



# Commodity Levies (Blueberries) Order 2001

Silvia Cartwright, Governor-General

## Order in Council

At Wellington this 10th day of September 2001

Present:

Her Excellency the Governor-General 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.

### Contents

|    |  |    |  |
|----|--|----|--|
| 1  | Title  | 14 | Growers to pay levy annually                         |
| 2  | Commencement   | 15 | Due date and latest date for payment                 |
| 3  | Interpretation   | 16 | Levy money to be spent by BBNZ                       |
| 4  | Levy imposed   | 17 | Purposes for which levies may be spent               |
| 5  | Basis of calculation of levy   | 18 | Conscientious objectors                              |
| 6  | Growers primarily responsible for payment of levy                                    | 19 | Returns  |
| 7  | Levy to be paid at 4 different rates   | 20 | Records  |
| 8  | Collection agents to pay levy on blueberries exported fresh                          | 21 | Confidentiality of information                       |
| 9  | Growers to pay levy on blueberries sold in New Zealand, or exported by grower        | 22 | Remuneration of persons conducting compliance audits |
| 10 | BBNZ to fix initial rates of levy  |    | <i>Mediation in case of dispute</i>                  |
| 11 | Later rates of levy  | 23 | Appointment of mediators                             |
| 12 | Notification of levy rates   | 24 | Remuneration of mediators                            |
| 13 | Collection agents and growers exporting export fresh blueberries to pay levy monthly | 25 | Time and place of conference                         |
|    |  | 26 | Conference to be held in private                     |
|    |  | 27 | Representatives                                      |

|    |   |    |                          |
|----|---|----|--------------------------|
| 28 | Right to be heard                             | 31 | Appeal to District Court |
| 29 | Evidence                                      | 32 | Revocation               |
| 30 | Mediator may resolve dispute in certain cases |    |                          |

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## Order

### 1 Title

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

### 2 Commencement

This order comes into force on 15 October 2001.

### 3 Interpretation

In these regulations, unless the context otherwise requires,—

**BBNZ** means Blueberries New Zealand Incorporated

**collection agent** means a person whose business is or includes buying blueberries from a grower for export fresh

**export fresh blueberries** means blueberries—

- (a) exported fresh from New Zealand by their grower; or
- (b) sold fresh by their grower for export fresh from New Zealand by a collection agent

**export frozen blueberries** means blueberries exported frozen from New Zealand by their grower

**fresh** means having never been frozen

**frozen** includes thawed

**grower**, in relation to a levy year, means the occupier of land—

- (a) that is used for growing bushes for the production of blueberries for commercial purposes; and
- (b) from which at least 500 kilograms of blueberries are harvested and sold during the levy year

**GST** means goods and services tax 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 beginning on 1 July and ending on 30 June; and

- (b) includes the period beginning on the commencement of this order and ending on 30 June 2002

**local fresh blueberries** means blueberries sold fresh by their grower on the local market—

- (a) otherwise than for export; and  
(b) otherwise than for freezing

**local frozen blueberries** means blueberries sold on the local market (whether or not for export) by their grower frozen or for freezing

**mediator** means a person appointed under clause 23; and, in relation to a dispute, means the mediator appointed to resolve that dispute

**occupier**, in relation to land, means—

- (a) unless paragraph (b) applies, the owner of the land;  
(b) a person who has the right to occupy the land under a tenancy granted for a term of 12 months or more.

#### **4 Levy imposed**

- (1) A levy is imposed on all blueberries produced in New Zealand and sold on the local market or exported, whether as fresh or frozen produce.
- (2) The levy is payable to Blueberries New Zealand Incorporated.

#### **5 Basis of calculation of levy**

The levy is to be calculated at the first point of sale or export by reference to the weight in kilograms of blueberries that are sold as either fresh or frozen produce for consumption in New Zealand or for export.

#### **6 Growers primarily responsible for payment of levy**

- (1) The grower of blueberries is primarily responsible for paying the levy on them.
- (2) No blueberry grower is exempt from paying the levy.

#### **7 Levy to be paid at 4 different rates**

The levy is to be paid at 4 different rates, exclusive of GST, on the following 4 categories of blueberries:

- (a) local fresh blueberries:  
(b) local frozen blueberries:

- (c) export fresh blueberries;
- (d) export frozen blueberries.

## **8 Collection agents to pay levy on blueberries exported fresh**

- (1) A collection agent—
  - (a) must pay the levy on blueberries exported fresh by the collection agent at the export fresh levy rate; 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 blueberries bought from the grower.
- (2) A collection agent is not entitled to charge a collection fee for paying and recovering the levy.

## **9 Growers to pay levy on blueberries sold in New Zealand, or exported by grower**

The grower of blueberries must pay the levy on them at the appropriate rate (to the extent that the levy is not paid by a collection agent under clause 8) if—

- (a) the blueberries are sold by the grower on the New Zealand market, whether fresh or frozen; or
- (b) the blueberries are exported by the grower, whether fresh or frozen.

## **10 BBNZ to fix initial rates of levy**

- (1) The rates of levy for the levy year ending on 30 June 2002 are to be fixed by BBNZ, with the approval of the Minister of Agriculture, by notice in the *Gazette*.
- (2) BBNZ may fix the rates by any means by which it can lawfully make such decisions.
- (3) The initial rates of levy take effect on—
  - (a) the date of their notification in the *Gazette*; or
  - (b) such later date as BBNZ may specify in the *Gazette* notice.

## **11 Later rates of levy**

- (1) Rates of the levy for later levy years are to be fixed by BBNZ by any means by which it can lawfully make such decisions.

- (2) BBNZ may not fix a particular rate for a levy year unless either—
- (a) the rate is no greater than the corresponding rate for the previous levy year; or
  - (b) the rate was approved by growers at the most recent annual general meeting of BBNZ and either—
    - (i) is proportionately greater than the corresponding rate for the previous levy year by no more than the annual percentage increase in the Consumers Price Index most recently released before that meeting; or
    - (ii) was later approved by the Minister of Agriculture.
- (3) For any levy year for which a particular levy rate is not fixed by BBNZ, the corresponding levy rate for the previous levy year will be the rate that applies.

## **12 Notification of levy rates**

- (1) As soon as practicable after the fixing of any rate of levy for a levy year, BBNZ must publish in the *Gazette* a notice of—
- (a) the rate of levy; and
  - (b) the blueberries to which the rate applies; and
  - (c) the levy year to which the rate relates.
- (2) BBNZ must also, by its newsletter, advise these matters to all potential levy payers and collection agents known to it.

## **13 Collection agents and growers exporting export fresh blueberries to pay levy monthly**

A collection agent required by clause 8 to pay any levy, and a grower exporting export fresh blueberries, must pay the levy on the export fresh blueberries on a monthly basis.

## **14 Growers to pay levy annually**

A grower selling local fresh or local frozen blueberries or exporting export frozen blueberries must pay the levy on those blueberries on an annual basis for each levy year.

## **15 Due date and latest date for payment**

- (1) The due date for payment of the levy to BBNZ is—

- (a) for export fresh blueberries on which the levy is payable by a collection agent, the date an invoice for the levy is issued by BBNZ to the collection agent:
  - (b) for export fresh blueberries on which the levy is payable by the grower, the date an invoice for the levy is issued by BBNZ to the grower:
  - (c) for export frozen, local fresh, and local frozen blueberries on which the levy is payable by a grower, the date the annual levy declaration form is issued by BBNZ to the grower.
- (2) The latest date for payment of the levy to BBNZ is the 20th day of the month following the month in which, as the case may require,—
- (a) the invoice is issued to the collection agent or the grower; or
  - (b) the levy declaration form is issued to the grower.

## **16 Levy money to be spent by BBNZ**

BBNZ must spend or (pending its expenditure) invest all levy money paid to BBNZ.

## **17 Purposes for which levies may be spent**

- (1) The general purposes for which BBNZ is to spend the levy money are—
- (a) product research and development, including development of new varieties:
  - (b) education:
  - (c) promotion of blueberries:
  - (d) market research and development:
  - (e) quality assurance:
  - (f) day-to-day administration of BBNZ.
- (2) At each annual general meeting, and at any special general meeting called for the purpose, BBNZ must consult with growers on how the levy money is to be spent.
- (3) BBNZ must not spend levy money on commercial or trading activities.

## **18 Conscientious objectors**

- (1) A grower who objects on conscientious or religious grounds to the manner of recovery by BBNZ of an amount of levy

money may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.

- (2) The chief executive must pay the amount to BBNZ.

## **19 Returns**

Every grower and collection agent must supply to BBNZ, in writing and as soon as reasonably practicable, the information required by any levy declaration form or other return required by BBNZ for the purpose of calculating the levy.

## **20 Records**

- (1) Every grower must, for every levy year, keep records of the number of kilograms of—
  - (a) export fresh blueberries sold or exported by the grower:
  - (b) export frozen blueberries exported by the grower:
  - (c) local fresh blueberries sold by the grower:
  - (d) local frozen blueberries sold by the grower.
- (2) Every collection agent must, for each levy year, keep records of—
  - (a) the names and addresses of growers from whom blueberries have been bought:
  - (b) the quantities of fresh blueberries bought from each grower, and the quantities then exported:
  - (c) the amount of levy deducted in respect of each quantity.
- (3) BBNZ must, for each levy year, keep records of—
  - (a) each amount of levy money paid to it:
  - (b) the person who paid each amount and the date on which it was received:
  - (c) how levy money was spent or invested.
- (4) The records required by this clause must be retained for at least 2 years from the end of the levy year to which they relate.

## **21 Confidentiality of information**

- (1) No officer or employee of BBNZ may disclose (except to some other officer or employee of BBNZ) any 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 production of any statement under section 25 of the Commodity Levies Act 1990; or
  - (c) 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 BBNZ from—
- (a) disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes; or
  - (b) disclosing or using any information for the purposes of invoicing and collecting the levy; or
  - (c) disclosing or using any information with the consent of every identifiable person to whom it relates.

## **22 Remuneration of persons conducting compliance audits**

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

### *Mediation in case of dispute*

## **23 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 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 30.

## **24 Remuneration of mediators**

- (1) A mediator is to 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 of the Institute of Chartered Accountants of New Zealand (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 is to 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.

## **25 Time and place of conference**

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

## **26 Conference to be held in private**

Except as provided in clause 27, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

## **27 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.

## **28 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 organised by a mediator, may be heard at the conference.

## **29 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.

### **30 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.

### **31 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 30 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 after the making of the decision concerned, or within any longer time 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.

### **32 Revocation**

- (1) The Commodity Levies (Blueberries) Order 1995 (SR 1995/221) is revoked.

- (2) Despite subclause (1), amounts of levy that become payable before the commencement of this order to the New Zealand Blueberry Growers Association Incorporated under the Commodity Levies (Blueberries) Order 1995 continue to be due and payable as if that order had not been revoked.

Marie Shroff,  
Clerk of the Executive Council.

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### 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 15 October 2001, imposes a levy on commercially grown blueberries that is payable to Blueberries New Zealand Incorporated. The persons primarily responsible for paying the levy are **growers**, who are defined as occupiers of land—

- (a) that is used for growing bushes for the production of blueberries for commercial purposes; and
- (b) from which at least 500 kilograms of blueberries are harvested and sold during the levy year to which the levy payment relates.

In the case of blueberries purchased from growers for the purpose of export as fresh blueberries, the purchaser (the **collection agent**) is liable to pay the levy, but may recover it from the grower.

The levy may be imposed at different rates on the following 4 categories of blueberries:

- export fresh:
- export frozen:
- local fresh:
- local frozen.

This order revokes and replaces the Commodity Levies (Blueberries) Order 1995. Unless earlier revoked, it will expire 6 years after it is made.

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

Date of notification in *Gazette*: 13 September 2001.

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

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