



THE COMMODITY LEVIES (FRESH TOMATOES) 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 (Fresh Tomatoes) 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,—

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

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

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

“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 fresh tomato sector of the federation (including its annual conference) in accordance with the federation’s constitution and rules:

“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 tomatoes exported from New Zealand in respect of which a customs entry has been made, means the value of those tomatoes 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 tomatoes—

(a) For sale fresh in New Zealand (otherwise than for processing for sale); or

(b) For export fresh from New Zealand:

“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,—

(a) Whether as tomatoes 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—

(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) Tomatoes grown in New Zealand and—

(i) Sold fresh in New Zealand by their grower (otherwise than for processing for sale) for human consumption; or

(ii) Exported fresh from New Zealand by their grower:

(b) The federation.

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

5. Collection agents to pay levy on tomatoes bought or sold but may recover it from growers—A collection agent who buys tomatoes from their grower (otherwise than through any other collection agent and otherwise than for processing for sale), or sells or exports fresh tomatoes 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 tomatoes or any other tomatoes bought from the grower or sold or exported on the grower’s behalf.

6. Growers to pay levy in other cases—The grower of tomatoes who—

(a) Sells them fresh to consumers at or near the place where they were grown; or

(b) Exports them from New Zealand fresh,—

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 tomatoes exported fresh, on the basis of their f. o. b. value:
- (b) In the case of tomatoes sold by a collection agent on behalf of their grower, on the basis of the selling price at that sale:
- (c) In the case of tomatoes sold fresh by their grower (otherwise than for processing for sale), on the basis of the selling price at that sale.

9. Collection fee—A person required by clause 5 of this order to pay the levy on any tomatoes may, by deducting it from any amount of levy money otherwise payable to the federation in respect of those tomatoes, 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 1.0 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 fresh tomato 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 the total selling price of tomatoes grown by the grower that the grower sold fresh to consumers in that year at or near the place where they were grown.

(2) Every grower shall, as soon as reasonably practicable after the end of each payment year, give the federation written notice of the f. o. b. value of every consignment of tomatoes grown by the grower that the grower exported from New Zealand fresh in that year.

(3) Every collection agent 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 tomatoes the agent bought from their grower (otherwise than through another collection agent) during the previous month for resale or export fresh; and

- (b) The total selling price of all fresh vegetables the agent sold on their grower's behalf during the previous month; and
- (c) The total f. o. b. value of all fresh vegetables the agent exported on their grower's behalf during the previous month.

15. Payments by collection agents 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 tomatoes bought from their grower (otherwise than for processing for sale) by a collection agent, is the day on which the agent buys them; and
- (b) In the case of tomatoes 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.

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 tomatoes concerned were sold or 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 growers of tomatoes intended for human consumption fresh.

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 tomatoes intended for human consumption fresh shall—

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

(i) The quantities of tomatoes grown by the grower sold fresh to collection agents, or by collection agents on the grower's behalf, in that year, and the selling prices of those quantities; and

(ii) The quantity of tomatoes grown by the grower sold fresh to consumers at or near the place where they were grown, and the selling price of those tomatoes; and

(iii) The quantities of tomatoes grown and exported by the grower in that year, and the f. o. b. values of those quantities; and

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

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

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

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

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

(c) The quantities of tomatoes 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 federation in respect of each quantity; and

(g) 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 tomatoes grown otherwise than for commercial processing a levy payable to the New Zealand Tomato 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.