



COMMODITY LEVIES (TAMARILLOS) ORDER 1997

THOMAS EICHELBAUM, Administrator of the Government

ORDER IN COUNCIL

At Wellington this 7th day of April 1997

Present:

THE RIGHT HON J B BOLGER PRESIDING IN COUNCIL

PURSUANT to section 4 of the Commodity Levies Act 1990, His Excellency the Administrator of the Government, 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 (Tamarillos) Order 1997.

(2) This order comes 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,—

“Association” means the industry organisation referred to in clause 3 (3):

“Collection agent” means a person whose business is or includes—

(a) Buying tamarillos from their grower for resale fresh (otherwise than as part of a meal), export fresh, or processing for resale or export; or

(b) Selling or exporting tamarillos on behalf of their grower:

“F. o. b. value”, in relation to any quantity of tamarillos exported from New Zealand in respect of which a customs entry has been made, means the value of those tamarillos as specified in the declaration attached to or forming part of the entry:

“Fresh” means not processed:

“Grower” means a person whose business is or includes the growing of tamarillos for sale, export, or processing:

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

“Levy” means the levy imposed by clause 3:

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

“Mediator” means a person appointed under clause 25 (1); and, in relation to a dispute, means a mediator appointed to resolve it:

“Month” means calendar month:

“Notional price” means the notional price referred to in clause 5:

“*The Orchardist*”—

(a) Subject to paragraph (b), 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) If the publication referred to in paragraph (a) 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*:

“Processed” includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, and preserved,—

(a) Whether as tamarillos or as concentrate, pulp, puree, sauce, or some other product; and

(b) Whether alone or with other ingredients;—
and “processing” has a corresponding meaning:

“Selling price” means a price—

(a) Exclusive of GST; and

(b) Before deduction of any costs or charges:

“Tamarillos” means the fruit of the tamarillo plant (*Cyphomandra betacea*);

“Year” means calendar year.

3. Levy imposed—(1) There is imposed on the commodity specified in subclause (2) a levy payable to the industry organisation specified in subclause (3).

(2) The commodity on which the levy is imposed is tamarillos grown in New Zealand for sale, processing, or export.

(3) The industry organisation to which the levy is payable is the body known on the commencement of this order as the New Zealand Tamarillo Growers Association Incorporated.

4. General purposes for which levy money to be spent—The general purposes for which the association may spend levy money are as follows:

(a) Market development and promotion:

(b) Scientific research:

(c) Pest and disease control:

(d) Research into grower-related issues:

(e) Quality management:

(f) Grower education:

(g) The day-to-day administration of the association’s activities (not being the administration, direct or indirect, of any commercial or trading activity undertaken by the association or on its behalf).

5. Basis of calculation of levy—(1) The levy is to be calculated—

(a) In the case of tamarillos processed by their grower, on the basis of a notional price determined by the association under subclause (2) or subclause (3):

(b) In the case of tamarillos exported by or on behalf of their grower, on the basis of their f. o. b. value:

(c) In the case of tamarillos sold by or on behalf of their grower, on the basis of the selling price at the sale.

(2) The notional price of tamarillos (exclusive of GST, if any) processed by any grower in any year after 1997 is to be fixed by the association at its annual general meeting in the year before.

(3) The notional price of tamarillos (exclusive of GST, if any) processed by any grower in 1997 is to be determined by the Executive Committee of the association by any means by which it may lawfully make decisions.

6. Growers primarily responsible for paying levy—The grower of tamarillos is primarily responsible for paying the levy on them.

7. Collection agents to pay levy on tamarillos bought or sold but may recover it from growers—A collection agent who buys fresh tamarillos from their grower (otherwise than through any other collection agent), or sells or exports fresh tamarillos on their grower’s behalf,—

(a) Must (subject to clause 22) pay the levy on them monthly; but

(b) May recover it (and any GST paid in respect of it) from the grower by reducing the amount otherwise payable to the grower for the

tamarillos or any other tamarillos bought from the grower or sold or exported on the grower's behalf.

8. Growers to pay levy in other cases—The grower of tamarillos who—

- (a) Sells them fresh to consumers at or near the place where they were grown; or
- (b) Exports them fresh from New Zealand; or
- (c) Processes them,—

must pay the levy on them monthly.

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

10. Maximum rate of levy—The maximum rate of the levy is 4% of selling price, notional price, or f. o. b. value (plus GST, if any).

11. Association to fix actual rate of levy—(1) The association is to fix the actual rate of the levy for any year after 1997 at its annual general meeting in the year before.

(2) The actual rate of the levy for 1997 is to be fixed by the Executive Committee of the association by any means by which it may lawfully make decisions.

12. Rate if no rate fixed—If in any year after 1997 no rate of levy has been fixed by the association for the next year, the levy for the next year will be payable at the rate last fixed under clause 11.

13. Notification of rate of levy—As soon as is practicable after fixing a rate of levy for any year, the association must, by notice in *The Orchardist* and the *Gazette*, publish the rate and year.

14. Payments to be made monthly—(1) The due day for the payment of amounts of the levy under clause 7—

- (a) In the case of tamarillos bought from their grower by a collection agent, is the day on which the agent buys them; and
- (b) In the case of tamarillos sold or exported by a collection agent on their grower's behalf, is the day on which the agent sells or exports them;—

and the latest day for payment is the 20th day of the following month.

(2) The due day for the payment of amounts of the levy under clause 8 is the day on which the tamarillos concerned were sold, exported, or processed; and the latest day for payment is the 20th day of the following month.

15. Extensions of time for paying levy—If satisfied that, because of exceptional circumstances, a person is unable to pay any levy money on or before the latest day for payment, the association may (in its absolute discretion) allow the person an extension of time for paying it.

16. Additional levy payable where levy not paid in time—Where any levy money has not been paid on or before the latest day for payment (or any later day allowed by an extension under clause 15), there is to be paid to the association, in addition to the amount otherwise payable, an amount calculated at the rate of 10% of that money.

17. Returns—(1) Every grower must, on or before the latest day for payment of the levy in each month, give the association written notice of—

- (a) The total of the amounts—
 - (i) Exclusive of GST; and
 - (ii) Before deduction of any costs or charges,—
paid, or to be paid, to the grower for tamarillos that the grower grew, and sold fresh to consumers in the previous month at or near the place where they were grown; and
- (b) The total f. o. b. value of every consignment of tamarillos grown by the grower that the grower exported from New Zealand fresh in the previous month; and
- (c) The total quantity and notional price of tamarillos grown by the grower that were processed in the previous month by the grower.

(2) Every collection agent must, on or before the latest day for payment of the levy in each month, give the association written notice in respect of every grower concerned of—

- (a) The total of the amounts—
 - (i) Exclusive of GST; and
 - (ii) Before deduction of any costs or charges,—
paid or to be paid for all tamarillos the agent bought fresh from their grower (otherwise than through another collection agent) during the previous month for resale, export, or processing; and
- (b) The total of the amounts—
 - (i) Exclusive of GST; and
 - (ii) Before deduction of any costs or charges,—
paid or to be paid for all fresh tamarillos the agent sold on their grower's behalf during the previous month; and
- (c) The f. o. b. value of all fresh tamarillos the agent exported on their grower's behalf during the previous month.

Miscellaneous Matters

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

19. Consultation on how levy money to be spent—(1) Every year, at its annual general meeting or some other general meeting, the association must consult growers on how levy money is to be spent in the next year.

(2) For the purposes of subclause (1), the association must—

- (a) Publish in *The Orchardist* a general invitation to growers to attend the meeting concerned; and
- (b) Send to growers whose postal addresses it knows a written invitation (whether as a separate document or as part of or in a notice in some other publication or document) to attend the meeting; and
- (c) Circulate before the meeting a draft budget and plan for the spending of levy money in the next year; and
- (d) Ensure that all growers who attend the meeting (and, in the case of growers that are bodies corporate, all officers of those growers who attend the meeting) have an opportunity to speak on how levy money is to be spent, whether or not they are members of the association and otherwise entitled to participate in the meeting.

20. Records—(1) Every grower must—

(a) In every year keep records of—

(i) The quantities of tamarillos grown by the grower that were sold to or by collection agents in that year, and the payments received for those quantities; and

(ii) The quantity of tamarillos that the grower grew, and sold to consumers in that year at or near the place where it was grown, and the payments received for that quantity; and

(iii) The quantities of tamarillos grown by the grower that were exported in that year (by or on behalf of the grower), and the f. o. b. values of those quantities; and

(iv) The quantities of tamarillos that were processed by the grower in that year, and the notional prices of those quantities; and

(b) Ensure that the records are retained for at least 7 years after the end of that year.

(2) Every collection agent must in every year keep, in respect of every grower from whom the agent bought tamarillos in that year for resale, export, or processing, or on whose behalf the agent sold or exported tamarillos grown by the grower, records of—

(a) The quantities of tamarillos bought (otherwise than through another collection agent); and

(b) The price paid for each quantity bought; and

(c) The quantities of tamarillos grown by the grower sold or exported on the grower's behalf; and

(d) The price received for each quantity sold; and

(e) The f. o. b. value of each quantity exported; and

(f) The amount of levy money paid to the association in respect of each quantity; and

(g) The collection fee deducted in respect of each amount;—

and must ensure that the records are retained for at least 7 years after the end of that year.

(3) The association must in every year keep records of—

(a) Each amount of levy money paid to it in that year and, in relation to each amount,—

(i) The day on which it was received; and

(ii) The person who paid it; and

(b) How (if at all) levy money paid to it in that year was invested; and

(c) How and when all levy money spent by it in that year was spent;— and must ensure that the records are retained for at least 7 years after the end of that year.

(4) Nothing in this clause requires any person to keep a nil record.

21. Conscientious objectors—Any grower who objects on conscientious or religious grounds to the manner of recovery by the association of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture. The chief executive will cause that amount to be paid to the association.

22. Collection fee may be charged by agent—(1) A collection agent who is required by clause 7 to pay levy money on any tamarillos may charge the association a fee of 10% of the amount (exclusive of GST) of that levy money.

(2) The fee may be deducted by the collection agent from the amount of levy money otherwise payable to the association.

(3) The fee of 10% is inclusive of any GST payable in respect of the fee.

23. Confidentiality of information—(1) No officer or employee of the association, and no returning officer appointed by the association, may disclose (otherwise than to some other such person) any commercially sensitive 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.

(2) Nothing in subclause (1) 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.

(3) Nothing in subclause (1) prevents the association from disclosing or using any information (not being information relating to an identifiable person) for statistical or research purposes.

(4) Nothing in subclause (1) prevents the disclosure to, and use of, any information by the association's returning officer to determine the voting entitlements and to count the votes of members of the association.

(5) Nothing in subclause (1) prevents the association from disclosing or using any information with the consent of every identifiable person to whom it relates.

24. Remuneration of persons conducting compliance audits—A person appointed as an 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

25. Appointment of mediator in case of dispute—(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 conference of the parties to the dispute, and 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 will be determined if—

(a) The parties to the dispute have resolved the dispute by agreement; or

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

26. Remuneration of mediators—(1) A mediator will 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 on a mediator's remuneration, the President of the New Zealand Society of Accountants, or a person authorised by the President to do so, will—

(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 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.

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

28. Conference to be held in private—Except as provided in clause 29, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

29. 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 organised by the mediator.

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

31. 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 conference of the parties to a dispute to verify the evidence by statutory declaration.

32. 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 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 decision and the reasons for that decision.

(2) Subject to clause 33, the parties must comply with any decision of a mediator under subclause (1) of this clause.

33. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 32 may appeal to a District Court against the decision.

(2) The 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 will—

(a) Fix the time and place for the hearing of the appeal, and notify the appellant and 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 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 28 days after notification in the *Gazette*, imposes on tamarillos a levy payable to the New Zealand Tamarillo Growers Association Incorporated.

The maximum rate at which the levy may be set by the Association is 4% of the selling price of the tamarillos at their first point of sale (or, where appropriate, 4% of their f.o.b. price or notional price).

The levy is payable monthly.

Unless earlier revoked, the order will expire 6 years after the date of its making 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*: 10 April 1997.

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