



## Commodity Levies (Summerfruit) Order 2020

Patsy Reddy, Governor-General

### Order in Council

At Wellington this 29th day of June 2020

Present:

Her Excellency the Governor-General in Council

This order is made under section 4 of the Commodity Levies Act 1990—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister of Agriculture made in accordance with sections 5 and 6 of that Act.

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## Order

### 1 Title

This order is the Commodity Levies (Summerfruit) Order 2020.

## 2 Commencement

This order comes into force on 18 August 2020.

## 3 Interpretation

(1) In this order, unless the context otherwise requires,—

**Act** means the Commodity Levies Act 1990

**collection agent** or **agent** means a person whose business is or includes—

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

**commercial grower** or **grower** means a person whose business is or includes producing summerfruit for commercial purposes

**first point of sale**, in the case of export for sale, means when the summerfruit is accepted for export by a licensed summerfruit exporter

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

**Heinz Wattie's** means Heinz Wattie's Limited

**levy** means the levy imposed by clause 5

**levy money** means the money paid or payable under this order as a levy

**levy year** means—

- (a) a period of 12 months starting on 1 September and ending on 31 August; but
- (b) for the first levy year, the period starting on 18 August 2020 and ending on 31 August 2021; and
- (c) for the last levy year, the period starting on 1 September 2025 and ending on 17 August 2026

**notional process value**, in relation to summerfruit, means the amount of money that, in the opinion of SNZI, a commercial grower would have received if, immediately before the summerfruit were processed, the grower had sold the summerfruit to a similar processor in the same locality (exclusive of GST and before the deduction of any costs or charges)

**processed**—

- (a) means any chemical or mechanical process applied to summerfruit; and
- (b) includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, juiced, pressed, preserved, or extracted,—
  - (i) whether as summerfruit or as concentrate, pulp, puree, sauce, or some other product; and

- (ii) whether alone or with other ingredients

**sales value** means the price received by the grower at the first point of sale (exclusive of GST and before the deduction of any costs or charges) unless—

- (a) the summerfruit is exported, in which case the sales value will be the price received at the first point of sale by the grower after all the export-related costs (including international freight) are deducted; or
- (b) the summerfruit is processed prior to the first point of sale, in which case the sales value will be based on the notional process value of the summerfruit

**SNZI** means Summerfruit New Zealand Incorporated

**summerfruit** means apricots, cherries, nectarines, peaches, and plums, and includes hybrids of those fruits.

- (2) Summerfruit processed over a period of more than a day must be treated, for the purposes of this order, as having been processed on the day the processing started.

#### **4 GST**

A reference in this order to the payment or recovery of a levy must be read as including the payment or recovery of any GST payable on the levy.

#### *Levy imposed*

#### **5 Levy on summerfruit**

- (1) A levy is imposed on summerfruit grown by commercial growers for commercial purposes.
- (2) The levy is payable to SNZI.

#### *Exemption from levy*

#### **6 Certain summerfruit exempt from levy**

Summerfruit sold to Heinz Wattie's on contract for processing is exempt from the levy.

#### **7 Suspension of exemption**

- (1) If SNZI is satisfied that any of the requirements specified in subclause (2) are not met, SNZI may suspend the exemption described in clause 6.
- (2) The requirements are that—
- (a) Heinz Wattie's imposes a research and development levy on summerfruit sold to it on contract for processing; and
- (b) the rate of the research and development levy is equal to or greater than the relevant rate of levy set under this order; and

- (c) Heinz Wattie's makes available to SNZI the research information arising from its use of the research and development levy.
- (3) Before suspending the exemption, SNZI must give Heinz Wattie's a reasonable opportunity to be heard on the matter.
- (4) If SNZI suspends the exemption,—
  - (a) SNZI must give written notice of the suspension and the date on which, in accordance with paragraph (b), the suspension takes effect; and
  - (b) the exemption ceases to apply on and from the date specified in the notice (which must be the first day of a month that starts at least 7 days after the date of publication of the notice in the *Gazette* under clause 9(d)).

## **8 Revival of suspension**

- (1) If, having suspended the exemption, SNZI is satisfied that all of the requirements specified in clause 7(2) are met, SNZI may revive the exemption with effect on and from the first day of a month.
- (2) If SNZI revives the exemption,—
  - (a) SNZI must give written notice of its revival and the date on which the exemption takes effect; and
  - (b) the exemption applies on and from the date specified in the notice.

## **9 Notice requirements for suspension or revival of exemption**

Written notice required under clause 7(4) or 8(2) must be given—

- (a) to Heinz Wattie's; and
- (b) to the extent practicable (whether by newsletter or other means), to commercial growers who SNZI considers will be affected by the suspension or revival; and
- (c) in an industry publication produced by SNZI; and
- (d) in an issue of the *Gazette* that is published after the dates of the notices given under paragraphs (a) and (b).

### *Rate of levy*

## **10 Basis of calculation of levy**

- (1) SNZI must calculate the levy for summerfruit sold in New Zealand as follows:
  - (a) on the basis of the sales value of the summerfruit, for summerfruit sold in New Zealand as whole fresh fruit by, or on behalf of, the commercial grower; or
  - (b) on the basis of the sales value of the summerfruit exported as whole fresh fruit by, or on behalf of, the commercial grower, in which case the

- levy will be calculated on the sales value received by the grower after deduction of all export-related costs (including international freight); or
- (c) if the commodity is processed before the first point of sale, on the basis of the notional process value of the summerfruit, for summerfruit processed by, or on behalf of, the commercial grower.
- (2) The levy calculated under subclause (1) must be calculated together with the value of—
- (a) any other payment made to the grower by the purchaser in relation to the sale of the summerfruit; and
  - (b) any goods or services provided to the grower by the purchaser in relation to, or in connection with, the sale of summerfruit free of charge or below market value.

## **11 Levy rates**

- (1) SNZI may set the levy at 3 different rates, as follows:
- (a) a rate for apricots, nectarines, peaches, and plums (and any hybrids of those fruits):
  - (b) a rate for cherries:
  - (c) a rate for summerfruit sold for processing (excluding summerfruit sold to Heinz Wattie's for processing).
- (2) The rate for apricots, nectarines, peaches, and plums (and any hybrids of those fruits) must not exceed 1.75% of the sales value.
- (3) The rate for cherries must not exceed 1% of the sales value.
- (4) The rate for summerfruit sold for processing (excluding summerfruit sold to Heinz Wattie's for processing) must not exceed 0.5% of the sales value.

## **12 Actual levy rates**

- (1) SNZI must set actual levy rates for the first levy year in accordance with its rules.
- (2) For each subsequent levy year, SNZI must set the actual levy rates at either of the following meetings held before the start of the levy year:
- (a) the annual general meeting;
  - (b) a special general meeting called for the purpose.
- (3) If SNZI does not set the actual levy rate for a levy year, the levy rate currently applying continues to apply.

## **13 Notifying actual levy rates**

- (1) SNZI must notify the actual levy rates—
- (a) in the *Gazette*; and
  - (b) in an industry publication produced by SNZI; and

- (c) on SNZI's Internet site.
- (2) SNZI must notify the actual levy rates as soon as practicable after setting them.

*Paying levy*

**14 Levy paid to SNZI**

The levy is payable to SNZI.

**15 Commercial growers primarily responsible for paying levy**

Commercial growers are primarily responsible for paying the levy.

**16 Collection agent must pay levy**

- (1) If a commercial grower uses a collection agent, the agent must pay the levy.
- (2) The collection agent may charge SNZI a collection fee of not more than 4% of the levy payable (exclusive of GST) plus the GST payable on the fee by deducting the fee plus GST before paying the levy to SNZI.
- (3) The collection agent may recover the levy on summerfruit bought from the commercial grower by deducting the amount of the levy from the payment made to the grower for the summerfruit.
- (4) The collection agent may recover the levy on summerfruit sold, processed, or exported on the commercial grower's behalf by recovering the amount of the levy as a debt due from the grower.

**17 Conscientious objection to paying levy to SNZI**

If a commercial grower or collection agent objects on conscientious or religious grounds to paying the levy to SNZI,—

- (a) the grower or agent must pay the equivalent amount to the Director-General of the Ministry for Primary Industries; and
- (b) the Director-General must pay the amount to SNZI.

**18 Information to determine payment**

- (1) This clause applies for the purpose of determining the amount of levy payable by a commercial grower or by a collection agent.
- (2) Every commercial grower who sells, processes, or exports the grower's own summerfruit in any month must give SNZI written notice of—
  - (a) the sales value and quantity of summerfruit sold by the grower; and
  - (b) the notional process value and quantity of summerfruit processed for sale by the grower; and
  - (c) the sales value and quantity of summerfruit exported by the grower.

- (3) Every collection agent who buys summerfruit from a commercial grower or sells, processes, or exports summerfruit on behalf of a grower in any month must give SNZI written notice of—
  - (a) the full name, postal address, email address, and telephone contact details of the grower from whom the summerfruit was bought; and
  - (b) the purchase price and quantity of summerfruit bought from the grower; and
  - (c) the quantity of summerfruit sold, processed, or exported by the agent on behalf of the grower and the price paid for, or the value placed on, that quantity; and
  - (d) the amount of levy collected and paid to SNZI in relation to that quantity; and
  - (e) the amount of collection fee deducted in relation to that quantity (if any); and
  - (f) the rate at which the levy was calculated.
- (4) A notice under subclause (2) or (3) must be—
  - (a) given at the time of payment; and
  - (b) given in relation to each fruit type; and
  - (c) accompanied by the amount of levy for the month.
- (5) SNZI may request a commercial grower or a collection agent to provide any other information about the production or sale of summerfruit that SNZI reasonably requires to determine the levy that the grower or agent must pay.
- (6) SNZI must make the request by post, email, or other electronic means.
- (7) The grower or agent must provide the requested information within 30 days after receiving a request from SNZI.

#### **19 Due and latest dates for payment**

- (1) The due date for payment of the levy to SNZI is—
  - (a) the date of sale, in the case of summerfruit sold—
    - (i) by the commercial grower; or
    - (ii) by a collection agent on behalf of the grower; or
  - (b) the date of processing, in the case of summerfruit—
    - (i) processed without having been sold by the commercial grower; or
    - (ii) processed by a collection agent on behalf of the grower; or
  - (c) the date of export, in the case of summerfruit exported—
    - (i) by the commercial grower; or
    - (ii) by a collection agent on behalf of the grower.



- (2) The latest date for payment of the levy is the 20th day of the month after the month in which the due date occurs.

**20 Additional levy if levy not paid in time**

If any amount of the levy has not been paid by the close of the latest day for payment, the following amounts must be paid to SNZI in addition to the amount otherwise payable:

- (a) 5% of the amount of the unpaid levy:  
(b) 2% of the amount of the unpaid levy (excluding additional levies owing under this clause) for each month that the amount is outstanding.

*Spending levy money*

**21 SNZI must spend levy money**

SNZI must—

- (a) spend all levy money paid to it; and  
(b) invest all levy money until it is spent.

**22 Purposes for which SNZI may spend levy money**

- (1) SNZI must spend all levy paid to it for the following purposes relating to summerfruit or growing summerfruit:
- (a) product development:  
(b) research, including market research:  
(c) market development:  
(d) protection or improvement of plant health:  
(e) biosecurity activities:  
(f) development and implementation of quality assurance programmes:  
(g) education, information, or training:  
(h) grower representation:  
(i) day-to-day administration of SNZI.
- (2) SNZI must not spend any levy money on commercial or trading activities.

**23 Consultation on spending levy money**

- (1) SNZI must consult commercial growers who pay the levy on how it proposes to spend the levy.
- (2) SNZI must consult growers who pay the levy—
- (a) at its annual general meeting:  
(b) at any special general meeting called for that purpose.
- (3) SNZI must—

- (a) distribute to growers the account records for the levy in the previous levy year and the spending proposals for the following levy year;
- (b) allow growers who pay the levy and who attend the meeting to speak on all matters relating to the spending of the levy money.

*Records and confidentiality*

**24 Commercial growers must keep records**

- (1) A commercial grower must collect the following information for each levy year:
  - (a) the sales value and quantity of each type of summerfruit sold by the grower to someone other than a collection agent; and
  - (b) the notional process value and quantity of each type of summerfruit processed by the grower; and
  - (c) the sales value and quantity of each type of summerfruit exported by the grower; and
  - (d) the name and contact details of each collection agent to whom the grower has sold summerfruit, or who has sold, processed, or exported summerfruit on the grower's behalf; and
  - (e) the sales value and quantity of each type of summerfruit sold to a collection agent; and
  - (f) the sales value and quantity of each type of summerfruit sold by a collection agent on behalf of the grower; and
  - (g) the notional process value and quantity of each type of summerfruit processed by a collection agent on behalf of the grower; and
  - (h) the sales value and quantity of each type of summerfruit exported by a collection agent on behalf of the grower; and
  - (i) the amount of levy money paid by the grower to SNZI; and
  - (j) the rate or rates at which the levy was paid to SNZI.
- (2) The grower must keep the information for at least 2 years after the date on which the levy is paid to SNZI.

**25 Collection agents must keep records**

- (1) A collection agent must collect the following information for each levy year:
  - (a) the name and contact details of each commercial grower from whom the agent bought summerfruit, or on whose behalf the agent sold, processed, or exported summerfruit; and
  - (b) the sales value and quantity of each type of summerfruit bought by the agent from a grower; and

- (c) the sales value and quantity of each type of summerfruit sold by the agent on behalf of a grower; and
  - (d) the notional process value and quantity of each type of summerfruit processed by the agent on behalf of a grower; and
  - (e) the sales value and quantity of each type of summerfruit exported by the agent on behalf of a grower; and
  - (f) the amount of money paid to each grower for summerfruit, the date of payment, the rate at which the levy was deducted, and the amount deducted; and
  - (g) the amount of levy paid by the agent to SNZI and the date of payment; and
  - (h) the amount of the collection fee deducted (if any).
- (2) The collection agent must keep the information for at least 2 years after the date on which the levy is paid to SNZI.

## **26 SNZI must keep records**

- (1) SNZI must collect the following information for each levy year:
- (a) each amount of levy paid to it;
  - (b) when the amount of levy was paid to it;
  - (c) who paid the amount of levy;
  - (d) how it spent or invested all levy paid to it;
  - (e) the sales value or notional process value of all summerfruit in relation to which a levy was paid.
- (2) SNZI must keep the information for at least 2 years after the date on which the levy is paid to SNZI.

## **27 Confidentiality of information**

- (1) This clause applies to information obtained—
- (a) under the Act in relation to this order; or
  - (b) under or because of this order.
- (2) An officer or employee of SNZI, or any person involved in collecting the levy, must not disclose the information to anyone other than an officer or employee of SNZI.
- (3) However, SNZI may disclose the information—
- (a) for any of the following purposes:
    - (i) communicating with and supporting levy-paying commercial growers;
    - (ii) producing records or accounts under section 17(1) of the Act;
    - (iii) producing a statement under section 25 of the Act;

- (iv) giving evidence in legal proceedings taken under or in relation to this order:
  - (v) determining the voting entitlements of commercial growers:
  - (vi) counting the votes of commercial growers:
  - (vii) statistical and research purposes that do not involve the disclosure of personal information:
  - (viii) invoicing for and collecting levies; or
- (b) with the consent of every identifiable person to whom it relates; or
  - (c) if the disclosure is required by law.

### *Dispute resolution*

#### **28 Appointing mediators**

- (1) This clause applies to a dispute concerning—
  - (a) whether any person is required to pay the levy; or
  - (b) the amount of levy payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated (the **President**) to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President, or a person authorised by the President, may appoint a person to resolve the dispute by mediation.
- (4) 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 35.

#### **29 Remunerating mediators**

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed 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, 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 or amounts fixed and specified under subclause (2).

#### **30 Conferences under control of mediators**

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties by email or post; and
- (c) preside at the conference.

### **31 Representatives**

A mediator may allow a representative of a party to a dispute to attend a conference if the mediator is satisfied that it is appropriate to do so in all the circumstances.

### **32 Conferences must be held in private**

Only the parties to a dispute, the mediator, and representatives the mediator allows to attend may attend a conference organised by the mediator.

### **33 Right to be heard**

Each person who attends a conference may be heard at the conference.

### **34 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 their own initiative,—
  - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
  - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the 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.

### **35 Mediators may resolve disputes 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) A mediator who resolves a dispute under subclause (1) 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 mediator's decision.

### **36 Cost of mediation**

Each party must pay its own costs in relation to the mediation.

**37 Appeal to District Court**

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

*Compliance audits***38 Remunerating auditors**

SNZI must remunerate a person appointed as an auditor under section 15 of the Act at a rate determined by the Minister of Agriculture after consultation with SNZI.

*Revocation***39 Commodity Levies (Summerfruit) Order 2014 revoked**

The Commodity Levies (Summerfruit) Order 2014 (LI 2014/278) is revoked.

Michael Webster,  
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 18 August 2020, imposes a levy on summerfruit (apricots, cherries, nectarines, peaches, and plums, and hybrids of those fruits) grown in New Zealand by commercial growers. Commercial growers of summerfruit are primarily responsible for paying the levy. The levy is payable to Summerfruit New Zealand Incorporated (SNZI).

Prior to this order, a levy was imposed on summerfruit by the Commodity Levies (Summerfruit) Order 2014. That order expires at the close of 17 August 2020 and is replaced by this order.

The order is a confirmable instrument under section 47B of the Legislation Act 2012. It is revoked at the close of 30 June 2021, unless earlier confirmed by an Act of Parliament. That stated time is the applicable deadline under section 47C(1)(a) of that Act. If this order is confirmed, it will be revoked on 17 August 2026 (the day before the sixth anniversary of the date on which it came into force), unless it is extended under section 13(2) of the Commodity Levies Act 1990.

Issued under the authority of the Legislation Act 2012.

Date of notification in *Gazette*: 30 June 2020.

This order is administered by the Ministry for Primary Industries.