



Commodity Levies (Vegetables) Order 2001

Silvia Cartwright, Governor-General

Order in Council

At Wellington this 5th day of November 2001

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 (Vegetables) Order 2001.

2 Commencement

This order comes into force on 18 December 2001

3 Interpretation

In this order, unless the context otherwise requires,—

asparagus means asparagus grown in New Zealand for sale, for commercial processing, or for export

collection agent means a person whose business is or includes—

- (a) buying 1 or more kinds of vegetable from a grower for resale or commercial processing in New Zealand, or for export; or
- (b) selling or commercially processing 1 or more kinds of vegetable in New Zealand on behalf of a grower, or exporting 1 or more kinds of vegetable on behalf of a grower

commercial processing means processing by way of artificial drying, evaporating, freezing, canning, bottling, preserving, or juicing

export squash means the unprocessed fruit of plants of the species *Cucurbita maxima* (commonly known as buttercup squash) grown in New Zealand and exported fresh or sold for export

Federation means the organisation registered under the Incorporated Societies Act 1908 that, on the commencement

of this order, is known as the New Zealand Vegetable and Potato Growers Federation Incorporated (commonly known as Vegfed)

fob value means, in relation to any vegetables exported from New Zealand for which a customs entry is made, the free on board value of the vegetables specified in the declaration in, attached to, or forming part of the customs entry

fresh tomatoes means tomatoes grown in New Zealand for sale or for export, except those grown for commercial processing

fresh vegetables means the following vegetables grown in New Zealand for sale or export:

- (a) artichoke (globe and Jerusalem), bean (excluding field-dried bean), beetroot, box thorn, broccoli, broccoflower, brussel sprout, burdock, cabbage, capsicum (including chilli pepper), carrot, cauliflower, celeriac, celery, Chinese cabbage (including Peking cabbage, Chinese flat cabbage, Chinese white cabbage, and flowering Chinese cabbage), choko, courgette (also known as zucchini or scallopini), cucumber (including gherkin), eggplant (also known as aubergine), florence fennel, garlic, garland chrysanthemum, herbs, kohlrabi, kumara, leek, lettuce, marrow, melon (including water, green netted, honey dew, bitter, rock, white musk, and prince), okra, onion (including shallot), parsnip, pea (excluding field-dried pea), puha, pumpkin, radish (including Chinese radish and daikon), rhubarb, salsify, salad leaves, scorzonera, silverbeet, spinach (including water spinach), spring onion, sprouted bean and seed, squash (excluding export squash), swede, sweetcorn (including baby corn), taro, turnip, watercress, and wit-loof (also known as chicory or endive); but
- (b) does not include vegetables grown for commercial processing

grower means a person whose business is or includes the commercial production of vegetables

herbs include basil, bay, borage, caraway, chervil, chives, coriander, dill, fennel, horseradish, lemon balm, marigold, marjoram, mint, nasturtium, oregano, parsley, rosemary, sage, savory, sorrel, tarragon, and thyme

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

levy means the levies imposed by clause 5

levy money means the money paid under this order as a levy

levy year means a period of 12 months beginning on 1 October and ending on the following 30 September, except that the first levy year will begin on 18 December 2001 and end on 30 September 2002

mediator means a person appointed under clause 27 and, in relation to a dispute, means a mediator appointed to resolve that dispute

notional process value, in respect of vegetables commercially processed in New Zealand by, or on behalf of, the grower, means the price that, in the Federation's opinion, the grower would have received if, immediately before the vegetables were commercially processed, the grower had sold them to a similar commercial processor situated in the same locality as the commercial processor

potatoes means potatoes grown in New Zealand for sale, commercial processing, or export (whether for consumption or for use as seed potatoes)

process tomatoes means tomatoes grown in New Zealand for commercial processing

process vegetables means fresh vegetables and export squash grown in New Zealand for commercial processing

sector means each division of the Federation that operates on behalf of growers of, or is relevant to, each of the kinds of vegetable listed in clause 4, except process tomatoes

selling price means the price at which vegetables are sold—

- (a) exclusive of GST; and
- (b) before the deduction of any costs or charges

vegetables means each of the kinds of vegetable listed in clause 4.

4 Scope of order

This order applies to the following kinds of vegetable:

- (a) asparagus:
- (b) export squash:
- (c) fresh tomatoes:

- (d) process tomatoes:
- (e) potatoes:
- (f) fresh vegetables:
- (g) process vegetables.

5 Levy imposed on vegetables

- (1) A levy is imposed on the vegetables listed in clause 4 that are grown commercially in New Zealand by growers and are—
 - (a) sold for consumption in New Zealand as fresh produce or are potatoes sold as seed potatoes; or
 - (b) sold for commercial processing in New Zealand or commercially processed by or on behalf of a grower before sale; or
 - (c) exported by a grower, sold to a collection agent for export, or exported by a collection agent on behalf of a grower.
- (2) The levy is payable to the Federation.

Responsibility for payment of levy

6 Growers primarily responsible for payment of levy

Growers of vegetables are primarily responsible for paying the levy.

7 Responsibility of collection agents for payment of levy

- (1) A collection agent must pay the levy to the Federation (plus any GST payable on the levy) if that person—
 - (a) buys vegetables from a grower (otherwise than through another collection agent) for resale or commercial processing in New Zealand, or for export; or
 - (b) sells or commercially processes vegetables in New Zealand on behalf of a grower, or exports them on behalf of a grower.
- (2) A collection agent may recover the levy (and any GST paid in respect of it) from a grower—
 - (a) by deducting the amount of the levy (and any GST payable on it) from the payment made to the grower; or
 - (b) by recovering the amount of the levy (and any GST paid in respect of it) as a debt due from the grower.
- (3) A collection agent must disclose to a grower the amount of levy money deducted under this order.

8 Collection fee

A collection agent who pays the levy to the Federation may deduct from the levy otherwise payable to the Federation a collection fee (plus the GST payable on the fee) of not more than—

- (a) 10% of the levy payable to the Federation (exclusive of GST) for vegetables sold, commercially processed, or exported, except process tomatoes and process vegetables; and
- (b) 7.5% of the levy payable to the Federation (exclusive of GST) for process tomatoes and process vegetables.

*Determination of levy by Federation***9 Rate of levy**

- (1) Subject to subclause (2), the levy on the vegetables listed in clause 4 must be paid at a single rate.
- (2) The levy imposed on fresh vegetables must be paid at 2 rates, being a rate for fresh vegetables—
 - (a) sold for domestic consumption; or
 - (b) sold for export.

10 Basis for calculation of levy

- (1) The levy payable must be calculated on the basis of—
 - (a) the selling price—
 - (i) of vegetables that are sold for consumption or commercial processing in New Zealand, or for export; and
 - (ii) of potatoes that are sold as seed potatoes; and
 - (b) the notional process value of vegetables commercially processed in New Zealand before the first point of sale; and
 - (c) the fob value of vegetables exported before the first point of sale.
- (2) The price or value referred to in subclause (1) is, in each case, the price or value before the deduction of any costs or charges.

11 Maximum rate of levy

- (1) The maximum rate of levy is, in respect of the vegetables specified in subclause (2), the stated percentage, as the case may be, of—

- (a) the selling price—
 - (i) of vegetables that are sold for consumption or commercial processing in New Zealand, or for export; and
 - (ii) of potatoes that are sold as seed potatoes; and
 - (b) the notional process value of vegetables commercially processed in New Zealand before the first point of sale; or
 - (c) the fob value of vegetables exported before the first point of sale.
- (2) The vegetables and the percentages referred to in subclause (1) are as follows:
- (a) asparagus, 0.15%:
 - (b) export squash, 0.15%:
 - (c) fresh tomatoes, 1.0%:
 - (d) process tomatoes, 0.15%:
 - (e) potatoes, 0.75%:
 - (f) fresh vegetables, 0.45%:
 - (g) process vegetables, 0.5625%.

12 Federation must set levy rates

- (1) The Federation must set the levy rates for the first levy year beginning 18 December 2001 by any lawful means.
- (2) For each subsequent levy year, the relevant sector of the Federation may set the levy rates at the annual sector conference of the Federation, except that the levy rate for process tomatoes may be set at the annual conference of the Federation.
- (3) If the levy rates are not set under subclause (2) before the beginning of a levy year, the levy for that year is payable at the rates last set under this clause.

13 Notification of rates of levy

- (1) If any new levy rate set under clause 12 differs from the levy rate applying in the previous year, the Federation must notify the new levy rate, as soon as practicable after setting the rate,—
 - (a) in the *Gazette*; and
 - (b) in *The Commercial Grower*; and

- (c) by direct mail to all growers and collection agents known to the Federation, for the relevant sector of the Federation.
- (2) If *The Commercial Grower* ceases to be published, the Minister of Agriculture may, by notice in the *Gazette*, specify a publication for the time being for the purposes of this order.

Time for payment of levy to Federation

14 When levy payable by growers

- (1) If vegetables are sold directly to the public by growers, or commercially processed by growers, or exported by growers, the due date for payment of the levy by growers is—
 - (a) 30 June 2002, for the period between 18 December 2001 and 30 June 2002; and
 - (b) 30 June in each succeeding year, for the preceding 12 months.
- (2) The latest date for payment of the levy by growers is 30 September in the same calendar year.

15 When levy payable by collection agents

- (1) The due date for payment of the levy by a collection agent is the date on which the collection agent recovers the levy from the grower.
- (2) The latest date for payment of the levy by the collection agent is the 20th day of the month after the month in which the levy is recovered from the grower.

16 Additional levy 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 levy not paid must be paid to the Federation, in addition to the amount otherwise payable.

17 Conscientious objectors

- (1) Any grower who objects on conscientious or religious grounds to the manner of recovery by the Federation of an amount of levy money may pay the amount concerned to the chief executive of the Ministry of Agriculture and Forestry.
- (2) The chief executive must pay that amount to the Federation.

*Expenditure of levy money by Federation***18 Federation must spend levy money**

The Federation must—

- (a) spend all levy money; or
- (b) pending its expenditure, may—
 - (i) pay the levy money to any district association that is a branch of the Federation, which must spend the money; or
 - (ii) invest it.

19 Purposes for which levy money may be spent

- (1) Subject to clause 18, the Federation may spend the levy money for any of the following general purposes, as relevant to any specific sectors:
 - (a) research and development;
 - (b) development of quality assurance;
 - (c) market development and promotion;
 - (d) education and information;
 - (e) grower representation;
 - (f) day-to-day administration of the Federation.
- (2) Subclause (1)(c) does not apply to levy money collected in respect of process vegetables.
- (3) The Federation must consult on how it is to spend its levy money by consulting—
 - (a) district associations; and
 - (b) growers at the annual conference of each sector of the Federation; and
 - (c) in the case of process tomatoes, growers at the annual conference of the Federation; and
 - (d) the representatives of the growers elected at the annual sector conference or annual Federation conference, as the case may be.
- (4) The Federation must not spend levy money on commercial or trading activities.

*Record-keeping requirements and confidentiality of information provided to Federation***20 Returns must be supplied to Federation**

- (1) A payment of levy money to the Federation by a grower or collection agent must state—

- (a) the value of and the kinds of vegetables to which the payment relates; and
 - (b) in the case of a return by a collection agent, the name of the grower.
- (2) Growers and collection agents must, as soon as reasonably practicable after receiving a written request from the Federation for information required for determining the amount of levy payable, supply the information in writing to the Federation.

21 Records to be kept by growers

A grower must, in each levy year, keep some or all of the following records, as relevant to the circumstances of the grower:

- (a) the quantities and kinds of vegetables grown commercially and sold in that year—
 - (i) by the grower, and the payment received for that quantity; or
 - (ii) to a collection agent, or by a collection agent on a grower's behalf, and the payment received for those quantities; and
- (b) the quantities and kinds of vegetables processed commercially by the grower in that year, and the notional process value of those quantities; and
- (c) the quantities and kinds of vegetables exported by the grower in that year, and the fob value of those quantities; and
- (d) the amount of the levy money paid to the Federation in respect of each quantity in this subclause.

22 Records to be kept by collection agents

- (1) A collection agent must, in each levy year, keep records in respect of every grower relating to—
- (a) the quantities and kinds of vegetables bought (otherwise than through another collection agent) in that year for resale, commercial processing, or export by the collection agent and the price paid for each quantity; and
 - (b) the quantity and kinds of vegetables sold, commercially processed, or exported by the collection agent on a grower's behalf, and the payment received for each

quantity sold, or the notional or fob value of each quantity commercially processed or exported, as the case may be.

- (2) The records made under subclause (1) must state—
- (a) the amount of the levy money paid to the Federation by the collection agent in respect of each quantity; and
 - (b) the amount of the collection fee (if any) deducted by the collection agent in respect of each amount.

23 Records to be kept by Federation

The Federation must, in each levy year, for each kind of vegetable, keep records of,—

- (a) for each amount of levy paid to it in the levy year, and in relation to each amount,—
 - (i) the date on which each levy is received; and
 - (ii) the person who pays the levy in each case; and
- (b) how the levy money—
 - (i) is spent; or
 - (ii) is invested (if at all); and
- (c) each amount of levy money paid by the Federation to a district association and, in relation to each amount,—
 - (i) the date on which it was paid to a district association; and
 - (ii) the name of the district association.

24 Records must be retained for 2 years

The records made under clauses 21, 22, and 23 must be retained for not less than 2 years after the end of the levy year to which they relate.

25 Confidentiality of information

- (1) No officer or employee of the Federation or any other person or organisation that gathers information may disclose (except to an officer or employee of the Federation) any information obtained—
- (a) under or because of this order; or
 - (b) under the Commodity Levies Act 1990 in relation to this order.
- (2) Subclause (1) does not prevent the Federation from disclosing or using information—

- (a) with the consent of the levy payer and every other identifiable person to whom it relates; or
 - (b) for the purposes of collecting levy money from each levy payer; or
 - (c) for statistical or research purposes, if the information is in a form that does not identify any individual.
- (3) Subclause (1) does not affect or prevent—
- (a) the disclosure of information for the purposes of—
 - (i) an audit conducted under section 17 of the Commodity Levies Act 1990; or
 - (ii) a statement required under section 25 of the Commodity Levies Act 1990; or
 - (b) the giving of evidence in any legal proceedings taken under, or in relation to, this order or, in relation to this order, under the Commodity Levies Act 1990; or
 - (c) the disclosure of information required by law.

Payment for compliance auditing

26 Remuneration of persons conducting compliance audits

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

Mediation in case of dispute

27 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 34.

28 Remuneration of mediators

- (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.

29 Time and place of conference

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

30 Conference must be held in private

Except as provided in clause 31, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

31 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.

32 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.

33 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.

34 Mediator may resolve dispute in certain cases

- (1) A 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; or
 - (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 that decision.
- (3) The parties must comply with the decision of the mediator.

35 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the decision made by a mediator under clause 34 may appeal to a District Court against the decision.
- (2) The appeal must be brought by filing 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 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) Filing a notice of appeal does not operate as a stay of any process for the enforcement of the decision appealed against.

36 Revocations

- (1) The following orders are revoked:
 - (a) Commodity Levies (Asparagus) Order 1995 (SR 1995/310); and
 - (b) Commodity Levies (Export Squash) Order 1995 (SR 1995/311); and
 - (c) Commodity Levies (Fresh Tomatoes) Order 1995 (SR 1995/312); and
 - (d) Commodity Levies (Processing Tomatoes) Order 1995 (SR 1995/313); and
 - (e) Commodity Levies (Potatoes) Order 1995 (SR 1995/314); and
 - (f) Commodity Levies (Fresh Vegetables) Order 1995 (SR 1995/315); and
 - (g) Commodity Levies (Processing Vegetables) Order 1995 (SR 1995/316).
- (2) Despite subclause (1), amounts of levy that become payable to the Federation under each of the orders listed in subclause (1) before the commencement of this order continue to be due and payable as if that order had not been revoked.

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 18 December 2001, imposes a levy on the following vegetables produced for commercial purposes:

- asparagus:
- export squash:
- fresh tomatoes:
- process tomatoes:
- potatoes:
- fresh vegetables:
- process vegetables.

The levy is payable to the New Zealand Vegetable and Potato Growers Federation Incorporated (Vegfed) by commercial growers or by collection agents, as the case may be.

A **grower** is a person who grows any of the specified vegetables or kinds of vegetable on a commercial basis. A **collection agent** is a person whose business is or includes buying the specified vegetables from growers for resale, processing commercially, or exporting, or for selling, processing commercially, or exporting on behalf of growers. Except in the case of fresh vegetables, the levy on the specified vegetables is charged at a single rate. For fresh vegetables, the levy is charged at 2 rates, depending on whether they are sold for domestic consumption or for export.

This order revokes and replaces 7 orders that imposed levies on the listed vegetables. In the case of asparagus, the levy under this order is additional to the levy imposed by the Commodity Levies (Asparagus) Order 2000 (SR 2000/68), payable to the New Zealand Asparagus Council Incorporated.

The Commodity Levies Act 1990 provides that a commodity levy order, unless earlier revoked, expires after 6 years.

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

Date of notification in *Gazette*: 8 November 2001.

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