



Biosecurity (Shipping Container Levy) Order 2006

Dame Sian Elias, Administrator of the Government

Order in Council

At Wellington this 7th day of August 2006

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 137 of the Biosecurity Act 1993, Her Excellency the Administrator of the Government, acting on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is the Biosecurity (Shipping Container Levy) Order 2006.

2 Commencement

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

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Biosecurity Act 1993

importer means a person who imports shipping containers into New Zealand

levy means the levy imposed by clause 4

levy year—

(a) means a period of 12 months beginning on 1 July and ending on 30 June; and

(b) includes the period beginning with the commencement of this order and ending on 30 June 2007

shipping agent means a person whose business is or includes importing shipping containers for importers

shipping container means a sea container, and includes a standardised device used to contain or hold goods while being—

- (a) loaded for carriage by sea; or
- (b) carried by sea; or
- (c) unloaded after carriage by sea.

4 Levy imposed

- (1) A levy is imposed on all shipping containers imported into and landed in New Zealand.
- (2) The levy is payable to the Director-General.

5 Importers primarily responsible for paying levy

Each levy year, all importers are primarily responsible for paying the levy.

6 Director-General must collect levy

- (1) The Director-General must collect the levy—
 - (a) in the case of any shipping container imported through a shipping agent, from the shipping agent;
 - (b) in any other case, from the importer.
- (2) The Director-General is entitled to recover the cost of collection.

Determination of levy

7 Basis of calculation of levy

- (1) The levy must be calculated on the basis of dividing—
 - (a) the estimated annual costs incurred by the Ministry; by
 - (b) the estimated number of shipping containers that are imported into and landed annually in New Zealand.
- (2) In calculating the levy in respect of any levy year commencing after 30 June 2007 (a **new levy year**), the Director-General must take into account—
 - (a) any shortfall in recovery of annual costs incurred by the Ministry in the levy year immediately preceding the new levy year; or
 - (b) any over-recovery of annual costs incurred by the Ministry in the levy year immediately preceding the new levy year.
- (3) In this clause **annual costs incurred by the Ministry** means the costs incurred in implementing and administering import health standards, to the extent that the standards apply to shipping containers.

8 Maximum rate of levy

The maximum rate of the levy is—

- (a) \$20 (inclusive of goods and services tax) per shipping container that contains goods; and
- (b) \$10 (inclusive of goods and services tax) per empty shipping container.

9 Director-General must fix actual rate

(1) The actual rate of levy—

- (a) for the levy year ending on 30 June 2007 is fixed by the Director-General at—
 - (i) \$16 (inclusive of goods and services tax) per shipping container that contains goods; and
 - (ii) \$7 (inclusive of goods and services tax) per empty shipping container; and
- (b) for each subsequent levy year must be fixed by the Director-General after consulting persons he or she considers to be representatives of importers likely to be substantially affected by the levy.

(2) However, subclause (1)(b) does not apply unless the Director-General proposes to increase the levy.

10 Rate if no rate fixed before beginning of levy year

If the Director-General does not fix the actual rate of levy before the beginning of a levy year, the levy for that year is payable at the rate last fixed under clause 9.

11 Notification of rate of levy

- (1) No notification of the rate of levy is required for the levy year ending on 30 June 2007.
- (2) For each subsequent year, the Director-General must, before the beginning of a levy year, notify the rate of levy by notice in the *Gazette*.

Payment of levy

12 When and how levy payable

- (1) The Director-General must send a written demand for the levy payable to a shipping agent or, where there is no shipping agent, to an importer.
- (2) The importer or the shipping agent, as the case may be, must pay the levy.

- (3) A shipping agent may recover the levy (and any goods and services tax paid in respect of it) from an importer by recovering the amount of the levy (and any goods and services tax paid in respect of it) as a debt due from an importer.
- (4) The levy, plus any goods and services tax payable on the levy, must be paid by the 20th day of the month after the month in which the demand is sent.

13 Purposes for which levy must be spent

All levy money paid to the Director-General must be spent on the costs of implementing and administering import health standards, to the extent that the standards apply to shipping containers.

14 Consultation on how levy spent

- (1) The Director-General must, before the start of each levy year (except the levy year ending on 30 June 2007), consult persons he or she considers to be representatives of importers likely to be substantially affected by the levy on how the levy money is to be spent.
- (2) However, subclause (1) does not apply to levy years ending on or after 30 June 2008, unless the Director-General proposes to make significant changes to the way in which the levy money is to be spent during those years.
- (3) The Director-General must use the following process to consult the representatives of importers:
 - (a) he or she must send to the representatives a proposed budget for the levy year's expenditure; and
 - (b) he or she must give the representatives an opportunity to make submissions to him or her on the proposed budget.

Miscellaneous

15 Records

- (1) The Director-General must, for each levy year, keep records of—
 - (a) the rate at which the levy was collected; and
 - (b) each amount of levy money paid to him or her and the person who paid the amount; and
 - (c) how the levy money paid to him or her was spent.

- (2) The Director-General must ensure that the records referred to in subclause (1) are retained for 2 years after the close of the levy year to which they relate.

16 Remuneration of Auditors

A person appointed as Auditor under section 141B of the Act must be remunerated by the Director-General at a rate determined by the responsible Minister.

Arbitration in case of dispute

17 Appointment of arbitrator

- (1) This clause applies to any dispute about—
 - (a) whether or not a person is required to pay the levy; or
 - (b) the amount of the levy payable.
- (2) The parties to a dispute may agree to submit the dispute to arbitration.
- (3) If the parties are unable to agree on the appointment of an arbitrator, the arbitrator must be appointed in accordance with Schedule 1 of the Arbitration Act 1996.
- (4) For the purposes of the Arbitration Act 1996,—
 - (a) an agreement under subclause (2) is an arbitration agreement; and
 - (b) the arbitrator (whether appointed by agreement or under subclause (3)) is an arbitral tribunal.

18 Application of Arbitration Act 1996 to dispute

Except as provided in clause 17, the provisions of the Arbitration Act 1996 (including the provisions for procedures to be followed by an arbitral tribunal) apply to the resolution of a dispute submitted to arbitration under this order.

19 Payment of arbitration costs

The costs of the arbitration (including the arbitrator's remuneration) must, unless the parties agree otherwise, be determined under Schedule 2 of the Arbitration Act 1996.

20 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by an arbitrator may appeal to a District Court against the decision.

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

Diane Morcom,
Clerk of the Executive Council.

Explanatory note

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

This order, which comes into force on the 28th day after its notification in the *Gazette*, imposes a levy on shipping containers imported into and landed in New Zealand.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 10 August 2006.
This order is administered by the Ministry of Agriculture and Forestry.
