



THE COMMODITY LEVIES (AVOCADOS) ORDER 1995

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of September 1995

Present:

HER EXCELLENCY THE GOVERNOR-GENERAL IN COUNCIL

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

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ORDER

1. Title and commencement—(1) This order may be cited as the Commodity Levies (Avocados) Order 1995.

(2) This order shall come into force on the 28th day after the date of its notification in the *Gazette*.

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

“The association” means the society (registered under the Incorporated Societies Act 1908) that on the commencement of this order was known as the NZ Avocado Growers Association Inc:

“Avocados” means fruit of any tree of the species *persea americana*:

“*Avocado Scene*”—

(a) Subject to paragraph (b) of this definition, means the publication that, before the commencement of this order, was from time to time published under that name (under whatever name it may later be published); but

(b) Where the publication referred to in paragraph (a) of this definition has ceased to be published, means a publication for the time being specified for the purposes of this order by the Minister of Agriculture by notice in the *Gazette*:

“Grower” means person who or that grows avocados for sale; and in relation to any avocados means occupier (within the meaning of section 2 of the Rating Powers Act 1988) of the orchard in which the avocados were grown:

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

“The industry” means the avocado growing industry:

“Levy” means levy imposed by clause 3 of this order:

“Levy money” means money paid under this order as levy:

“Mediator” means person appointed under clause 20 of this order; and, in relation to a dispute, means mediator appointed to resolve that dispute:

“Month” means calendar month:

“Producer price”, in relation to wholesale avocados, means price at which their grower sold them (exclusive of GST):

“Wholesale avocados” means avocados grown in New Zealand and sold by their grower to a person who, when the person bought them, intended to sell them in New Zealand.

3. Levy imposed—There is hereby imposed on the commodity specified in paragraph (a) of this clause a levy payable to the industry organisation specified in paragraph (b) of this clause; and for the purposes of this order there are hereby specified—

(a) Wholesale avocados:

(b) The association.

4. Growers primarily responsible for paying levy—The grower of wholesale avocados is primarily responsible for paying the levy on them.

5. Resellers to pay levy—(1) Any person who buys wholesale avocados from their grower shall pay the levy on them; but may recover it (and any GST paid in respect of it) from that grower by reducing the price otherwise payable to the grower for them or for any other avocados bought from the grower.

(2) Any person required by subclause (1) of this clause to pay the levy on any avocados may, by deducting it from any amount of levy money payable to the association in respect of those avocados, charge the association a fee of—

(a) 7.5 percent of the amount of that money (exclusive of GST); and

(b) The GST payable in respect of that fee,—
for paying and recovering that money.

6. Levy imposed on basis of producer price—The levy on wholesale avocados is to be calculated on the basis of their producer price.

7. Confidentiality of information—(1) This clause applies to every person who is—

(a) An officer or employee of the association; or

(b) A person required by clause 5 (1) of this order to pay the levy on any avocados; or

(c) An officer or employee of a body corporate required by clause 5 (1) of this order to pay the levy on any avocados.

(2) Subject to subclause (3) of this clause, no person to whom this clause applies shall disclose (otherwise than to some other person to whom this clause applies) any information obtained, or obtained as a result of actions taken,—

(a) Under this order; or

(b) In relation to this order, under the Commodity Levies Act 1990.

(3) Nothing in subclause (2) of this clause affects or prevents—

(a) The production of records or accounts under section 17 (1) of the Commodity Levies Act 1990; or

(b) The production of any statement under section 25 of the Commodity Levies Act 1990; or

(c) The giving of evidence in any 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.

(4) Nothing in this clause prevents the association from disclosing or using any information (not being information relating to an identifiable grower), obtained from a ballot held before the commencement of this order.

8. Association to consult growers on purposes for which levy money to be spent—The association—

(a) Shall at each annual general meeting consult growers as to how it is to spend levy money; and

(b) Shall not spend any levy money for any purpose not for the time being approved by its members, on the recommendation of its executive, at an annual general meeting.

9. Association to spend levy money—The association shall spend or (pending its expenditure) invest all levy money paid to it.

10. Gate-resellers of avocados to pay levy annually—Where a grower who sells avocados directly to consumers at a place on or outside the orchard where they were grown also resells directly to consumers at that place avocados bought from some other grower, the levy payable in respect of the avocados sold by the other grower to that grower shall be paid annually.

11. Levy to be paid monthly in other cases—Except as provided in clause 10 of this order, the levy payable in respect of any wholesale avocados shall be paid monthly.

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

13. Maximum rate of levy—The maximum rate of the levy payable in respect of any avocados is 3 percent of their producer price.

14. Rate of levy to be set at annual general meeting of association—The association may set a rate of levy at any annual general meeting of the association; and that rate shall apply to all wholesale avocados sold by their grower during the period—

(a) Commencing 28 days after the final day of the meeting at which it was set; and

(b) Ending with the earlier of—

(i) The close of the 27th day after the final day of the next annual general meeting of the association at which the association sets a rate of levy; and

(ii) The expiry or revocation of this order.

15. Initial rate—Notwithstanding clause 14 of this order, the rate of the levy for the period commencing on the commencement of this order and ending with the earlier of—

(a) The close of the 27th day after the final day of the first annual general meeting of the association after that commencement at which the association sets a rate of levy; and

(b) The expiry or revocation of this order.

shall be 3 percent of producer price.

16. Notification of rates of levy—As soon as is practicable after the fixing of any rate of levy, the association shall publish in *Avocado Scene* and the *Gazette* a notice of the rate and the day on which the period in respect of which it is payable commences.

17. Annual payments payable on 30 June—Amounts of levy money payable annually in respect of wholesale avocados shall be paid (together with any GST payable in respect of those amounts) no later than the 30th day of June after the day on which they were sold by their grower.

18. Monthly payments payable on 20th of following month—Amounts of levy money payable monthly in respect of wholesale avocados shall be paid (together with any GST payable in respect of those amounts) no later than the 20th day of the month after the month in which they were sold by their grower.

19. Conscientious objectors—Any person who objects on conscientious or religious grounds to the recovery by the association of an amount of levy money may pay the amount concerned to the chief

executive of the Ministry of Agriculture; and in that case the chief executive shall cause it to be paid to the association.

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

(a) Whether or not any person is required to pay the levy; or
(b) The amount of levy money any person is required to pay,—
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 general meeting of the parties to the dispute, and resolve it by mediation; and in that case the President (or a person authorised by the President to do so) may appoint a person to do so.

(2) The mediator's appointment shall be determined if—

(a) The parties to the dispute have resolved it by agreement; or
(b) The parties to the dispute have not resolved it by agreement, and the mediator has resolved it by coming to one or more findings in relation to it.

21. Remuneration of mediators—(1) Subject to subclause (2) of this clause, a mediator shall be paid remuneration (by way of fees and allowances) agreed by the parties to the dispute concerned.

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

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

22. Time and place of general meeting—Every general meeting of the parties to a dispute organised by a mediator shall be held on a day and at a time and place fixed, and notified in writing to the parties, by the mediator.

23. General meeting to be held in private—Except as provided in clause 24 of this order, only the parties to a dispute and the mediator may attend a general meeting of those parties organised by the mediator.

24. 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 general meeting of the parties to the dispute organised by the mediator.

25. Right to be heard—Every party to a dispute, and every representative of such a party allowed by the mediator to attend a general meeting of the parties to the dispute organised by a mediator, may be heard at the general meeting.

26. Evidence—(1) A mediator may hear and take into account any relevant evidence or information, whether or not it would normally 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 enable a dispute to be settled or resolved.

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

27. Mediator may determine dispute in certain cases—If—

- (a) The mediator has organised and presided at a general meeting of the parties but the dispute has not been settled; 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 resolution of the dispute, and the mediator's reasons for determining that particular resolution.

28. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 27 of this order may appeal to a District Court against the decision.

(2) The appeal shall 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 shall—

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

29. Records—(1) Every person who or that grows avocados in New Zealand and sells them shall ensure that there are kept, and retained for at least 2 years after they are kept, records of the quantities sold and the price at which they are sold.

(2) Every person who or that buys avocados grown in New Zealand from their grower and re-sells them shall ensure that there are kept, and retained for at least 2 years after they are kept, records of the quantities bought and the price at which they are bought.

(3) The association shall keep, and shall ensure that there are retained for at least 2 years after they are kept,—

- (a) Records of each amount of levy money paid to it, and, in relation to each amount,—
- (i) The day on which it was received; and
- (ii) The person who paid it; and
- (b) Records of—
- (i) How (if at all) levy money paid to it was invested; and
- (ii) How and when all levy money spent by it was spent.

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 28 days after notification in the *Gazette* (and unless earlier revoked expires 6 years later), imposes on avocados sold for resale for consumption in New Zealand a levy payable to the NZ Avocado Growers Association Inc.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 21 September 1995.
This order is administered in the Ministry of Agriculture.