



Commodity Levies (Nashi Asian Pears) Order 2006

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 27th day of February 2006

Present:

Her Excellency the Governor-General in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, acting on the recommendation of the Minister of Agriculture and on the advice and with the consent of the Executive Council, makes the following order.

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Order

1 Title

This order is the Commodity Levies (Nashi Asian Pears) 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,—

Association means the industry organisation specified in clause 4(2)

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

- (a) is used in that levy year for growing nashi asian pears for commercial purposes; and
- (b) produced during that levy year at least 2 000 kilograms of nashi asian pears, which were sold fresh for human consumption in New Zealand

leviable nashi asian pears means nashi asian pears grown in New Zealand and sold fresh in New Zealand (otherwise than for processing) for human consumption

levy means the levy imposed by clause 4

levy money—

- (a) means money payable under this order as levy; and
- (b) includes any increased levy payable under clause 14

levy year—

- (a) means a period of 12 months beginning on 1 October and ending on 30 September; and
- (b) includes both of the following periods:
 - (i) the period beginning on the date of commencement of this order and ending on 30 September 2006; and
 - (ii) the period beginning on 1 October 2011 and ending on the expiry of this order

mediator means a person appointed under clause 23

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, in relation to land, means—

- (a) a person who has the right to occupy the land under a tenancy granted for a term of 12 months or more; or
- (b) if paragraph (a) does not apply, the owner of the land

party means a party to a dispute

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).

*Levy imposed***4 Levy imposed**

- (1) A levy is imposed on leviable nashi asian pears.
- (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.

5 Growers responsible for payment of levy

A grower of nashi asian pears is primarily responsible for paying, and must pay, the levy on them.

*Determination of levy***6 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 kilogram weight of the grower's leviable nashi asian pears for that levy year.
- (3) In each levy year, the Association must send to growers a return on which growers must declare—
 - (a) the kilogram weight of leviable nashi asian pears produced in that levy year; and
 - (b) the levy payable for that levy year.

7 Levy to be paid at single rate

The levy is to be paid at a single rate.

8 Maximum rate of levy

The maximum rate of levy is 5 cents per kilogram of leviable nashi asian pears, exclusive of any goods and services tax.

9 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.

10 Association to fix actual rate of levy

The Association is to fix the actual rate of levy,—

- (a) in the case of the levy year ending 30 September 2006, in accordance with its rules; and

- (b) in the case of each of the other levy years, at its annual general meeting in the previous levy year.

11 Previous rate to apply

If the actual rate of levy is not fixed by the Association for a levy year, the levy for that levy year is payable at the levy rate last fixed under clause 10.

12 Notification of rate of levy

- (1) As soon as is practicable after fixing a rate of levy for a levy year, the Association must notify that rate and the levy year to which it relates by notice—
 - (a) in a publication of the Association (if any); and
 - (b) in *The Orchardist*.
- (2) If *The Orchardist* ceases to be published, the Association must notify the rate of levy and the levy year to which it relates by notice in a publication of the Association (if any) and—
 - (a) in a publication that replaces *The Orchardist*; or
 - (b) if no publication replaces *The Orchardist*, 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.

Payment of levy

13 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 clause 6(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.

14 Increased levy payable if 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 13.
- (2) The amount of the increased levy is—
 - (a) the amount of levy money not paid by the latest date for payment; and
 - (b) an additional 10% of that amount.

*Expenditure of levy money***15 Levy money to be spent by Association**

The Association must spend or (pending expenditure) invest all levy money paid to it.

16 Consultation on how levy money to be spent

- (1) The Association must consult growers on how it proposes to spend levy money and provide the details of the previous 12 months' expenditure at every annual general meeting of the Association.
- (2) For the purposes of subclause (1), the Association must, at the meeting,—
 - (a) present a budget for the proposed expenditure of levy money collected, or to be collected, in that levy year; and
 - (b) present accounts on the expenditure of levy money collected in the previous levy year; and
 - (c) allow reasonable time in the agenda of the meeting for growers to discuss expenditure of levy money.

17 General purposes for which levy money may be spent

The Association may spend levy money for the following purposes relating to nashi asian pears or matters in connection with them:

- (a) product research and development:
- (b) market research and development:
- (c) product promotion:
- (d) quality assurance:
- (e) education:
- (f) day-to-day administration of the Association.

*Record-keeping requirements and confidentiality
of information*

18 Returns by growers

A 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) the amount of levy money paid to the Association; and
- (b) ensure that the records are retained for at least 2 years after the payment of the levy money to which the records relate.

(2) The Association must—

- (a) record the following matters for each levy year:
 - (i) each amount of levy money paid to it and, for each amount, the day of its receipt and the name and details of the person who paid it;
 - (ii) how (if at all) levy money received was invested;
 - (iii) how and when levy money 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 money to which the records relate.

(3) This clause does not require any person to keep a nil record.

20 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—
- (a) disclosing or using any information (not being information relating to an identifiable person) for statistical and research purposes; or
 - (b) disclosing or using any information for the purpose of determining the voting entitlements, and counting the votes, of members of the Association; or
 - (c) disclosing or using any information for the purpose of collecting levy money (including the preparation of returns and invoices under this order); or
 - (d) disclosing or using any information with the consent of every identifiable person to whom it relates.

Miscellaneous

21 Conscientious objectors

- (1) A 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 or the chief executive of any department of State that is for the time being responsible for the administration of this order.
- (2) The chief executive must pay any levy money received under subclause (1) to the Association.

22 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***23 Appointment of mediators**

- (1) This clause applies if a dispute arises about—
 - (a) whether a person is required to pay a levy; or
 - (b) the amount of levy money payable.
- (2) A party may ask the President of the Arbitrators' and Mediators' Institute of New Zealand Incorporated (the **President**) to appoint a person to—
 - (a) organise and preside at a conference of the parties; and
 - (b) attempt to resolve the dispute by mediation.
- (3) On receiving a request under subclause (2), the President (or a person authorised by the President to do so) may appoint a person to resolve the dispute by mediation.
- (4) The mediator's appointment ends when—
 - (a) the parties resolve the dispute themselves; or
 - (b) the mediator resolves the dispute under clause 30.

24 Remuneration of mediators

- (1) A mediator is to be paid remuneration (by way of fees and allowances) agreed to by the parties.
- (2) However, if the parties cannot agree on a mediator's remuneration, the President (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts to be paid to the mediator as remuneration; and
 - (b) specify the amount (if any) that each party must pay.
- (3) Each party must pay to the mediator the amount fixed by the President (or authorised person) and specified as an amount to be paid by that party.

25 Time and place of conference

Every conference of the parties 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.

26 Conference to be held in private

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

27 Representatives

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

28 Right to be heard

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

29 Evidence

- (1) A mediator may hear and take into account any relevant evidence or information, whether or not it would be admissible in a court of law.
- (2) A mediator may, on the mediator's own initiative, seek and receive any evidence, and make any investigations and inquiries, that the mediator thinks desirable to resolve a dispute.
- (3) A mediator may require any person giving evidence at a conference of the parties to verify the evidence by statutory declaration.

30 Mediator may resolve dispute in certain cases

- (1) A mediator may resolve a dispute for the parties if the mediator—
 - (a) has organised and presided at a conference of the parties but the dispute has not been resolved; or
 - (b) believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If the mediator resolves a dispute, the mediator must give each of the parties written notice of the mediator's decision and the reasons for the decision.
- (3) The parties must comply with a decision of the mediator.

31 Costs of mediation

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

32 Appeal to District Court

- (1) A party who is dissatisfied with a decision made by a mediator under clause 30 may appeal against the decision to a District Court.
- (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 District Court must—
 - (a) serve a copy of the notice of appeal on every other party; and
 - (b) fix the time and place for the hearing of the appeal; and
 - (c) notify the appellant and the other parties of the time and place for the hearing of the appeal.
- (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 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 the date of its notification in the *Gazette*, replaces the Commodity Levies (Nashi Asian Pears) Order 1999. That order expired on 11 July 2005.

This order imposes a levy on nashi asian pears grown in New Zealand and sold fresh in New Zealand (otherwise than for processing) for human consumption. The levy is payable by commercial nashi asian pear growers to The New Zealand Nashi/Asian Pear Growers Association Incorporated.

Unless earlier revoked, this order expires 6 years after it is made by virtue of section 13 of the Commodity Levies Act 1990.

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

Date of notification in *Gazette*: 2 March 2006.

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