- (2) For each subsequent levy year, the association must fix the actual rate of levy at its annual general meeting or a special general meeting called for that purpose.

11 Rate if no rate fixed before 1 February

If the association does not fix the rate of levy under clause 10 before 1 February, the rate of levy for that year is payable at the rate last fixed under clause 10.

12 Notification of levy rate

- (1) As soon as is practicable after fixing a rate of levy for a levy year, the association must notify it in—
 - (a) *The Orchardist*; and
 - (b) the association's newsletter.

- (2) If *The Orchardist* or the association's newsletter cease to be published, the rate of levy for a levy year must be notified in—
- (a) any publication that replaces the publication concerned; or
 - (b) if no publication replaces the publication concerned, a publication specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*.

13 When levy payable

- (1) The due day for the payment of the levy is,—
- (a) for feijoas sold by a grower (including to a collection agent) in New Zealand, the date of sale by the grower:
 - (b) for feijoas processed by a grower, the date on which the feijoas are processed:
 - (c) for feijoas exported by a grower, the earlier of—
 - (i) the date of sale by the grower:
 - (ii) the date on which the feijoas are loaded on an international carrier for export:
 - (d) for feijoas sold or exported by a collection agent on behalf of a grower, the earlier of—
 - (i) the date of sale by the collection agent:
 - (ii) the date on which the feijoas are loaded on an international carrier for export.
- (2) Amounts of levy that become payable during any calendar month must be paid to the association no later than the 20th day of the next month.

14 Levy money must be spent by association

The association must spend or (pending expenditure) invest all levy money paid to it.

15 Association must consult on how levy money is spent

- (1) The association must, at least once every 12 months, consult commercial growers as to how the levy money is spent.
- (2) The association must use the following process to consult commercial growers:
- (a) the association must notify commercial growers, by way of *The Orchardist*, the association's newsletter, or any other similar publication that is likely to be read by commercial growers, that they are invited to attend the annual general meeting or a special general meeting of

the association that is held to approve how the levy money is spent:

- (b) the association must circulate to all commercial growers before the meeting a draft budget and draft plan of how the levy money is proposed to be spent.
- (3) The draft budget and draft plan must be approved at the annual general meeting or special general meeting by commercial growers who are members of the association.
- (4) For the purposes of subclause (3), a commercial grower who is not a member of the association may attend the meeting held by the association but only has speaking rights on how the levy money is proposed to be spent.

16 General purposes for which levy money may be spent

- (1) The association may spend the levy money for the following purposes relating to feijoas or commercial growers:
 - (a) product research and development:
 - (b) market research and development:
 - (c) education and training:
 - (d) promotion of feijoas:
 - (e) day-to-day administration of the association.
- (2) The association must not spend any levies on commercial or trading activities.

17 Conscientious objectors

Any commercial grower who objects on conscientious or religious grounds to the manner of recovery of levy money by the association may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry, and the chief executive must pay the amount to the association.

18 Confidentiality of information

- (1) No officer or employee of the association may disclose (except to some other officer or employee of the association) any commercially sensitive information obtained—
 - (a) under, or because of, this order; or
 - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not affect or prevent—

- (a) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990; or
 - (b) the giving of evidence in any legal proceedings taken—
 - (i) under, or in relation to, this order; or
 - (ii) in relation to this order, under, or in relation to, the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent the association from disclosing any information (not being information relating to an identifiable person) or from using any information for the purpose of—
- (a) determining the voting entitlements, and counting the votes, of commercial growers;
 - (b) issuing invoices to commercial growers or collection agents and collecting the levy.
- (4) Subclause (1) does not prevent the association from—
- (a) disclosing any information (not being information relating to an identifiable person) for statistical or research purposes; or
 - (b) disclosing or using information for the purpose of collecting levies; or
 - (c) disclosing or using any information with the consent of every identifiable person to whom it relates.

19 Records

- (1) Every commercial grower must, in every levy year, keep records of—
- (a) the amount of levy paid to the association and the date of payment; and
 - (b) the quantity of feijoas sold, processed, or exported by the commercial grower; and
 - (c) the name and contact details of every collection agent and exporter to whom feijoas are sold and the price paid.
- (2) Every collection agent must, in every levy year, keep records of—
- (a) the amount of levy paid to the association and the date of payment; and
 - (b) the quantity of feijoas purchased from a commercial grower and the price paid; and
 - (c) the quantity of feijoas sold or exported by the collection agent on behalf of a commercial grower; and

- (d) the name and contact details of every commercial grower referred to in paragraph (b).
- (3) Every commercial grower and every collection agent must ensure that the records are retained for at least 2 years after the levy year to which they relate.
- (4) The association must, in every levy year, keep records of—
 - (a) the amount of the levy money paid to it in that year and, in relation to each amount,—
 - (i) the day on which it was received; and
 - (ii) the person who paid it; and
 - (b) how (if at all) the levy money paid to it was invested; and
 - (c) how and when all the levy money spent by it in that year was spent.
- (5) The association must retain the records kept under sub-clause (4) for at least 2 years after the levy year to which the records relate.
- (6) This clause does not require any person to keep a nil record.

20 Remuneration of persons conducting compliance audit

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by the association at a rate determined by the Minister of Agriculture after consultation with the association.

Mediation in case of dispute

21 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of levy payable.
- (2) Any party to the dispute may ask the President of the Institute of Chartered Accountants of New Zealand (the **President**) to appoint a person to resolve the dispute by mediation and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 28.

22 Remuneration of mediators

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed to by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

23 Time and place of conference

Every conference organised by a mediator of the parties to a dispute must be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

24 Conference must be held in private

Except as provided in clause 25, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

25 Representatives

If satisfied that in all the circumstances it is appropriate to do so, a mediator may allow a representative of any party to a dispute to attend a conference of the parties organised by the mediator.

26 Right to be heard

Every party to a dispute, and every representative of a party allowed by the mediator to attend a conference of the parties to the dispute organised by a mediator, may be heard at the conference.

27 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.

- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

28 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved; or
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with the decision of the mediator.

29 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 28 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time that a District Court Judge allows.
- (3) The Registrar of the Court must—
 - (a) fix the time and place for the hearing of the appeal, and notify the appellant and the other parties to the dispute; and
 - (b) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party may appear and be heard at the hearing of the appeal.
- (5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed against.
- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

Marie Shroff,
Clerk of the Executive Council.

Explanatory note

This note is not part of the order, but is intended to indicate its general effect.

This order, which comes into force on the 28th day after the date of its notification in the *Gazette*, imposes a levy on feijoas commercially grown in New Zealand that is payable to the New Zealand Feijoa Growers Association Incorporated by commercial growers or collection agents. The order defines—

- a **commercial grower** as a person whose business is or includes producing feijoas and who has more than 50 feijoa trees; and
- a **collection agent** as a person whose business is or includes buying feijoas from a commercial grower for processing, resale, or export, or selling or exporting feijoas on behalf of a commercial grower.

A levy for feijoas is also payable by commercial growers to the New Zealand Fruitgrowers Federation under the Commodity Levies (Orchard Fruit) Order 2001.

Unless earlier revoked, this order expires 6 years after it is made.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 9 August 2001.

This order is administered in the Ministry of Agriculture and Forestry.
