



**COMMODITY LEVIES (NASHI ASIAN PEARS) ORDER 1999**

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MICHAEL HARDIE BOYS, Governor-General

ORDER IN COUNCIL

At Wellington this 12th day of July 1999

Present:

THE HON WYATT CREECH PRESIDING IN COUNCIL

PURSUANT to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting by and with the advice and consent of the Executive Council, makes the following order.

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## ORDER

**1. Title and commencement**—(1) This order may be cited as the Commodity Levies (Nashi Asian Pears) Order 1999.

(2) This order comes into force on 12 August 1999.

**2. Interpretation**—In this order, unless the context otherwise requires,—

“Association” means the industry organisation specified in clause 3 (2):

“Grower”, in relation to any levy year, means the occupier of land—

(a) That is used in that levy year for growing nashi asian pears for commercial purposes; and

(b) That produced at least 2,000 kilograms of nashi asian pears during the 12-month period ending on the previous 31 March, which were sold fresh for human consumption in New Zealand:

“Leviable nashi asian pears” means nashi asian pears grown in New Zealand for sale fresh in New Zealand (otherwise than for processing) for human consumption:

“Levy” means the levy imposed by clause 3:

“Levy money” means money payable under this order as levy; and includes any increased levy payable under clause 13:

“Levy year”—

(a) Means a period of 12 months beginning on 1 April and ending on 31 March; and

(b) Includes the period commencing on the date this order comes into force and ending on 31 March 2000; and

(c) Includes the period commencing on 1 April 2005 and ending on the expiry of this order:

“Mediator” means a person appointed under clause 21:

“Nashi asian pears” means fruit of the plant species *Pyrus pyrifolia* or of any plant that is a hybrid of that species and the species *Pyrus ussuriensis*:

“Occupier” has the same meaning as in section 2 of the Rating Powers Act 1988:

“Orchard” means any land on which plants that produce nashi asian pears are grown:

“*The Orchardist*” means the publication of that name published, from time to time, before the commencement of this order (under whatever name it may later be published).

**3. Levy imposed**—(1) A levy is imposed on nashi asian pears grown in New Zealand for sale fresh in New Zealand (otherwise than for processing) for human consumption.

(2) The levy is payable to the industry organisation known, on the commencement of this order, as The New Zealand Nashi Asian Pear Growers Association Incorporated.

**4. Growers responsible for payment of levy**—The grower of nashi asian pears is primarily responsible for paying, and must pay, the levy on them.

**5. Basis of calculation of levy**—(1) The levy is to be based and calculated on the kilogram weight of leviable nashi asian pears.

(2) The levy for a levy year is to be calculated by reference to the weight of the grower's harvest of leviable nashi asian pears for that levy year.

(3) The Association is to send to growers, each levy year, a return on which growers must declare—

- (a) The kilogram weight of leviable nashi asian pears harvested in the previous levy year; and
- (b) The levy payable for that previous levy year.

**6. Levy to be paid at single rate**—The levy is to be paid at a single rate.

**7. Maximum rate of levy**—The maximum rate of levy is 2 cents per kilogram of leviable nashi asian pears, exclusive of any goods and services tax.

**8. Minimum amount of levy payable**—The minimum amount of levy money payable for a levy year is \$45.00 per grower, exclusive of any goods and services tax.

**9. Association to fix actual rate of levy**—The Association is to fix the actual rate of levy for each levy year at its annual meeting in that levy year.

**10. Rate if no rate fixed**—If the actual rate of levy is not fixed by the Association for a levy year, the levy for that levy year is payable—

- (a) At the levy rate last fixed under regulation 9; or
- (b) According to regulation 8 if a levy rate has not been fixed at all under regulation 9.

**11. Notification of rate of levy**—As soon as is practicable after fixing a rate of levy for a levy year, the Association must notify that rate by notice—

- (a) In *The Orchardist*, and in a publication of the Association (if any); or
- (b) If *The Orchardist* ceases to be published, in any publication that replaces it, and in a publication of the Association (if any); or
- (c) If *The Orchardist* ceases to be published and no publication replaces it, in a publication specified by notice in the *Gazette* by the Minister responsible for the time being for the administration of the Commodity Levies Act 1990, and in a publication of the Association (if any).

**12. Payment by growers to be annual**—(1) Levies must be paid annually.

(2) The due date for the payment of levy money is the day on which the grower receives a return from the Association under regulation 5 (3).

(3) The latest day for payment of levy money is the 20th day of the month following the due date.

(4) A return becomes an invoice for levy money the moment a grower pays the levy money declared to be payable on the return.

**13. Increased levy payable where levy not paid in time**—(1) A grower must pay the Association an increased levy if the grower fails to pay levy money by the latest date for its payment under clause 12.

- (2) The amount of the increased levy is—

- (a) The amount of levy money not paid by the latest date for payment;  
plus
- (b) 10% of that amount.

**14. Levy money to be spent by association**—The Association must spend or (pending expenditure) invest all levy money paid to it.

**15. Purposes for which levy money to be spent**—The Association is to spend levy money for the following purposes:

- (a) Researching nashi asian pears or matters connected with them:
- (b) Developing new varieties of nashi asian pears and products derived from nashi asian pears:
- (c) Researching and developing markets for nashi asian pears and products derived from them:
- (d) Promoting nashi asian pears, products derived from them, and the nashi asian pear industry generally:
- (e) Protecting and enhancing the health of plants from which nashi asian pears grow:
- (f) Developing or implementing plans or programmes intended to better the quality of nashi asian pears or products derived from them:
- (g) Educating, informing, promoting, or training people about nashi asian pears or products derived from them:
- (h) Administering the Association's daily activities.

**16. Conscientious objectors**—Any grower who objects on conscientious or religious grounds to the manner of recovery by the Association of levy money may pay the levy money concerned to the chief executive of the Ministry of Agriculture and Forestry; and the chief executive will cause that amount to be paid to the Association.

**17. Confidentiality of information**—(1) No officer or employee of the Association may disclose (otherwise than to some other officer or employee of the Association) any commercially sensitive information obtained—

- (a) Under or because of this order; or
- (b) In relation to this order, under the Commodity Levies Act 1990.
- (2) Subclause (1) does not affect or prevent—
  - (a) The production of records or accounts under section 17 (1) of the Commodity Levies Act 1990; or
  - (b) The production of statements under section 25 of the Commodity Levies Act 1990; or
  - (c) The giving of evidence in legal proceedings taken—
    - (i) Under or in relation to this order; or
    - (ii) In relation to this order, under or in relation to the Commodity Levies Act 1990.

(3) Subclause (1) does not prevent the Association from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(4) Subclause (1) does not prevent the disclosure of information to, and the use of information by, the Association to determine the voting entitlements, and to count the votes, of members of the Association.

(5) Subclause (1) does not prevent the Association from disclosing or using any information with the consent of every identifiable person to whom it relates.

**18. Returns by growers**—The grower must complete returns received from the Association as soon as practicable after the grower receives them.

**19. Records**—(1) Every grower must—

- (a) Record the following matters for each levy year:
    - (i) The quantities of leviable nashi asian pears;
    - (ii) The names of persons who buy nashi asian pears from the grower for resale, processing, or other secondary use;
    - (iii) Levy paid to the Association; and
  - (b) Ensure that the records are retained for at least 2 years after the payment of the levy to which the records relate.
- (2) The Association must—
- (a) Record the following matters for each levy year:
    - (i) Each amount of levy paid to it and, for each amount, the day of its receipt and the person who paid it;
    - (ii) How (if at all) levy received was invested;
    - (iii) How and when levy spent by it was spent; and
  - (b) Ensure that the records are retained for at least 2 years after the date of payment of the levy to which the records relate.
- (3) Nothing in this clause requires any person to keep a nil record.

**20. Remuneration of persons conducting compliance audits**—A person appointed as auditor under section 15 of the Commodity Levies Act 1990 is to be remunerated by the Association at a rate determined by the Minister after consultation with the Association.

*Mediation in Case of Dispute*

**21. Appointment of mediators**—(1) If a dispute arises as to—

- (a) Whether a person is required to pay levy; or
  - (b) The amount of levy money payable,—
- any party to the dispute may ask the President of the New Zealand Society of Chartered Accountants to appoint a person to organise and preside at a conference of the parties to the dispute, and attempt to resolve the dispute by mediation, and, in that case, the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.

(2) The mediator's appointment is ended if—

- (a) The parties to the dispute resolve it themselves; or
- (b) The mediator resolves the dispute under clause 28.

**22. Remuneration of mediators**—(1) Subject to subclause (2), a mediator is to be paid remuneration (by way of fees and allowances) agreed by the parties to the dispute.

(2) If the parties to a dispute cannot agree a mediator's remuneration, the President of the New Zealand Society of Chartered Accountants (or a person authorised by the President to do so) is to—

- (a) Fix an amount or several amounts to be paid to the mediator as remuneration; and
- (b) Specify the amount (if any) that each party is to pay.

(3) Each party is to pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

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

**24. Conference to be held in private**—Except as provided in clause 26, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

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

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

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

(2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.

(3) A mediator may require any person giving evidence at a conference of the parties to a dispute to verify the evidence by statutory declaration.

**28. Mediator may resolve dispute in certain cases**—(1) 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 settle the dispute, whether or not they confer directly,—

the mediator may resolve the dispute for them, and give each of them a written notice of the mediator's decision and the reasons for that decision.

(2) The parties must comply with a decision of the mediator under subclause (1).

**29. Appeal to District Court**—(1) Any party to a dispute who is dissatisfied with a decision made by a mediator under clause 28 may appeal to a District Court against the decision.

(2) An appeal is to be brought by the filing of a notice of appeal within 28 days of the making of the decision concerned, or within any longer time a District Court Judge allows.

(3) The Registrar of the Court is to—

(a) Fix the time and place for the hearing of the appeal, and notify the appellant and the other parties to the dispute; and

(b) Serve a copy of the notice of appeal on every other party to the dispute.

(4) Every party may appear and be heard at the hearing of the appeal.

(5) On hearing the appeal, the District Court may confirm, vary, or reverse the decision appealed.

(6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed.

MARIE SHROFF,  
Clerk of the Executive Council.

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EXPLANATORY NOTE

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

This order, which comes into force on 12 August 1999, imposes a levy on nashi asian pears grown commercially in New Zealand for sale fresh in New Zealand for human consumption. The levy is payable to The New Zealand Nashi Asian Pear Growers Association Incorporated.

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

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

Date of notification in *Gazette*: 15 July 1999.

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