



Commodity Levies (Satsuma Mandarins) Order 2003

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 24th day of March 2003

Present:

The Right Hon Helen Clark presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, Her Excellency the Governor-General, 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 Commodity Levies (Satsuma Mandarins) Order 2003.

2 Commencement

This order comes into force on 1 May 2003.

3 Interpretation

In this order, unless the context otherwise requires,—

Act means the Commodity Levies Act 1990

collection agent means a person whose business (whether alone or together with any other business) is or includes—

- (a) buying satsuma mandarins from growers; or
- (b) selling satsuma mandarins on behalf of growers, including wholesalers, auctioneers, procurers, brokers, agents, produce distribution centres, retailers, and exporters

grower means any person who produces satsuma mandarins in New Zealand for commercial purposes

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

levy means the levy imposed by clause 4

levy money means the money paid under this order as levy

levy year means,—

- (a) for the first year, a period of 11 months beginning on 1 May 2003 and ending on 31 March 2004;
- (b) for each subsequent year, a period of 12 months beginning on 1 April and ending on 31 March

mandarin product group means the NZCGI Mandarin Growers Product Group

mediator means a person appointed under clause 21; and, in relation to a dispute, means the mediator appointed to resolve that dispute

NZCGI means New Zealand Citrus Growers Incorporated

satsuma mandarin means any of the following mandarins and their hybrids:

- (a) miho:
- (b) miyagawa:
- (c) aoshima:
- (d) kawano:
- (e) silverhill:
- (f) okitsu:
- (g) ishikawa.

4 Levy

- (1) A levy is imposed on satsuma mandarins that a grower produces in New Zealand for sale or export as fresh fruit.
- (2) The levy is payable to NZCGI.

Responsibility for payment of levy

5 Growers primarily liable for paying levy

The grower is primarily liable for paying the levy.

6 Responsibility of collection agents for payment of levy

- (1) A collection agent—
 - (a) must pay the levy (and any GST payable on the levy) on satsuma mandarins—
 - (i) bought from the grower (except through another collection agent); or
 - (ii) sold or exported on the grower's behalf; and
 - (b) may recover the levy (and any GST paid in respect of it) from the grower—
 - (i) by deducting the amount of the levy (and any GST paid in respect of it) from the payment made to the grower; or
 - (ii) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.

- (2) A collection agent who pays the levy may, before paying it to NZCGI, deduct from the levy a collection fee of not more than 10% of the amount of the levy (exclusive of GST) plus the GST payable on the fee.
- (3) Subclause (1) does not apply to a collection agent if—
 - (a) the grower—
 - (i) has given the collection agent written notification that the grower intends to pay the levy directly to NZCGI; and
 - (ii) has obtained the written agreement of NZCGI to accept direct payment of the levy; or
 - (b) the grower—
 - (i) sells satsuma mandarins directly to the public; or
 - (ii) directly exports satsuma mandarins.

Determination of levy by NZCGI

7 Levy payable at single rate

The levy must be paid at a single rate.

8 Maximum rate of levy

The maximum rate of levy that may be fixed is 2 cents per kilogram (excluding GST).

9 Levy calculation

The levy must be calculated—

- (a) on a per kilogram basis; and
- (b) at the first point of sale.

10 Fixing of levy

- (1) The mandarin product group must fix the levy rate for the levy year ending 31 March 2004 in accordance with its decision-making rules.
- (2) For each subsequent levy year, the mandarin product group may fix the levy rate at the mandarin product group annual meeting in accordance with NZCGI's voting rules.
- (3) If the mandarin product group does not fix the levy rate under subclause (2) before the beginning of a levy year, the levy for that year is payable at the levy rate last fixed under this clause.

- (4) Growers attending the mandarin product group annual meeting who are not members of NZCGI must be accorded voting rights on the levy rate.

11 Notification of rates of levy

- (1) As soon as practicable after fixing the levy rate for a levy year, NZCGI must notify the levy rate and the year to which it applies—
- (a) in the *Gazette*; and
 - (b) in *The Orchardist*; and
 - (c) in *Citrus News* or another industry publication; and
 - (d) by direct mail to all growers and collection agents known to NZCGI.
- (2) If *The Orchardist* or *Citrus News* or both cease to be published, the levy rate must be notified in—
- (a) any publication that replaces either of those publications; or
 - (b) if no publication replaces either of them, a publication specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*.

Time for payment of levy to NZCGI

12 When levy payable

- (1) The due date for payment of the levy to NZCGI is,—
- (a) in the case of a grower who pays the levy directly to NZCGI, at the end of each quarter of the levy year; and
 - (b) in the case of a grower who pays the levy through a collection agent, the date on which the collection agent deducts the levy from the grower.
- (2) The latest date for payment of the levy is the 20th day of the month following the due date for payment.

13 Additional levy payable if levy not paid in time

If any amount of the levy has not been paid by the close of the latest day for payment, 10% of the amount of the unpaid levy (excluding additional levies owing under this clause) must be paid to NZCGI in addition to the amount otherwise payable.

*Recordkeeping requirements and confidentiality of
information provided to NZCGI*

14 Records

- (1) For the purposes of ascertaining compliance with this order,—
- (a) a grower must, in each levy year, keep records of—
 - (i) the quantity of satsuma mandarins sold or exported; and
 - (ii) the name of the collection agent or exporter used (if any); and
 - (iii) the amount of levy paid to NZCGI; and
 - (b) a collection agent must, in each levy year (in respect of each grower of satsuma mandarins from whom the collection agent bought satsuma mandarins in that year for resale or export, or on whose behalf the agent sold or exported satsuma mandarins grown by the grower) keep records of—
 - (i) the name and address of the grower and purchaser; and
 - (ii) the quantity of satsuma mandarins purchased for sale or export; and
 - (iii) the quantity of satsuma mandarins sold or exported on behalf of growers; and
 - (iv) the amount of levy collected and paid to NZCGI; and
 - (c) NZCGI must, in each levy year, keep records of—
 - (i) each amount of levy money paid to it and, in relation to each amount,—
 - (A) the date on which the levy was received; and
 - (B) the name of the person who submitted the levy; and
 - (ii) how levy money paid to it has been invested or spent.
- (2) Each grower and collection agent must—
- (a) retain the records prepared under subclause (1)(a) or (b) for at least 2 years after the date of payment to NZCGI of the levy to which the records relate; and
 - (b) for the purposes of determining the amounts of levy payable, provide NZCGI with a copy of those records within 20 working days after receiving from NZCGI a written request for a copy of those records.

- (3) NZCGI must retain the records prepared under subclause (1)(c) for at least 2 years after the levy year to which the records relate.

15 Confidentiality of information

- (1) No officer or employee of NZCGI, or any other person who gathers information, may disclose (except to an officer or employee of NZCGI) any information obtained under this order unless—
- (a) the person who provided the information and every identifiable person to whom it relates consents to its disclosure; or
 - (b) its disclosure is required by law.
- (2) Subclause (1) does not affect or prevent the disclosure of information, records, or statements for the purposes of—
- (a) assisting with the collection of the levy; or
 - (b) section 17(1) or section 25 of the Commodity Levies Act 1990; or
 - (c) evidence given in any legal proceedings taken under, or in relation to, this order or the Commodity Levies Act 1990.
- (3) Subclause (1) does not prevent NZCGI from disclosing or using any information for statistical or research purposes if the information is in a form that does not identify any individual.

Expenditure of levy money by NZCGI

16 Levy money must be spent by NZCGI

NZCGI must spend or, pending its expenditure, invest all levy money paid to NZCGI.

17 Purposes for which levy money may be spent

- (1) NZCGI must not spend levy money on commercial or trading activities.
- (2) NZCGI may spend levy money for any or all of the following purposes relating to satsuma mandarins or growers:
- (a) research, including market research:
 - (b) product development:
 - (c) export market development:
 - (d) quality assurance:
 - (e) education and information:

- (f) generic promotions:
- (g) grower representation:
- (h) day-to-day administration of the mandarin product group.

18 Consultation on spending levy money

- (1) At each annual general meeting and at each special general meeting called for the purpose, and through quarterly newsletters to all members of NZCGI, NZCGI must consult growers on how it proposes to spend the levy money.
- (2) NZCGI must give written notification, no later than 3 weeks before any annual general meeting or special general meeting at which levy matters are to be discussed, to any levy payer who is not a member of NZCGI and is known to NZCGI.
- (3) Growers attending any annual general meeting or special general meeting who are not members of NZCGI must be accorded speaking rights on all matters relating to the expenditure of levy money.

Miscellaneous

19 Conscientious objectors

- (1) A grower or collection agent who objects on conscientious or religious grounds to paying the levy in the manner provided for by this order may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive of the Ministry of Agriculture and Forestry must pay the amount to NZCGI.

20 Remuneration of persons conducting compliance audits

A person appointed as an auditor under section 15 of the Commodity Levies Act 1990 must be remunerated by NZCGI at a rate determined by the Minister of Agriculture after consultation with NZCGI.

Mediation in case of dispute

21 Appointment of mediators

- (1) This clause applies to any dispute about—
 - (a) whether or not any person is required to pay the levy; or
 - (b) the amount of levy payable.

- (2) Any party to the dispute may ask the President of the Institute of Chartered Accountants of New Zealand to appoint a person 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.
- (3) The mediator's appointment ends if—
 - (a) the parties to the dispute resolve it by agreement; or
 - (b) the mediator resolves the dispute under clause 28.

22 Remuneration of mediator

- (1) A mediator must be paid remuneration (by way of fees and allowances) as agreed to by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Institute of Chartered Accountants of New Zealand (or a person authorised by the President to do so) must—
 - (a) fix an amount or several amounts that must 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.

23 Time and place of conference

Every conference organised by a mediator must be held on a day and at a time and place fixed by the mediator and notified in writing to the parties.

24 Conference held in private

Except as provided in clause 25, 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 to a dispute 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 to a dispute 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) The mediator may resolve a dispute for the parties if—
 - (a) the mediator has organised and presided at a conference of the parties, but the dispute has not been resolved;
 - (b) the mediator believes that the parties are unlikely to resolve the dispute, whether or not they confer directly.
- (2) If subclause (1) applies, 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 the decision of the mediator.

29 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 28 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 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 every other party to the dispute.
- (4) Every 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.

Marie Shroff,
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 1 May 2003, imposes a levy payable to New Zealand Citrus Growers Incorporated on satsuma mandarins sold or exported by growers.

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

Date of notification in *Gazette*: 27 March 2003.

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