



THE COMMODITY LEVIES (EXPORT SQUASH) ORDER 1995

CATHERINE A. TIZARD, Governor-General

ORDER IN COUNCIL

At Wellington this 18th day of December 1995

Present:

THE RIGHT HON. J. B. BOLGER PRESIDING 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 (Export Squash) Order 1995.

(2) Clauses 2 to 9, 11 (1), and 12 to 33 of this order shall come into force on the 1st day of January 1996.

(3) The rest of this order shall come into force on the day after the date of its notification in the *Gazette*.

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

“*Commercial Grower*”—

(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*:

“District association” means any organisation that for the time being—

(a) Holds affiliated member association status granted by the federation; and

(b) Appoints delegates to attend and participate in the proceedings of the export squash sector of the federation (including its annual conference) in accordance with the federation’s constitution and rules:

“Export” means export from New Zealand; and “to export” has a corresponding meaning:

“Exporter” means a person whose business is or includes—

(a) Buying export squash from their grower for export; or

(b) Exporting export squash on behalf of their grower:

“Export squash” means the unprocessed fruit (being only the fruit commonly known as buttercup squash) of plants of the species *cucurbita maxima*:

“Federation” means the society (incorporated under the Incorporated Societies Act 1908) whose name, immediately before the commencement of this order, was The New Zealand Vegetable and Potato Growers Federation (Inc.):

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

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

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

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

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

“Mediator” means a person appointed under clause 24 (1) of this order; and, in relation to a dispute, means a mediator appointed to resolve it:

“Payment year” means a period of 12 months commencing after the commencement of this order and ending with the 30th day of September; and includes—

(a) The period commencing on the 1st day of January 1996 and ending with the 30th day of September 1996; and

(b) The period commencing on the 1st day of October 2001 and ending with the expiry of this order:

“Person” includes body corporate; “who” includes “that”; and “whom” includes “which”:

“Processed” includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, and preserved; and “unprocessed” has a corresponding meaning:

“Selling price” means a price—

(i) Exclusive of GST; and

(ii) Before deduction of any costs or charges.

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) Export squash grown in New Zealand and—

(i) Sold by their grower for export; or

(ii) Exported by their grower:

(b) The federation.

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

5. Exporters to pay levy on export squash bought or sold but may recover it from growers—An exporter who buys export squash from their grower for export, or exports export squash on their grower’s behalf,—

(a) Shall (subject to clause 9 of this order) 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 export squash or any other export squash bought from or exported on behalf of the grower.

6. Growers to pay levy in other cases—The grower of export squash who exports them from New Zealand shall pay the levy on them annually.

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

8. Basis of calculation of levy—The levy is to be calculated—

(a) In the case of export squash exported by their grower, or by an exporter on behalf of their grower, on the basis of their f. o. b. value:

(b) In the case of export squash exported by an exporter, on the basis of the selling price at their sale by their grower.

9. Collection fee—A person required by clause 5 of this order to pay the levy on any export squash may, by deducting it from any amount of levy money otherwise payable to the federation in respect of those export squash, charge the federation—

- (a) A fee of 10 percent of the amount of that money (exclusive of GST); and
 - (b) The GST payable in respect of that fee,—
- for paying and recovering the money.

10. Maximum rate—The maximum rate of the levy is 0.15 percent of selling price or f. o. b. value (plus GST, if any).

11. Federation to fix actual rate of levy—(1) Except as provided in subclause (2) of this clause, the federation shall fix the actual rate of the levy for any payment year at the annual export squash sector conference of the federation.

(2) The federation may fix the actual rate of the levy for the payment year ending with the 30th day of September 1996 by any means by which it may lawfully make decisions.

12. Rate if no rate fixed—If before the 1st day of September in any payment year no rate of levy has been fixed by the federation for the next payment year, the levy for the next year shall be payable at the rate last fixed under clause 11 of this order.

13. Notification of rate of levy—As soon as is practicable after fixing a rate of levy for a payment year, the federation shall by notice in *Commercial Grower* and the *Gazette*, publish the rate and year.

14. Returns—(1) Every grower shall, as soon as reasonably practicable after the end of each payment year, give the federation written notice of—

- (a) The total selling price of export squash grown by the grower that the grower sold to exporters in that year; and
 - (b) The total f. o. b. value of every consignment of export squash grown by the grower that the grower exported, or had exported on the grower's behalf, in that year.
- (2) Every exporter shall, on or before the latest day for payment of the levy in each month, give the federation written notice in respect of every grower concerned of—

- (a) The total selling price of all export squash the exporter bought from their grower during the previous month for export; and
- (b) The total f. o. b. value of all export squash the exporter exported on their grower's behalf during the previous month.

15. Payments by exporters to be monthly—The due day for the payment of amounts of the levy under clause 5 of this order—

- (a) In the case of export squash bought from their grower by an exporter, is the day on which the exporter buys them; and
- (b) In the case of export squash exported by an exporter on their grower's behalf, is the day on which the exporter exports them;—

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

16. Payments by growers to be annual—The due day for the payment of amounts of the levy under clause 6 of this order is the last day

of the payment year in which the export squash concerned were exported; and the latest day for payment is the following 31st day of December.

17. 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 federation may (in its absolute discretion) allow the person an extension of time for paying it.

18. 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 17 of this order), there shall be paid to the federation, in addition to the amount otherwise payable, an amount calculated at the rate of 10 percent of that money.

19. Conscientious objectors—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 in that case the chief executive shall cause it to be paid to the federation.

20. Levy money may be paid to district associations—The federation may pay any part of any levy money paid to it to any district association that is a branch of the federation; and the district association may spend it.

21. Consultation on how levy money to be spent—(1) At least once every year, the federation shall consult district associations and grower representatives on how levy money is to be spent.

(2) In subclause (1) of this clause “grower representative”, at any time, means a person who is able under the rules and constitution of the federation then in force to represent export squash growers.

22. Confidentiality of information—(1) Subject to subclause (2) of this clause, no officer or employee of the federation shall disclose (otherwise than to some other person who is an officer or employee of the federation) 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) 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.

(3) Nothing in subclause (1) of this clause prevents the federation from disclosing or using any information (not being information relating to an identifiable person), obtained from a support referendum held before the commencement of this order.

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

23. Records—(1) Every grower of export squash shall—

(a) In every payment year, keep records of—

(i) The quantities of export squash grown by the grower that were sold to exporters in that year, and the selling prices of the quantities sold; and

(ii) The quantities of export squash grown by the grower that were exported by the grower, or by an exporter on the grower's behalf, in that year, and the f. o. b. values of those quantities; and

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

(2) Every exporter shall in every payment year keep, in respect of every grower of export squash from whom the exporter bought export squash in that year for export, or on whose behalf the exporter exported in that year export squash grown by the grower, records of—

(a) The quantities of export squash bought; and

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

(c) The quantities of export squash grown by the grower exported on the grower's behalf; and

(d) The f. o. b. value of each quantity exported on a grower's behalf; and

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

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

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

(3) The federation shall in every payment 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

(d) Each amount of levy money paid by it to a district association in that year and, in relation to each amount, the day on which it was paid and the name of the association;—

and shall 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.

24. 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 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 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.

25. 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 on 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.

26. Time and place of conference—Every conference 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.

27. Conference to be held in private—Except as provided in clause 28 of this order, only the parties to a dispute and the mediator shall attend a conference organised by the mediator.

28. 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 the dispute organised by the mediator.

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

30. 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.

31. Mediator may resolve dispute in certain cases—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 resolution of the dispute, and the mediator's reasons for determining that particular resolution.

32. Appeal to District Court—(1) Any party to a dispute who is dissatisfied with the decision made by a mediator under clause 31 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 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 of 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.

33. Remuneration of persons conducting compliance audits—A person appointed as Auditor under section 15 of the Commodity Levies Act 1990 shall be remunerated by the federation at a rate determined by the Minister after consultation with the federation.

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 imposes on export squash grown commercially a levy payable to the New Zealand Vegetable and Potato Growers Federation (Inc).

Clause 10 (which specifies a maximum rate for the levy) and clause 11 (2) (which empowers the fixing of a rate of levy for the period from 1 January to 30 September 1996) come into force the day after the order's notification in the *Gazette*. The rest of the order comes into force on 1 January 1996.

Unless earlier revoked, the order expires 6 years after it was made.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 20 December 1995.
This order is administered in the Ministry of Agriculture.