



## APPLE AND PEAR EXPORT REGULATIONS 1999

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MICHAEL HARDIE BOYS, Governor-General

### ORDER IN COUNCIL

At Wellington this 20th day of September 1999

Present:

HIS EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

PURSUANT to Part 2 of the Apple and Pear Industry Restructuring Act 1999, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, and on the recommendation of the Minister for Food, Fibre, Biosecurity and Border Control, makes the following regulations.

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#### ANALYSIS

1. Title and commencement
2. Interpretation

#### PART 1

#### RESTRICTIONS ON EXPORT OF APPLES AND PEARS

3. Export ban

#### PART 2

#### ENZA'S EXPORT AUTHORISATION

4. Board must authorise ENZA to export apples and pears
5. Requirements of authorisation
6. Matters that must not be included in authorisation

7. Discretionary requirements of authorisation

#### PART 3

#### MITIGATION MEASURES

8. Purpose of Part

#### *Non-Discrimination Rule*

9. Duty not to discriminate unjustifiably
10. Justifiable discrimination

#### *Non-Diversification Rule*

11. Non-diversification rule

#### *Information Disclosure*

12. Financial statement disclosure

13. Apple and Pear Information Disclosure Handbook	37. Membership of Export Permits Committee
14. Disclosure of apple and pear purchase conditions	38. Conflict of interest
15. Disclosure relating to export permits	39. Cost-effective requirement
<i>Miscellaneous Provisions Relating to Information Disclosure</i>	40. Prohibitions
16. No charge for supplying information	41. Powers
17. Period of disclosure	42. Financial provisions
18. Information required to be certified by auditor	<i>Applications</i>
19. Time limit for responding to requests for information	43. Applicants
20. Information to be supplied to Board	44. Application for export permit
21. Exemptions	45. Criteria for export permits
<i>Corporate Form</i>	46. Power to grant export permits
22. Continuing requirements as to ENZA Limited's corporate form	<i>Grant of Export Permit</i>
<i>Protections for Shareholders</i>	47. Grant of export permit
23. Contents of constitution	<i>Other Matters</i>
<i>Arms Length Rules</i>	48. Procedure
PART 4	PART 6
ESTABLISHMENT OF NEW ZEALAND APPLE AND PEAR BOARD	MISCELLANEOUS PROVISIONS
25. New Zealand Apple and Pear Board	49. Alteration or review of authorisation
26. Functions	50. No contracting out
27. Cost-effective requirement	51. No Crown liability
28. Prohibitions	52. Notice of international obligations
29. Membership	53. Supply of information
30. Election of grower representatives	54. Revocation
31. Powers	<i>Transitional Provisions</i>
32. Funding	55. Preparation for new Board
33. Compliance with Financial Reporting Act 1993	56. Application of regulations to old Board before 1 April 2000
34. Further provisions applying to Board	57. Acquisition of title at FAS
PART 5	58. Enforcement in respect of period before 1 April 2000
EXPORT PERMITS	SCHEDULES
35. Purpose of Part	Schedule 1
<i>Export Permits Committee</i>	Arms Length Rules
36. Establishment of Export Permits Committee	Schedule 2
	Specified Activities
	Schedule 3
	Provisions Relating to Board
	Schedule 4
	Transitional Enforcement Regime

## REGULATIONS

**1. Title and commencement**—(1) These regulations may be cited as the Apple and Pear Export Regulations 1999.

(2) Parts 1 and 2 and regulation 54 come into force on 1 April 2000.

(3) The rest of these regulations come into force on 1 October 1999.

**2. Interpretation**—In these regulations, unless the context otherwise requires,—

“Act” means the Apple and Pear Industry Restructuring Act 1999:

“Apples and pears” means apples and pears of any kind other than pears that are the fruit of—

(a) Plants of the species *Pyrus pyrifolia*:

(b) Plants that are a hybrid of the species *Pyrus pyrifolia* and the species *Pyrus ussuriensis*:

“Arms length rules” means the objectives and rules set out in Schedule 1:

“Board” means the board established under Part 4:

“Committee” means the Export Permits Committee established under regulation 36:

“Core business” means the purchase of New Zealand grown apples and pears for export where the point of acquisition of title to fruit is at FAS (or, at ENZA’s discretion, later in the supply chain than FAS) and the export of that fruit:

“Director” has the same meaning as in section 126 of the Companies Act 1993:

“Export authorisation” means the authorisation granted by the Board to ENZA:

“Export ban” means the restriction on exports in regulation 3:

“ENZA” means the company incorporated under the Companies Act 1993 as at 1 April 2000 with the name ENZA Limited and its subsidiaries:

“FAS” means free alongside the ship or aircraft on which the apples and pears are exported from New Zealand:

“Financial statements” means—

(a) A statement of financial position; and

(b) A statement of financial performance; and

(c) A statement of cash flows; and

(d) A statement of movements in equity; and

(e) Notes to the statements referred to in paragraphs (a) to (d), including information relating to transactions between related parties; and

(f) A statement of accounting policies— prepared in accordance with generally accepted accounting practice (within the meaning of that term in section 3 of the Financial Reporting Act 1993):

“Financial year” means a period of 12 months commencing on 1 October in any year and ending with 30 September in the following year:

“Grower” means a person carrying on business in New Zealand as a grower of apples or pears for sale:

“Handbook” means the Apple and Pear Information Disclosure Handbook published under regulation 13:

“Independent auditor” means a person who—

(a) Is qualified for appointment as auditor of a company under the Companies Act 1993; and

(b) Has no relationship with, or interest in, the person that is required, by any provision of these regulations, to publicly disclose information:

“Information disclosure requirements” means the requirements in regulations 12 to 21:

“Justifiable discrimination” has the same meaning as in regulation 10:

“Manager”, in relation to a person,—

(a) Means a person who, whether alone or jointly with any other person, manages, or directs or supervises the management of, the whole or a substantial part of the business and affairs of the person; and

(b) Includes, for the avoidance of doubt, a director of that person:

“Non-discrimination rule” means the rule in regulation 9:

“Non-diversification rule” means the rule in regulation 11:

“Old Board” means the New Zealand Apple and Pear Marketing Board established by the Apple and Pear Marketing Act 1971:

“Publicly disclose” means to make information available in the following ways:

(a) By making copies of that information available for inspection, during ordinary office hours, at ENZA’s or the Committee’s (as the case may be) principal office; and

(b) At the request of any person, by posting a copy to the person or providing the person with a copy of that information for collection, during ordinary office hours, from ENZA’s or the Committee’s (as the case may be) principal office:

“Responsible chief executive”, in relation to any function or matter, means the chief executive for the time being of a responsible Ministry who has, with the authority of the Prime Minister, assumed responsibility for that function or matter:

“Supplier” means a person from whom ENZA acquires the property in apples and pears grown in New Zealand.

## PART 1

### RESTRICTIONS ON EXPORT OF APPLES AND PEARS

**3. Export ban**—(1) No person may export apples or pears except as authorised by the Board or permitted by the Committee in accordance with these regulations.

(2) Every person commits an offence, and is liable on summary conviction to a fine not exceeding \$50,000, who knowingly and without lawful excuse contravenes subclause (1).

## PART 2

### ENZA’S EXPORT AUTHORISATION

**4. Board must authorise ENZA to export apples and pears**—

(1) The Board must authorise ENZA to export apples and pears.

(2) The terms and conditions of the authorisation must be in accordance with regulations 5 to 7 and must be in writing.

**5. Requirements of authorisation**—The export authorisation must—

(a) Have no expiry date:

(b) Contain provisions to ensure that the Board will not incur any liabilities in respect of the export ban or anything done or omitted to be done by ENZA:

(c) Require the point of acquisition of title to apples and pears purchased for export to be at FAS (or, at ENZA’s discretion, later in the supply chain than FAS).

**6. Matters that must not be included in authorisation**—(1) The export authorisation must not provide for any of the following:

- (a) A limit on the percentage of the apples and pears crop that is available to ENZA to export:
  - (b) A requirement that ENZA purchase any particular proportion of the apples and pears crop:
  - (c) The basis on which ENZA is to purchase and pay for apples and pears (other than in connection with the non-discrimination rule):
  - (d) An assertion of rights by the Board over any of ENZA's assets, including intellectual property:
  - (e) The Board to have any right or obligation to approve any transactions entered into by ENZA:
  - (f) The Board to have any rights or powers in respect of apples and pears pool administration or control:
  - (g) The Board to have any right or power to receive any of ENZA's revenue or income whatsoever (except the fees referred to in regulation 7 (1) (c)):
  - (h) Any events on which the export authorisation is to terminate (except in the case of ENZA's insolvency):
  - (i) Compensation for any person if the export ban is revoked:
  - (j) Any matters other than those reasonably necessary for the effective implementation of the requirements in regulation 5 or the discretionary requirements in regulation 7:
  - (k) Any variation of the provisions of Part 3.
- (2) "Insolvency" means—
- (a) The appointment of a receiver; or
  - (b) The appointment of a liquidator or interim liquidator under Part XVI of the Companies Act 1993; or
  - (c) The removal of ENZA from the register of companies kept pursuant to section 360 (1) (a) of the Companies Act 1993; or
  - (d) The appointment of a statutory manager under Part III of the Corporations (Investigation and Management) Act 1989.

**7. Discretionary requirements of authorisation**—(1) The export authorisation must—

- (a) Provide for an enforcement regime to ensure reasonable compliance with the matters referred to in regulation 26 (1) (b):
  - (b) Provide for the Board to make determinations on, and administer, the exemptions in respect of the information disclosure requirements under regulation 21:
  - (c) Provide for ENZA to pay to the Board—
    - (i) The reasonable costs incurred by the Board in administering ENZA's export authorisation, including monitoring and enforcement under regulation 26 (1) (b); and
    - (ii) The reasonable costs incurred by the Board during the process of appointing the members of the Committee; and
    - (iii) The reasonable costs of the Board's communications with growers; but
    - (iv) No other fees:
  - (d) Provide for any other matters reasonably necessary for the effective implementation of the requirements in this regulation or regulation 5.
- (2) The enforcement regime must include provisions for—
- (a) The identification of enforcement events:

(b) Procedures which comply with natural justice:

(c) Remedies, including provisions enabling affected persons to initiate, by way of complaint to the Board, an action through the enforcement regime and to receive an appropriate remedy if their claim is made out.

(3) The Board may decide how these terms are specified in the authorisation after consultation with ENZA or the persons who are to be the initial directors of ENZA in the case of consultation required before the restructuring day.

(4) However, the Board must—

(a) Submit to the Minister for approval, in sufficient time to enable the implementation of the authorisation on 1 April 2000, the range of enforcement options to be included in the enforcement regime; and

(b) Submit to the Minister for approval any proposed variation in that range of enforcement options; and

(c) Comply with any request made by the Minister arising from the submission for approval.

(5) This regulation is subject to regulation 6.

### PART 3

#### MITIGATION MEASURES

**8. Purpose of Part**—The purpose of this Part is to mitigate the potential costs and risks arising from the monopsony by—

(a) Encouraging innovation in the apple and pear industry while requiring that providers of capital agree to the ways in which their capital is used outside the core business; and

(b) Promoting efficient pricing signals to growers; and

(c) Providing appropriate protections for ENZA's shareholders and growers; and

(d) Promoting sustained downward pressure on ENZA's costs; and

(e) Requiring ENZA to operate its core business at arm's length from its activities in contestable markets in New Zealand.

#### *Non-Discrimination Rule*

**9. Duty not to discriminate unjustifiably**—ENZA, and its directors and managers, must not unjustifiably discriminate among suppliers and potential suppliers in respect of—

(a) A decision on whether to purchase apples and pears; or

(b) The terms of the purchase contract.

**10. Justifiable discrimination**—(1) Discrimination (or the extent of the discrimination) is justifiable if it is on commercial grounds.

(2) A commercial ground includes, but is not limited to, matters relating to product features, quality, quantity, timing, location, risk, or potential returns.

#### *Non-Diversification Rule*

**11. Non-diversification rule**—(1) ENZA must not carry out activities, and must not own or operate assets, that are not necessary for the core business unless—

- (a) The providers of capital used or to be used for those activities have been asked and have agreed to the use of their capital for those activities; and
  - (b) The shareholders and suppliers who have not agreed are not exposed to more than a minimal risk from those activities.
- (2) Subclause (1) does not apply to the activities specified in Schedule 2.
- (3) In this regulation, “use of capital” includes, for the avoidance of doubt,—
- (a) The use of any resources that are or would be represented on ENZA’s balance sheet as shareholders funds;
  - (b) The entering into of any arrangements that provide, directly or indirectly, for recourse to shareholders or suppliers funds or that would otherwise expose those funds to risk;
  - (c) The use of any funds that would otherwise be available for payment to suppliers or distribution to shareholders.

*Information Disclosure*

**12. Financial statement disclosure**—(1) Within 4 months after the end of each financial year (beginning with the 1999/2000 financial year), ENZA must publicly disclose financial statements for that financial year in respect of each of the business activities defined in the Handbook.

(2) Those financial statements must—

- (a) Be prepared in accordance with the allocation methodology in the Handbook; and
- (b) Disclose the information specified in that Handbook.

**13. Apple and Pear Information Disclosure Handbook**—The responsible chief executive may from time to time publish a Handbook which may provide for all or any of the following:

- (a) The definition of ENZA’s business activities;
- (b) The allocation methodology that must be used for preparing the financial statements and allocating the expenses, revenues, assets, and liabilities amongst ENZA’s business activities;
- (c) The disclosure of the manner in which the allocation methodology has been applied;
- (d) The information that must be specified in the financial statements disclosed under regulation 12;
- (e) The disclosure of transfer payments (whether actual or notional) amongst the business activities;
- (f) The disclosure of financial performance measures, or information from which financial performance measures may be derived, or both;
- (g) The form of the disclosures (including requirements as to separate, consolidated, and reconciliation information);
- (h) The audit and certification of disclosed information;
- (i) The retention of data on which disclosed information is based and associated documentation.

**14. Disclosure of apple and pear purchase conditions**—(1) ENZA must publicly disclose 1 month before coming into effect—

- (a) Its terms and conditions, and any amendments to those terms and conditions, for the purchase of apples and pears grown in New Zealand; and

- (b) The period for which each set of terms and conditions, including amendments, is applicable.
- (2) If it is not practicable to make the disclosure under subclause (1) 1 month before coming into effect, ENZA must make that disclosure as soon as practicable and no later than the date of coming into effect.
- (3) ENZA must publicly disclose within 3 months after the end of each financial year (beginning with the 1999/2000 financial year),—
  - (a) The number of suppliers to which each set of terms and conditions were applied; and
  - (b) The volume of apples and pears to which each set of terms and conditions were applied.
- (4) ENZA must publicly disclose,—
  - (a) Within 3 months after the beginning of each financial year, the methodology used at the beginning of that financial year to determine the payments for apples and pears; and
  - (b) Any change in the methodology or adoption of a different methodology, within 1 month of the change or the different methodology taking effect.
- (5) Every disclosure under subclause (4) must include key details of the methodology, including—
  - (a) The relationship between purchase prices and selling prices; and
  - (b) The key costs (including cost of capital incurred by ENZA) and other factors that explain the differences between purchase prices (paid to suppliers) and selling prices; and
  - (c) Any other information on which ENZA is relying to justify discrimination amongst suppliers.

**15. Disclosure relating to export permits**—(1) Within 3 months after the end of each financial year (beginning with the 1999/2000 financial year), the Committee must publicly disclose for that year the aggregate volume of apples and pears marketed by export permit holders.

(2) The information disclosed under subclause (1) must also be reported by appropriate geographical segment, but the form of segmentation adopted must not be likely to prejudice unreasonably the commercial interests of any individual export permit holder.

*Miscellaneous Provisions Relating to Information Disclosure*

**16. No charge for supplying information**—ENZA and the Committee must not charge for supplying any information required to be publicly disclosed under this Part.

**17. Period of disclosure**—(1) ENZA must comply with the following rules:

- (a) Information that is publicly disclosed must be publicly disclosed for a period of at least 4 years:
  - (b) Information relating to any terms and conditions under regulation 14 that is publicly disclosed must be publicly disclosed for a period of at least 4 years or until the terms and conditions are no longer applied, whichever is the longer.
- (2) A period runs from the time the information is first required to be publicly disclosed in accordance with these regulations.



**18. Information required to be certified by auditor**—(1) An independent auditor must provide a signed auditor's report with respect to the financial statements required by regulation 12 to be publicly disclosed.

(2) The auditor must give a qualified audit report if, in the auditor's opinion, the financial statements—

(a) Fail to comply with these regulations or generally accepted accounting practice; or

(b) Fail to give a true and fair view of the matters to which they relate (having regard to any information or explanations that may have been added by the directors of ENZA, as the case may be, under section 11 (2) or section 14 (2) of the Financial Reporting Act 1993);—

and the qualified audit report must explain the respects in which the statements so fail.

(3) An independent auditor must certify the financial performance measures specified in the Handbook in accordance with regulation 13 (f).

**19. Time limit for responding to requests for information**—A person required by a provision of these regulations to publicly disclose any information must provide a copy of the disclosed information within 2 weeks of receiving a request to provide any other person with a copy of that disclosed information.

**20. Information to be supplied to Board**—(1) ENZA must supply to the Board—

(a) A copy of all statements and information required to be publicly disclosed under this Part within 1 week after the statements and information are first required to be made so available:

(b) Any further statements, reports, agreements, particulars, and other information requested in writing by the Board for the purpose of monitoring ENZA's compliance with these regulations.

(2) ENZA, on receipt of a request made under subclause (1)(b), must comply with that request within 1 month after receiving the request or within such further period as the Board in any particular case may allow.

(3) The Board may require that all statements, reports, agreements, particulars, and information supplied to the Board under subclause (1)(a) must be certified by a director of ENZA as a true copy of the information that has been publicly disclosed by ENZA.

(4) The Board may require that all statements, reports, agreements, particulars, and information supplied to the Board under subclause (1)(b) must be accompanied by a certificate from a director of ENZA that—

(a) Declares that the statements, reports, agreements, particulars, and information are the statements, reports, agreements, particulars, and information requested by the Board; and

(b) To the best of the director's knowledge, contain all the statements, reports, agreements, particulars, and information in the possession of ENZA which relate to the request.

**21. Exemptions**—(1) The Board may exempt ENZA from a provision of the information disclosure requirements if satisfied that the granting of the exemption would not significantly prejudice the effective scrutiny of ENZA's performance.

(2) The Board may allow ENZA to disclose information in confidence to the Board (instead of being publicly disclosed) if satisfied that to publicly

disclose the information would be likely to prejudice unreasonably the commercial position of ENZA.

*Corporate Form*

**22. Continuing requirements as to ENZA Limited's corporate form**—(1) ENZA Limited must—

- (a) Remain a company registered only under the Companies Act 1993;
- (b) Have no shares other than ones that are fully tradeable (not based on any supply criteria) at least among growers where “growers” includes—
  - (i) Growers under the share allocation plan under the Act and persons who become growers after 30 September 1999; and
  - (ii) Any other person determined by the board of directors of ENZA Limited to be a grower for the purpose of tradeability of shares.
- (2) Any rules about maximum shareholdings in ENZA Limited—
  - (a) Must not set a maximum percentage of less than 20%; and
  - (b) Must be simple and inexpensive to administer.

*Protections for Shareholders*

**23. Contents of constitution**—(1) Section 36 (2) of the Companies Act 1993 does not apply in respect of the shares issued under the share allocation plan provided for in the Act.

(2) Section 131 (1) of the Companies Act 1993 applies to the directors of ENZA Limited, and for the purposes of section 131 (4), ENZA Limited is not a joint venture company.

(3) Section 76 (1)(c) of the Companies Act 1993 does not apply.

(4) All directors of ENZA Limited must be elected according to the procedure set down in section 155 (1) (a) of the Companies Act 1993.

(5) Subclause (4) does not prevent an appointment to fill a casual vacancy pending the next election of directors by shareholders.

*Arms Length Rules*

**24. Arms length rules**—The arms length rules apply to the companies and managers carrying on the core business and on-shore logistics activities.

PART 4

ESTABLISHMENT OF NEW ZEALAND APPLE AND PEAR BOARD

**25. New Zealand Apple and Pear Board**—(1) The New Zealand Apple and Pear Board is established.

(2) The Board is a body corporate with perpetual succession and a common seal.

(3) The Board is not a Crown entity for the purposes of the Public Finance Act 1989.

**26. Functions**—(1) The functions of the Board are—

- (a) To authorise the export of apples and pears, and to set the terms of the authorisation, in accordance with Part 2;
- (b) To monitor and enforce—
  - (i) The non-discrimination rule, the non-diversification rule, the information disclosure requirements, and the arms length rules (including enforcement under regulation 58); and

(ii) The requirement that the point of acquisition of title to apples and pears purchased for export be in accordance with regulation 5(c) or regulation 57 (as the case may be); and

(iii) Any other terms and conditions of the authorisation:

(c) To appoint the members of the Committee.

(2) The Board must carry out its function under subclause (1)(a) and (b) to best achieve the purpose in regulation 8.

**27. Cost-effective requirement**—The Board must perform its functions in a manner that is as efficient and cost-effective as possible.

**28. Prohibitions**—The Board must not—

(a) Carry on any commercial activity, including the purchase or sale of apples and pears:

(b) Operate to make a profit.

**29. Membership**—(1) The Board consists of 5 members of which—

(a) 2 members are to be elected by growers in accordance with regulation 30:

(b) 2 members are to be appointed by Pipfruit Growers New Zealand Incorporated or its successor:

(c) 1 member, who is fully independent of the apple and pear industry, is to be appointed by the other members to act as chairperson.

(2) No person may be a member of the Board if the person is a member of the Committee.

(3) All members must be elected or appointed no later than 1 November 1999.

**30. Election of grower representatives**—(1) The Board may determine the way in which the election of the members who are to be elected by growers is to be conducted.

(2) The Board must, however, ensure that the election is held in a way that ensures fairness and that a clear and accurate result can be ascertained and verified.

**31. Powers**—The Board has all the powers necessary to enable it to perform its functions.

**32. Funding**—(1) The Board is to be funded on a cost recovery basis by charging ENZA, in accordance with the export authorisation, for—

(a) The reasonable costs incurred by the Board in administering ENZA's export authorisation, including monitoring and enforcement under regulation 26(1)(b); and

(b) The reasonable costs incurred by the Board during the process of appointing the members of the Committee.

(2) Any costs so charged are recoverable as a debt due to the Board in any court of competent jurisdiction.

**33. Compliance with Financial Reporting Act 1993**—The Board must comply with the Financial Reporting Act 1993 and must appoint an independent auditor to audit the financial statements of the Board.

**34. Further provisions applying to Board**—The provisions set out in Schedule 3 apply to the Board.

## PART 5

## EXPORT PERMITS

**35. Purpose of Part**—The purpose of this Part is to enable an independent committee established by the Board to grant permits to export apples and pears.

*Export Permits Committee*

**36. Establishment of Export Permits Committee**—(1) The Board must establish a committee, to be known as the Export Permits Committee, to decide applications for export permits and to monitor compliance with any permit conditions.

(2) The Committee is a separate legal entity from the Board.

(3) The Committee is not a Crown entity for the purposes of the Public Finance Act 1989.

(4) The Board must establish the Committee within 1 week of the Board members being elected or appointed under regulation 29.

**37. Membership of Export Permits Committee**—(1) The Committee consists of—

(a) No fewer than 3, and no more than 6, members appointed by the Board; and

(b) 1 member, who is fully independent of the apple and pear industry, appointed by the other members to act as chairperson.

(2) No person may be appointed to the Committee if that person—

(a) Is either a director or employee of ENZA or of a current export permit holder:

(b) Is a member or employee of the Board:

(c) Is a member of the old Board.

**38. Conflict of interest**—(1) If any member of the Committee has any interest in any application under consideration by the Committee, the member must declare that interest at the first meeting of the Committee at which, or after which, the member first becomes aware of the matter.

(2) In such a case, the member must take no further part in the discussion or deliberations of the Committee on that application and must withdraw from the room while the matter is being discussed or decided.

**39. Cost-effective requirement**—The Committee must perform its functions in a manner that is as efficient and cost-effective as possible.

**40. Prohibitions**—The Committee must not—

(a) Carry on any commercial activity, including the purchase or sale of apples and pears:

(b) Operate to make a profit.

**41. Powers**—The Committee has all the powers necessary to enable it to perform its functions.

**42. Financial provisions**—(1) The Committee must comply with the Financial Reporting Act 1993 and must appoint an independent auditor to audit the financial statements of the Committee.

(2) Clauses 15 and 16 of Schedule 3 apply to the Committee.

*Applications*

**43. Applicants**—(1) Any person may apply to the Committee for an export permit.

(2) Nothing in this Part limits or affects the ability of—

(a) The former holder of an export permit that has expired; or

(b) The holder of a current export permit—

to apply for and be granted another export permit.

**44. Application for export permit**—Every application for an export permit must be—

(a) Made in writing including such information as the applicant considers will assist the Committee in its consideration of the application; and

(b) Accompanied by the fee (if any) set by the Committee for the purpose of recovery of the Committee's costs.

**45. Criteria for export permits**—(1) In considering any application for an export permit, the Committee must be satisfied that the application meets the following criteria:

(a) The application must complement the current marketing activities of ENZA; and

(b) The application must not be likely to result in any adverse effect on ENZA's reputation in the relevant overseas market or markets.

(2) In this regulation, "complement" means not undermine.

(3) The criteria in subclause (1) are the only criteria to be considered by the Committee.

**46. Power to grant export permits**—The Committee may permit any person to export apples and pears in accordance with these regulations.

*Grant of Export Permit*

**47. Grant of export permit**—(1) The Committee must consider an export permit application as expeditiously as possible and grant an export permit to the applicant if the Committee is satisfied that the applicant has met the criteria set out in regulation 45.

(2) The Committee may, before deciding whether to grant the application, indicate to the applicant possible changes to the application which, if included, would improve the prospects of the application being approved.

(3) The Committee may, in granting an application, impose any reasonable and necessary conditions consistent with the criteria in regulation 45 provided that the permit contains provisions to ensure that the Committee will not incur any liabilities in respect of the export ban or anything done or omitted to be done by the applicant.

(4) For the avoidance of doubt, the conditions may not include a charge imposed by the Committee to recover any costs other than those referred to in regulation 44 (b).

(5) After deciding an application, the Committee must,—

(a) As expeditiously as possible, give written notice to the applicant of its decision, including the reasons for its decision in any case where it declines the application; and

(b) If it has decided to grant an export permit, issue the export permit to the applicant.

*Other Matters*

**48. Procedure**—Subject to any requirements in this Part, the Committee may regulate its own procedure in a way that is consistent with the rules of natural justice.

## PART 6

## MISCELLANEOUS PROVISIONS

**49. Alteration or review of authorisation**—(1) The Board may alter the authorisation if it is necessary or desirable to do so to ensure the effective enforcement of the authorisation.

(2) The Board must review the effectiveness of the enforcement regime provided for under regulation 7 (1)(a) at intervals of no more than 3 years apart and change the authorisation as necessary to ensure the effectiveness of the regime.

(3) If these regulations are amended in a way that necessitates a change to the export authorisation, the Board must change the authorisation to ensure consistency with the regulations as amended.

**50. No contracting out**—These regulations apply despite anything to the contrary in the constitution of ENZA Limited or its subsidiaries.

**51. No Crown liability**—(1) The Crown is not liable to ENZA or any other person—

(a) In the event that an export authorisation or export permit is revoked:

(b) For any act or omission relating to the export authorisation or the operation of ENZA or of any other person permitted to export under these regulations.

(2) The Crown is not liable in respect of any act or omission by the Board or the Committee.

**52. Notice of international obligations**—(1) The Minister of the Crown who (under the authority of any warrant or with the authority of the Prime Minister) is in charge of international trade may, at any time, give to ENZA a written notice specifying—

(a) A particular international obligation of New Zealand; and

(b) An element of the performance of ENZA's functions or the exercise of ENZA's powers to which, in the Minister's opinion, the obligation is relevant.

(2) ENZA must ensure that its performance or exercise of the element is consistent with the obligation until the notice is revoked.

**53. Supply of information**—(1) The Board and the Committee may from time to time, for the purpose of the administration and enforcement of these regulations, require ENZA to make available to the Board or the Committee, as the case may be, information in its possession or over which it has control.

(2) ENZA must make that information available promptly in a form in which it can be readily understood.

(3) This regulation is not limited by regulation 20 (1)(b).

**54. Revocation**—The Apple and Pear Marketing (Annual General Meeting) Regulations 1994 (S.R. 1994/200) are revoked.

*Transitional Provisions***55. Preparation for new Board**—The members of the old Board—

- (a) May take all steps that are reasonably necessary or desirable to prepare for the establishment and operation of the Board under these regulations; and
- (b) Must, as soon as practicable after 1 October 1999 and in any event no later than 1 November 1999, hold elections for members of the Board under these regulations.

**56. Application of regulations to old Board before 1 April 2000** — These regulations (other than Parts 1 and 2) apply to the old Board in the period beginning on 1 October 1999 and ending with 31 March 2000 as if references to ENZA or the companies were references to the old Board.

**57. Acquisition of title at FAS**—(1) The point of acquisition of title to apples and pears purchased for export by the old Board must, from 1 February 2000 or such later date as the Minister may specify by notice in the *Gazette*, be at FAS (or, at the old Board's discretion, later in the supply chain than FAS).

(2) The Minister may specify a later date in the *Gazette* for the purpose of subclause (1) if—

- (a) The Minister is satisfied that there are compelling operational barriers that make it impracticable to require the point of acquisition of title to apples and pears purchased for export to be at FAS from 1 February 2000; and
- (b) The Minister has notified representatives of the apple and pear industry of his or her intention to specify the later date; and
- (c) That notification has been given within a period before 1 February 2000 that the Minister considers reasonable.

(3) A barrier that could have been overcome by the old Board using best endeavours in the period from the commencement of these regulations is not a compelling barrier for the purpose of subclause (2).

(4) The Minister must, in deciding whether to specify a later date for the purpose of subclause (1), take into account—

- (a) Any expert advice sought by the Minister; and
- (b) Any views made known to the Minister from the old Board or other providers of on-shore logistic activities that are relevant to the consideration in subclause (2) (a).

**58. Enforcement in respect of period before 1 April 2000**—(1) The enforcement regime that applies in the period beginning 1 October 1999 and ending with 31 March 2000 is set out in Schedule 4.

(2) The Board may take enforcement action in respect of any breach of these regulations, despite the fact that the breach occurred before the date on which the Board was established.

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## SCHEDULES

Regs. 2, 24

## SCHEDULE 1

## ARMS LENGTH RULES

**1. Objective**—(1) The objective of this schedule is to ensure that, where ENZA continues to carry out on-shore logistics activities within the group, the core business and on-shore logistics activities must be operated at arms length from each other.

(2) Without limiting the ordinary meaning of the expression, “arms length” includes having relationships, dealings, and transactions which—

(a) Do not include elements that parties in their respective positions would usually omit; or

(b) Do not omit elements that parties in their respective positions would usually include,—

if the parties were—

(c) Connected or related only by the transaction or dealing in question; and

(d) Acting independently; and

(e) Each acting in its own best interests.

**2. Arms length rules**—The arms length rules are as follows:

*Duty to Ensure Arms Length Objective is Met*

1. Business A and every parent of business A, and business B and every parent of business B, must take all reasonable steps to ensure that the arms length objective in clause 1 is met.

*Arms Length Terms*

2. Business A, and every parent of business A, must not enter into a transaction in which business B, or any parent of business B, is interested if the terms of the transaction are terms which unrelated parties in the position of the parties to the transaction, each acting independently and in its own best interests, would not have agreed to.

*Duty Not to Prefer Interests of Business B*

3. A manager of business A must not, when exercising powers or performing duties in connection with business A, act in a manner which the manager knows or ought reasonably to know would prefer the interests of business B over the interests of business A.

*Duty Not to Discriminate in Favour of Business B*

4. Business A must not, in providing services or benefits, discriminate in favour of business B or the customers, suppliers, or members of business B.

*Duty to Focus on Interests of Right Ultimate Owners*

5. A manager of business A must, when exercising powers or performing duties in connection with business A, act in the interests of the ultimate members of business A in their capacity as such, and must neither subordinate the interests of those members to the interests of the members of business B nor, to the extent that the members or ultimate beneficial members of each business over-



SCHEDULE 1—*continued*ARMS LENGTH RULES—*continued*

lap, take account of that fact or have regard to their dual capacity as members of business B and business A.

*Duty of Managers of Parents of Business A*

6. A manager of a parent of business A must not, when exercising powers or performing duties in connection with business A, act in a manner which the manager knows or ought reasonably to know would prefer the interests of business B, or of the customers, suppliers, or members of business B in that capacity, over the interests of business A or the customers, suppliers, or members of business A.

*Restriction on Use of Information*

7. Business A must not disclose or permit the disclosure to business B, or use or permit the use for the purposes of business B of, restricted information of business A.  
 “Restricted Information” is information received or generated, and held, by business A connected with its business, being information which—
- (a) Is not available to the competitors or potential competitors of business B; and
  - (b) If disclosed to business B, would put, or be likely to put, business B in a position of material advantage in relation to any competitor or potential competitor.

*Rules Do Not Limit Objective*

The arms length rules above do not limit the generality of the arms length objective above.

*Interpretation*

(1) In this schedule, “Parent” in relation to a business means every person that is involved in the business.

(2) In this schedule, a person is “interested” in a transaction if the person, or an associate of that person,—

- (a) Is a party to, or will derive a material financial benefit from, the transaction; or
- (b) Has a material financial interest in a party to the transaction; or
- (c) Is a manager of a party to, or a person who will or may derive a material financial benefit from, the transaction; or
- (d) Is otherwise directly or indirectly materially interested in the transaction.

(3) References in this schedule to business A apply equally to business B and vice versa.

*Terms Refer Only to Related Companies*

The terms “business A” and “business B” refer to the core business and the on-shore logistics business respectively.

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Reg. 11 (2)

## SCHEDULE 2

## SPECIFIED ACTIVITIES

**1. On-shore logistics activities excepted as at 20 July 1999 levels—**The following activities are excepted from regulation 11 (1), subject to the conditions in clause 6, provided that the activities are carried out to a level no greater than the level to which they were carried out in the year ending 20 July 1999:

- (a) Coolstore services referred to in clause 4 or clause 5:
- (b) Arranging the purchase of packaging on behalf of suppliers:
- (c) Arranging the purchase of packing services on behalf of suppliers excluding, for the avoidance of doubt, arrangements that ENZA has with providers of packing services relating to standards and specifications for packing fruit for export:
- (d) Arranging transport services on behalf of suppliers:
- (e) Providing consultancy services to suppliers for harvest management, harvest quality programmes, and food safety.

**2. Other activities excepted as at 20 July 1999 levels—**The following activities are excepted from regulation 11 (1), subject to the conditions in clause 6, provided that the activities are carried out to a level no greater than the level to which they were carried out in the year ending 20 July 1999:

- (a) Acting as an agent for another person in selling Asian pears from New Zealand in North America, Europe, Asia (including India and Indian Ocean Islands), the Pacific Islands, and the Middle East:
- (b) Acting as an agent for another person in selling apples, pears (European and Asian), bananas, citrus, grapes, kiwifruit, stonefruit, and onions from Australia, Chile, India, EU member states, Brazil, Argentina, the United States, and China in North America, Europe, Asia (including India and Indian Ocean Islands), the Pacific Islands, and the Middle East:
- (c) Any activity that is carried out in accordance with the terms of an approval granted by the Minister before 20 July 1999 under section 11(1) (ha) of the Apple and Pear Marketing Act 1971, until the date on which the approval would have expired as at 20 July 1999:
- (d) The activities within New Zealand of FIPIA New Zealand Limited comprising—
  - (i) Arranging, on behalf of New Zealand or overseas owners of plant variety rights, testing of the varieties under New Zealand conditions, and the sublicensing of those plant variety rights in New Zealand:
  - (ii) Sales of budwood and trees directly to growers or through growers or nurseries pursuant to licensed propagation agency agreements:
- (e) The activities outside New Zealand of FIPIA New Zealand Limited comprising—
  - (i) Arranging for the registration and licensing of plant variety rights overseas on behalf of New Zealand owners of those rights:
  - (ii) Arranging agreements with overseas persons for the licensing of plant variety rights.

SCHEDULE 2—*continued*SPECIFIED ACTIVITIES—*continued*

3. **Other excepted activities**—The following activities are excepted from regulation 11 (1), subject to the conditions in clause 6:

- (a) Sales in New Zealand of New Zealand-grown apples and pears up to a total sales limit of 200,000 tray carton equivalents (TCEs) for each year ending 30 September:
- (b) Processing activities carried out by ENZAFOODS Limited of fruit and vegetable products at the plants used by it as at 20 July 1999 at Nelson, Hastings, and Roxburgh, up to a total processing capacity of 250,000 tonnes for each year ending 30 September, and the sale of those processed products:
- (c) ENZACOR Pty Ltd, Australia, acting as an agent for another person in selling processed fruit and vegetable products, up to a total gross sales limit of A\$50 million for each year ending 30 September:
- (d) Activities carried out by Chiquita-ENZA Chile Limited in respect of the acquisition and sale of non-New Zealand-grown apples, pears (European and Asian), citrus, grapes, kiwifruit, stonefruit, and onions:
- (e) The purchase of New Zealand-grown apples and pears where the point of acquisition of title to the fruit is earlier in the supply chain than FAS provided that—
  - (i) The date of purchase is no later than the date from which, under these regulations, the point of acquisition of title must be at FAS (or, at ENZA's discretion, later in the supply chain than FAS); and
  - (ii) Title is acquired no earlier than the point of acquisition during the 1998/99 season.

4. **Coolstore services using coolstores owned by ENZA** —(1) Clause 1 (a) excepts coolstore services supplied using—

- (a) A coolstore that was wholly owned by the Board as at 20 July 1999:
  - (b) That part of a partially owned coolstore that reflects ENZA's ownership share as at 20 July 1999:
  - (c) A coolstore that becomes wholly or partially owned by the Board or ENZA after 20 July 1999—
- provided that—
- (d) ENZA's overall coolstore capacity is, at the date a service is supplied using that coolstore, not materially greater than ENZA's overall coolstore capacity immediately before 20 July 1999; and
  - (e) The capital value of the Board's or ENZA's ownership interest in the coolstore is, when taken together with ownership interests in all other coolstores owned by the Board or ENZA, not materially greater than the audited replacement value for insurance purposes of all the Board's or ENZA's ownership interests in coolstores immediately before 20 July 1999.

(2) ENZA's overall coolstore capacity as at a particular date is the total of—

- (a) The capacity of coolstores wholly owned by ENZA as that date; and
- (b) That part of the capacity of a partially owned coolstore that reflects ENZA's ownership share as at that date.

SCHEDULE 2—*continued*SPECIFIED ACTIVITIES—*continued*

5. **Other coolstore services**—(1) Clause 1 (a) also excepts coolstore services supplied using a coolstore that was leased by the Board as at 20 July 1999, or operated by a person and available for use by the Board as at 20 July 1999, until—

- (a) The date on which the lease or contract would have expired as at 20 July 1999; or
- (b) In the case of a lease or contract of a coolstore that is referred to in the following table, the expiry of any new lease or contract that may be entered into in respect of that coolstore provided that—
- (i) The new lease or contract is for a term not greater than the maximum term referred to in that table; and
- (ii) The new lease or contract does not provide for the coolstore to be used by the Board or ENZA to a capacity exceeding the maximum capacity referred to in the table.

Party	Coolstore Location	Maximum Static Capacity	Date Until Which Lease or Contract Can Be Renewed
Birdhurst	Nelson	6,000 pallets	9 years
CSN	Nelson	13,000 pallets	5 years
Rainsley	Hawkes Bay	4,800 CA bins	5 years
Flowers	Hawkes Bay	800 pallets	3 years
Wakatu Inc	Nelson	1,400 pallets	3 years
PPC	Hawkes Bay	5,000 CA bins	5 years
Provincial	Marlborough	6,500 pallets	5 years
Whakatu	Hawkes Bay	8,000 pallets and 2,300 CA bins	5 years

(2) For the avoidance of doubt, nothing in this clause requires the parties to a lease or contract in respect of a coolstore referred to in the table to enter into a new lease or contract.

6. **Conditions**—(1) The exceptions in this schedule are subject to the following conditions:

- (a) That the activities are carried out in accordance with the regulations; and
- (b) That, in the case of the exceptions in respect of the activities carried out by FIPIA New Zealand Limited, ENZACOR Pty Ltd, Australia, and Chiquita-ENZA Chile Limited, neither the Board nor ENZA, directly or indirectly, after 20 July 1999—
- (i) Acquires any additional relevant interest in any shares of the company; or
- (ii) Provides any additional capital to the company,—  
where “additional” means additional to that as at 20 July 1999, “capital” has the same meaning as regulation 11, and “relevant interest” has the same meaning as in the Securities Amendment Act 1988; and

SCHEDULE 2—*continued*SPECIFIED ACTIVITIES—*continued*

- (c) That, in the case of the exemptions in respect of the activities carried out by FIPIA New Zealand Limited,—
- (i) The activities are confined to the provision of a brokering or royalty-based service on a fully commercial basis; and
  - (ii) The activities covered by the exemption do not include research and development or industry good activities.
- (2) The condition in subclause (1) (b) does not apply in respect of any core business activities of FIPIA New Zealand Limited.
- (3) The condition in subclause (1) (b) does not apply in respect of clause 9.5 and 9.6 of the joint venture contract relating to Chiquita-ENZA Chile Limited.
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Reg. 34

## SCHEDULE 3

## PROVISIONS RELATING TO BOARD

1. **Term of office**—(1) Every appointed member of the Board is appointed for a term of up to 3 years.

(2) Every member of the Board elected by growers is elected for a term of up to 3 years.

(3) This clause is subject to clause 3.

2. **Reappointment**—Every member of the Board is eligible for reappointment or re-election from time to time.

3. **Continuation in office after appointed member's term expires**—On expiry of an appointed Board member's term of office, the member continues to hold office, by virtue of the appointment for the term that has expired, until—

(a) The member is reappointed; or

(b) A successor to the member is appointed.

4. **Vacancies**—The powers of the Board are not affected by any vacancy in its membership.

5. **Meetings**—(1) Meetings of the Board must be held at such times and places as the Board or its chairperson from time to time appoints.

(2) The chairperson, or any 2 members, may at any time call a special meeting by giving not less than 7 days' notice of the special meeting, and of the business to be transacted at that meeting, to each member of the Board for the time being in New Zealand.

(3) No business other than that specified in a notice of special meeting may be transacted at that meeting.

(4) The quorum at any meeting of the Board is 3 members.

(5) All questions arising at any meeting of the Board must be decided by a majority of the valid votes recorded on the question.

(6) A resolution signed, or assented to by letter, facsimile transmission, telex, or other method of communication, by no fewer than 3 members has the same effect as a resolution duly passed at a meeting of the Board.

(7) Subject to the provisions of this Act, the Board may regulate its own procedure.

6. **Chairperson**—(1) The chairperson must preside at all Board meetings at which he or she is present.

(2) If the chairperson is absent, the deputy chairperson must preside.

(3) If the chairperson and the deputy chairperson are absent, the members present must appoint 1 of their number to be chairperson of that meeting.

(4) At a Board meeting, the chairperson or other person presiding has a deliberative vote and, in the case of an equality of votes, also has a casting vote.

7. **Deputy chairperson**—(1) The Board may from time to time appoint 1 of its members as the deputy chairperson of the Board.

(2) During any vacancy in the office of chairperson, or in the absence of the chairperson from New Zealand, or while the chairperson is incapacitated by sickness or otherwise, the deputy chairperson has and may exercise all the powers and functions of the chairperson.

8. **Acts not to be called into question**—No one may question an appointment of a member of the Board to act as chairperson, or an act done by that member while acting as such, or an act done by the Board

SCHEDULE 3—*continued*PROVISIONS RELATING TO BOARD—*continued*

while any member is acting as such, in any proceedings on the grounds that the occasion for the appointment had not arisen or had ceased.

**9. Co-opted members**—(1) The Board may co-opt any person or persons whose qualifications or experience are likely, in the opinion of the Board, to be of assistance to the Board in dealing with any matter before the Board.

(2) Every person so co-opted is entitled to take part in the proceedings of the Board in relation to that matter, but is not entitled to vote on that matter.

**10. Committees**—(1) The Board may from time to time, by resolution, appoint, alter, discharge, continue, or reconstitute any committee to advise the Board on any matters relating to the Board's functions and powers that are referred to that committee by the Board.

(2) Any person may be appointed to be a member of a committee, whether or not that person is a member of the Board.

(3) Subject to this Act, and to any direction given by the Board, every committee may regulate its own procedure.

**11. Delegation of functions and powers**—(1) The Board may from time to time, either generally or specifically, delegate any of the Board's functions and powers to any of its committees, members, or employees.

(2) However, the Board must not delegate the power of delegation conferred by subclause (1).

(3) Every delegation must be in writing.

(4) Any delegation may be made to—

(a) A specified person; or

(b) A person belonging to a specified class of persons; or

(c) The holder for the time being of a specified office or appointment; or

(d) The holder for the time being of an office or appointment of a specified class.

(5) The committee or person to whom any such delegation is made may exercise or perform the delegated functions or powers in the same manner and with the same effect as if they had been conferred directly by this Act and not by delegation.

(6) Subclause (5) is subject to any general or special directions given or conditions imposed by the Board.

(7) Every committee or person purporting to act pursuant to any delegation under this clause is presumed, in the absence of proof to the contrary, to be acting in accordance with the terms of the delegation.

(8) Every delegation under this clause is revocable at will, but the revocation does not take effect until it is communicated to the delegate.

(9) A delegation continues in force according to its terms until it is revoked, notwithstanding any change in the membership of the Board or of any committee.

(10) No delegation under this clause prevents the performance or exercise of any function or power by the Board.

**12. Contracts**—(1) Board contracts must be made under the common seal of the Board if the contract is one which, if made by private persons, must be by deed.

SCHEDULE 3—*continued*PROVISIONS RELATING TO BOARD—*continued*

(2) Board contracts may be signed by a member of the Board or employee of the Board on behalf of and by authority of the Board if the contract is one that, if made by private persons, must be signed by the parties to be charged with it.

(3) Board contracts may be made orally by or on behalf of the Board by any member of the Board or employee of the Board acting by authority of the Board if the contract is one that, if made by private persons, may be made orally, but no oral contract may be made for a sum exceeding \$2,000.

(4) Failure to make a contract in a manner provided by this clause or clause 13 does not invalidate the contract if it was made pursuant to a resolution of the Board or to give effect to a resolution of the Board in relation to contracts generally or in relation to that particular contract.

13. **Attorneys**—(1) The Board may authorise any person, either generally or in respect of any specified matters, to execute instruments on its behalf in any place in or beyond New Zealand.

(2) The authorisation must be in writing under the common seal of the Board.

(3) An instrument executed by such an attorney on behalf of the Board binds the Board and, if executed as a deed, has the same effect as if it were under the common seal of the Board.

14. **Employees**—The Board may appoint employees that are necessary for the reasonable performance of its functions.

15. **Bank accounts**—(1) The Board may open at any bank, or banks, such accounts as are necessary for the performance of its functions.

(2) All money received by the Board, or by any member or employee of the Board for the purposes of the Board, must, as soon as practicable after it has been received, be paid into such bank accounts of the Board as the Board from time to time determines.

(3) The withdrawal or payment of money from any such accounts must be authorised in such manner as the Board thinks fit.

(4) Any bank account of the Board must be operated only by cheque or other instrument signed by a member or an employee of the Board authorised by the Board to do so, and must be countersigned by another member or employee of the Board authorised to do so.

16. **Expenditure not otherwise authorised**—The Board may, in any financial year, expend for lawful purposes not otherwise authorised by this Act or any other enactment, any sum or sums not amounting in the aggregate to more than \$5,000.

17. **Seal**—The common seal of the Board must be judicially noticed in all courts and for all purposes.

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## SCHEDULE 4

Reg. 58

## TRANSITIONAL ENFORCEMENT REGIME

**1. Purpose**—The purpose of this schedule is to ensure that in the period from 1 October 1999 to 1 April 2000 the Board may enforce against the old Board the requirements of the non-discrimination rule, the non-diversification rule, the information disclosure requirements, the arms-length rules, and the requirement that the point of acquisition of title to apples and pears purchased for export be in accordance with regulation 57 (“the rules”).

**2. Initiation of complaints**—(1) The Board may consider any complaint made to it about an alleged breach of the rules, or may investigate any enforcement matter of its own volition.

(2) Any complaint made to the Board must be in writing.

**3. Frivolous or vexatious complaints**—The Board must not consider any complaint that is, in its opinion, frivolous or vexatious.

**4. Procedure**—(1) The Board must regulate its own procedure in a way that—

- (a) Is consistent with the rules of natural justice; and
- (b) Ensures that enforcement is speedy, inexpensive, and simple.

(2) The Board must determine the matter according to the substantial merits of the case.

**5. Exercise of Board’s enforcement powers**—The Board may make one or more orders under clause 6 in any case where the Board is satisfied, on the balance of probabilities, that the old Board has breached any provision of the rules.

**6. Types of orders that may be made**—(1) The Board may—

- (a) Decide that no enforcement action should be taken;
- (b) Issue a private warning or reprimand;
- (c) Issue a public warning or reprimand;
- (d) Impose a financial penalty;
- (e) Order the payment of compensation in accordance with clause 8;
- (f) Require the Board to do any specified thing for the purpose of remedying any breach of the rules;
- (g) Make a cease and desist order restraining conduct in breach of any of the rules;
- (h) Make orders providing for any other reasonable remedies, undertakings, or penalties that the Board considers appropriate, in respect of a breach of any of the rules.

(2) An order may be made on such terms and conditions as the Board thinks fit.

**7. Matters to be taken into account**—When considering whether to make an order, the Board must have regard to the following matters—

- (a) The circumstances in which the breach occurred;
- (b) The severity of the breach;
- (c) The extent to which the breach was inadvertent, negligent, deliberate, or otherwise;
- (d) The length of time the breach remained unresolved;

SCHEDULE 4—*continued*TRANSITIONAL ENFORCEMENT REGIME—*continued*

- (e) The old Board's actions on learning of the breach:
- (f) How the breach was disclosed:
- (g) Any benefit that the old Board obtained or expected to obtain as a result of the breach:
- (h) Any previous breach of the rules by the old Board:
- (i) The impact of the breach on the apple and pear industry:
- (j) Such other matters as the Board thinks fit.

**8. Compensation orders**—The Board may order the payment of any compensation as follows:

- (a) To any supplier who has suffered loss arising from a breach of the non-discrimination rule:
- (b) To any person who has suffered loss arising from an activity, or ownership or operation of assets, in New Zealand in breach of the non-diversification rule:
- (c) To any grower or supplier who has suffered loss arising from an activity, or ownership or operation of assets, outside New Zealand in breach of the non-diversification rule:
- (d) To any person who has suffered loss arising from a breach of the arms length rules:
- (f) To any person who has suffered loss arising from a breach of the requirement that the point of acquisition of title to apples and pears purchased for export be in accordance with regulation 57.

**9. Application of financial penalties**—(1) The Board must retain any financial penalties in an interest bearing bank account.

(2) The use of any funds derived from financial penalties imposed in the transition period is to be determined in the enforcement regime incorporated in the export authorisation in accordance with regulation 7 (1) (a).

**10. Costs orders**—(1) The Board may make orders regarding the costs of an investigation or an enforcement proceeding

(2) A costs order may be made in addition to any order under clause 6.

**11. Board's decision final**—(1) The old Board must comply with an order under this schedule.

(2) A decision of the Board is final and binding on all persons affected.

**12. Other rights of redress**—(1) This schedule does not limit any other right of redress under any other enactment or rule of law.

(2) However, any person determining any other redress must take into account any redress obtained under this schedule.

MARIE SHROFF,  
Clerk of the Executive Council.

## EXPLANATORY NOTE

*This note is not part of the regulations, but is intended to indicate their general effect.*

These regulations set out a new regime for the export of apples and pears from New Zealand.

The principal features of the regime are as follows:

- Restrictions on the export of apples and pears:
- An authorisation for ENZA to export apples and pears:
- Measures to mitigate the potential costs and risks arising from the single desk. These measures are—
  - A non-discrimination rule preventing ENZA from discriminating, otherwise than on commercial grounds, among suppliers of apples and pears in relation to purchasing decisions or contracts:
  - A non-diversification rule preventing ENZA from carrying out activities, or owning or operating assets, that are not necessary for the core business of purchasing and exporting New Zealand-grown apples and pears, unless the providers of capital agree to the way in which their capital is used:
- Information disclosure rules:
- Arms length rules requiring on-shore logistics activities (such as coolstore, packaging, packing, and transport services) retained by ENZA to be carried on at arms length from the core business of purchasing and exporting New Zealand-grown apples and pears:
- The establishment of a New Zealand Apple and Pear Board to grant the export authorisation to ENZA, to monitor and enforce the various rules relating to the single desk, and to appoint an independent Export Permits Committee:
- Provision for a separate Export Permits Committee to grant permits to other exporters to export apples and pears independently from ENZA.

Most of the regulations come into force on 1 October 1999, and will apply to the existing New Zealand Apple and Pear Marketing Board established under the Apple and Pear Marketing Act 1971 until it is corporatised on 1 April 2000. During the period from 1 October 1999 to 1 April 2000—

- The export ban under the 1971 Act continues to apply:
- The purchasing, standard setting, and pricing provisions of the 1971 Act that were overridden by the Apple and Pear Industry Restructuring Act 1999 are replaced by the regime in these regulations, eg, the non-discrimination rule, the non-diversification rule, the information disclosure rules, and the arms length rules:
- The new Export Permits Committee may grant export permits to independent exporters in respect of the 1999/2000 season:
- A transitional enforcement regime applies (as set out in Schedule 4) so that the new Board can monitor and enforce the existing Board's activities under the new regime.

On 1 April 2000, the rest of these regulations come into force. From that point, the full regime in these regulations applies, including—

- The export restriction in these regulations, and the new export authorisation to be granted to the corporatised ENZA, apply:
- The enforcement regime will be specified in the export authorisation granted to ENZA by the new Board.

The regulations also provide for the point of acquisition of title to apples and pears purchased for export to be at "free alongside" the ship or aircraft, or a later point in the supply chain. This will apply from 1 February 2000, or a later date to be specified by the Minister by *Gazette* notice if there are compelling operational barriers that make it impracticable to require implementation of FAS from that date.

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These regulations are administered in the Ministry of Agriculture and Forestry.