



## Commodity Levies (Vegetables and Fruit) Order 2013

Jerry Mateparae, Governor-General

### Order in Council

At Wellington this 13th day of May 2013

Present:

The Right Hon John Key presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General, acting on the advice and with the consent of the Executive Council and on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act, makes the following order.

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**Order****1 Title**

This order is the Commodity Levies (Vegetables and Fruit) Order 2013.

**2 Commencement**

This order comes into force on 18 June 2013.

**3 Interpretation**

In this order, unless the context otherwise requires,—

**Act** means the Commodity Levies Act 1990

**collection agent** means a person whose business is or includes—

- (a) buying vegetables or fruit from a grower for resale or commercial processing in New Zealand or for export;
- (b) commercial processing, exporting, or selling of vegetables or fruit on behalf of a grower

**commercial processing**, in relation to vegetables, means artificial drying, bottling, canning, evaporating, freezing, or preserving for commercial purposes

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

**fresh tomatoes**—

- (a) means tomatoes grown in New Zealand for commercial purposes; but
- (b) excludes tomatoes grown for commercial processing

**fresh vegetables**—

- (a) means the following vegetables grown in New Zealand for commercial purposes:

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- (i) artichokes (Globe and Jerusalem), Asian vegetables, beans (excluding field dried beans), beetroot, boxthorn, broccoflower, broccoli, broccolini, Brussels sprouts, burdock, cabbage, capsicums, carrots, cauliflower, celeriac, celery, chilli peppers, chokos, courgettes, cucumbers, eggplant (also known as aubergine), Florence fennel, garland chrysanthemum, garlic, gherkins, herbs (including 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), Indian vegetables, kohlrabi, kumara, leeks, lettuces, marrows, melons (including water, green netted, honey dew, bitter, rock, white musk, and prince), okra, parsnips, peas (excluding field dried peas), puha, pumpkin, purslane, radishes (including Chinese radish and daikon), rakkyo, rhubarb, salad leaves, salsify, scallopini, scorzonera, shallots, silverbeet, spinach (including water spinach), spring onions, sprouted beans and seeds, squash (excluding buttercup squash exported from New Zealand), swedes, sweetcorn (including baby corn), taro, turnips, ulluco, watercress, witloof (also known as chicory or endive), yakon, yams, and zucchinis; and
- (ii) the hybrids of the vegetables listed in subparagraph (i); but
- (b) excludes any vegetables listed in paragraph (a) that are grown for commercial processing or that are imported
- fruit** means the following fruit grown in New Zealand for commercial purposes:
- (a) apples, Asian pears, avocados, babacos, blackberries, boysenberries, casanas, cherimoyas, citrus (including grapefruit, lemons, limes, mandarins, oranges, and tangelos), European pears, feijoas, guavas, kiwifruit, kiwiberries, loquats, passionfruit, persimmons, quinces,

sapotes, summerfruit (including apricots, cherries, nectarines, peaches, and plums), and tamarillos; and

- (b) the hybrids of the fruit listed in paragraph (a)

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

**GST** means goods and services tax

**HortNZ** means Horticulture New Zealand Incorporated

**levy** means a levy imposed by clause 4 or 5

**levy money** means money paid or payable under this order as a levy

**levy year** means,—

- (a) for the first year, the period starting on the commencement of this order and ending on 30 September 2013; and
- (b) for each later year (other than the last year), the 12-month period starting on 1 October and ending on 30 September of the following year; and
- (c) for the last year, the period starting on 1 October 2018 and ending on the day on which this order is revoked

**mediator** means—

- (a) a person appointed under clause 29; and
- (b) for a particular dispute, the mediator appointed to resolve the dispute

**notional process value**, in relation to a kind of vegetables or fruit, means the amount of money that, in the opinion of HortNZ, the grower would have received if, immediately before the vegetables or fruit were processed, the grower had sold the vegetables or fruit to a similar processor situated in the same locality as the grower

**other vegetables** means—

- (a) asparagus grown in New Zealand for commercial processing, the domestic fresh market, or export; and
- (b) buttercup squash that is exported in a fresh state or sold for export; and
- (c) onions grown in New Zealand for commercial processing, the domestic fresh market, or export; and
- (d) potatoes grown in New Zealand for commercial processing, the domestic fresh market, seed, or export; and

- (e) tomatoes grown in New Zealand for commercial processing

**process vegetables** means fresh vegetables grown in New Zealand for commercial processing

**Process Vegetables NZ** means the Processed Vegetables Product Group established by HortNZ

**TomatoesNZ** means the Fresh Tomatoes Product Group established by HortNZ

**vegetables** means fresh tomatoes, fresh vegetables, other vegetables, and process vegetables

**Vegetables New Zealand** means the Fresh Vegetable Product Group established by HortNZ

#### *Levies imposed*

#### **4 Levy imposed on vegetables and fruit**

- (1) A levy is imposed on vegetables and fruit.
- (2) The levy is payable to HortNZ.

#### **5 Levy imposed on product groups**

- (1) A levy is imposed on—
  - (a) fresh tomatoes:
  - (b) fresh vegetables:
  - (c) process vegetables.
- (2) Each levy imposed by subclause (1) is in addition to the levy on vegetables and fruit imposed by clause 4.
- (3) Each levy is payable to HortNZ.

#### *Payment of levies*

#### **6 Growers primarily responsible for paying levy**

- (1) A grower of vegetables or fruit is primarily responsible for paying the levy imposed by clause 4.
- (2) A grower of fresh tomatoes, fresh vegetables, or process vegetables is primarily responsible for paying the levy imposed on the commodity by clause 5.
- (3) Subclause (2) applies in addition to subclause (1).

**7 Responsibility of collection agents for payment of levy**

- (1) A collection agent must pay the applicable levy (or levies) and any GST payable on it at the first point of sale if the collection agent—
  - (a) buys vegetables or fruit from a grower; or
  - (b) sells, exports, or processes vegetables or fruit on behalf of a grower.
- (2) A collection agent may recover a 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 a levy may charge a collection fee of not more than 4% of the amount of levy collected (exclusive of GST) plus the GST payable on the fee by deducting the amount before paying the levy to HortNZ.

*Calculation of levies***9 Rate of levy**

- (1) The levies on vegetables and fruit, fresh tomatoes, and process vegetables must each be paid at a single rate.
- (2) The levy imposed on fresh vegetables must be paid at the rate for fresh vegetables—
  - (a) sold for domestic consumption; or
  - (b) sold for export.

**10 Basis for calculation of levies**

- (1) The levy on vegetables and fruit payable in a levy year must be calculated on the basis of the gross sales value at the first point of sale, except where—
  - (a) the commodity is exported, when the levy will be calculated as a percentage of the FOB value; or

- (b) the commodity is processed prior to the first point of sale, when the levy will be a percentage of the notional process value.
- (2) The levies on fresh tomatoes and fresh vegetables payable in a levy year must be calculated on the basis of the gross sales value at the first point of sale, except where the commodity is exported, when the levy will be calculated as a percentage of the FOB value.
- (3) The levy on process vegetables payable in a levy year must be calculated on the basis of the gross sales value at the first point of sale, except where the vegetables are processed prior to the first point of sale, when the levy will be a percentage of the notional process value.
- (4) A price or value referred to in subclauses (1) to (3) is, in each case, the price or value before the deduction of any costs or charges and exclusive of GST.

#### **11 Maximum rate of levy**

- (1) The maximum rate of the levy on vegetables and fruit is 0.15% of the—
  - (a) gross sales value at the first point of sale; or
  - (b) FOB value; or
  - (c) notional process value.
- (2) The maximum rate of the levy on fresh tomatoes is 0.35% of the—
  - (a) gross sales value at the first point of sale; or
  - (b) FOB value.
- (3) The maximum rate of the levy on fresh vegetables is 0.30% of the—
  - (a) gross sales value at the first point of sale; or
  - (b) FOB value.
- (4) The maximum rate of the levy on process vegetables is 0.50% of the—
  - (a) gross sales value at the first point of sale; or
  - (b) notional process value.
- (5) The maximum levy rate is exclusive of GST.

**12 Levy rates for first levy year**

For the first levy year, the levy rate—

- (a) for vegetables and fruit is 0.15%:
- (b) for fresh tomatoes is 0.25%:
- (c) for fresh vegetables is —
  - (i) 0.30%, for fresh vegetables sold domestically:
  - (ii) 0.20%, for fresh vegetables exported:
- (d) for process vegetables is 0.42%.

**13 HortNZ must set levy rates after first year**

- (1) HortNZ must set the levy rates for the levy years following the first levy year.
- (2) For each levy year,—
  - (a) the levy rate for vegetables and fruit must be set by a vote at the annual general meeting of HortNZ:
  - (b) the levy rate for fresh tomatoes must be set by a vote at the annual general meeting of TomatoesNZ:
  - (c) the levy rate for fresh vegetables must be set by a vote at the annual general meeting of Vegetables New Zealand:
  - (d) the levy rate for process vegetables must be set by a vote at the annual general meeting of Process Vegetables NZ.
- (3) If a levy rate is not set for vegetables and fruit, fresh tomatoes, fresh vegetables, or process vegetables under subclause (2) before the beginning of a levy year, the levy for that commodity in that year is payable at the rate last set for that commodity under this clause.

**14 Notification of rates of levy**

- (1) If any new levy rate set under clause 13 differs from the levy rate applying in the previous year, HortNZ must notify the new levy rate, as soon as practicable after setting the rate,—
  - (a) for vegetables and fruit,—
    - (i) in *The Orchardist*; and
    - (ii) in the *NZGROWER*; and
    - (iii) in the HortNZ email newsletter; and
    - (iv) by direct mail to all vegetable and fruit growers and relevant collection agents known to HortNZ; and
    - (v) in the *Gazette*; and

- (b) for fresh tomatoes, fresh vegetables, and process vegetables,—
  - (i) in the *NZGROWER*; and
  - (ii) in the HortNZ email newsletter; and
  - (iii) by direct mail to all growers of fresh tomatoes, fresh vegetables, or process vegetables and relevant collection agents known to HortNZ; and
  - (iv) in the *Gazette*.
- (2) If *The Orchardist* or the *NZGROWER* ceases to be published, the Minister for Primary Industries may, by notice in the *Gazette*, specify another publication for the purposes of this order.

*When levies payable*

**15 When levy payable by growers**

- (1) If vegetables or fruit are sold directly to the public by growers, or processed by growers, or exported by growers, the due date for payment of the levy by growers is 30 June.
- (2) The levy payable by growers is to be paid annually for the preceding 12 months.
- (3) The latest date for payment of the levy by growers is 30 September in the same calendar year.

**16 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.

**17 Additional levy if levy not paid in time**

- (1) If any amount of the levy (or GST payable on that amount) has not been paid by the close of the latest day for payment, 10% of the amount of the levy not paid at the end of the first month must be paid to HortNZ, in addition to the amount otherwise payable.

- (2) A further 2% of the amount owing (including any previous penalties) is payable at the end of each additional month that the amount has not been paid.

*Expenditure of levy money by HortNZ*

**18 HortNZ must spend levy money**

HortNZ must—

- (a) spend all levy money;
- (b) invest the money until it is spent.

**19 Purposes for which levy money may be spent**

- (1) HortNZ may spend levy money derived from the levy on vegetables and fruit for the following purposes:
- (a) research and development;
  - (b) market development and promotion;
  - (c) development of quality assurance;
  - (d) education and training;
  - (e) information and communication;
  - (f) day-to-day administration of HortNZ;
  - (g) grower representation.
- (2) HortNZ may spend levy money derived from the levy on fresh vegetables for the following purposes associated with Vegetables New Zealand:
- (a) research and development;
  - (b) market development;
  - (c) development of quality assurance;
  - (d) education and training;
  - (e) information and communication;
  - (f) day-to-day administration of the product group;
  - (g) grower representation;
  - (h) domestic promotion.
- (3) HortNZ may spend levy money derived from the levy on fresh tomatoes for the following purposes associated with TomatoesNZ:
- (a) research and development;
  - (b) market development and promotion;
  - (c) development of quality assurance;
  - (d) education and training;

- (e) information and communication:
  - (f) day-to-day administration of the product group:
  - (g) grower representation.
- (4) HortNZ may spend levy money derived from the levy on process vegetables for the following purposes associated with Process Vegetables NZ:
- (a) research and development:
  - (b) market development and promotion:
  - (c) development of quality assurance:
  - (d) education and training:
  - (e) information and communication:
  - (f) day-to-day administration of the product group:
  - (g) grower representation.
- (5) HortNZ must not spend levy money on commercial or trading activities.

## **20 Consultation on spending levy money**

- (1) HortNZ must consult on how it is to spend levy money derived from the levy on vegetables and fruit by consulting—
- (a) affiliated product groups; and
  - (b) affiliated grower associations; and
  - (c) growers at the annual conference of HortNZ.
- (2) HortNZ must consult on how it is to spend levy money derived from the levy on fresh tomatoes by consulting—
- (a) affiliated product groups; and
  - (b) affiliated grower associations; and
  - (c) growers at the annual general meeting of TomatoesNZ.
- (3) HortNZ must consult on how it is to spend the levy money derived from the levy on fresh vegetables by consulting—
- (a) affiliated product groups; and
  - (b) affiliated grower associations; and
  - (c) growers at the annual general meeting of Vegetables New Zealand.
- (4) HortNZ must consult on how it is to spend the levy money derived from the levy on process vegetables by consulting—
- (a) affiliated product groups; and
  - (b) affiliated grower associations; and

- (c) growers at the annual general meeting of Process Vegetables NZ.

*Record-keeping requirements and confidentiality  
of information provided to HortNZ*

**21 Returns must be supplied to HortNZ**

- (1) A payment of levy money to HortNZ by a grower or collection agent must state—
  - (a) the value of and the kinds of vegetables or fruit to which the payment relates; and
  - (b) in the case of a return by a collection agent, the name of the grower.
- (2) HortNZ may request, in writing, from a grower any information that HortNZ reasonably requires for the purpose of determining the amount of levy payable by the grower.
- (3) Each grower must, as soon as is reasonably practicable after receiving a request from HortNZ, supply HortNZ with a written return of the information requested.

**22 Records to be kept by growers**

- (1) A grower who pays a levy directly to HortNZ must, for each levy year, keep records of—
  - (a) the amount of the levy paid; and
  - (b) the sales that the levy money was deducted from.
- (2) A grower whose levies are paid by collection agents must, for each levy year, keep records of—
  - (a) the amount of the levy paid; and
  - (b) the sales that the levy money was deducted from; and
  - (c) the name and address of the collection agent.

**23 Records to be kept by collection agents**

- A collection agent must, for each levy year, keep records of—
- (a) the amount of the levy paid; and
  - (b) the sales that the levy money was deducted from; and
  - (c) the details of each grower from whom the agent has collected levies (including the grower's name, trading name, and postal address).

**24 Records to be kept by HortNZ**

HortNZ must, in each levy year, for each kind of vegetable and fruit, keep records of,—

- (a) for each amount of levy paid to it in that 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 levy money—
  - (i) is spent; or
  - (ii) is invested (if at all).

**25 Records must be retained for 2 years**

The records made under clauses 22, 23, and 24 must be retained for not less than 2 years from the date of the payment of the levy to which they relate.

**26 Confidentiality of information**

- (1) No officer or employee of HortNZ, or any person involved in collecting levy money, may disclose (except to an officer or employee of HortNZ) any information obtained—
  - (a) under or because of this order; or
  - (b) under the Act in relation to this order.
- (2) Subclause (1) does not affect or prevent—
  - (a) the production of records or accounts under section 17(1) of the Act; or
  - (b) the production of any statement under section 25 of the Act; 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 Act.
- (3) Subclause (1) does not prevent HortNZ from disclosing or using any information—
  - (a) for statistical or research purposes, if the information is in a form that does not identify any individual; or
  - (b) for the purposes of invoicing or collecting the levy; or
  - (c) with the consent of every identifiable person to whom it relates; or
  - (d) as required by law.

*Miscellaneous***27 Conscientious objectors**

- (1) A grower who objects on conscientious or religious grounds to the manner of recovery of levy money by HortNZ may pay the amount concerned to the chief executive of the Ministry for Primary Industries.
- (2) The chief executive must pay the amount to HortNZ.

**28 Remuneration of persons conducting compliance audit**

A person appointed as an auditor under section 15 of the Act must be remunerated by HortNZ at a rate determined by the Minister for Primary Industries after consultation with HortNZ.

*Mediation of disputes***29 Appointment of mediators**

- (1) This clause applies to a dispute concerning—
  - (a) whether any person is required to pay the levy; or
  - (b) the amount of the levy payable.
- (2) A party to the dispute may ask the President of the Arbitrators and Mediators Institute of New Zealand Incorporated to appoint a person to resolve the dispute by mediation.
- (3) If asked, the President or a person authorised by the President may appoint a person to resolve the dispute by mediation.
- (4) 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 36.

**30 Remuneration of mediators**

- (1) A mediator is to be paid remuneration (by way of fees and allowances) as agreed by the parties to the dispute.
- (2) If the parties to a dispute cannot agree on a mediator's remuneration, the President of the Arbitrators and Mediators Institute of New Zealand Incorporated, or a person authorised by the President, must—
  - (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 must pay.
- (3) Each party must pay to the mediator the amount or amounts fixed and specified under subclause (2).

### **31 Conferences under control of mediator**

A mediator must—

- (a) organise the date, time, and place for each conference to be held by the mediator; and
- (b) notify the parties of the matters specified in paragraph (a) by post or email; and
- (c) preside at the conference.

### **32 Conference to be held in private**

Subject to clause 33, only the parties to a dispute and the mediator may attend a conference organised by the mediator.

### **33 Representatives**

A mediator may allow a representative of a party to a dispute to attend a conference with the mediator if the mediator is satisfied that it is appropriate to do so in all the circumstances.

### **34 Right to be heard**

The following persons may be heard at a conference with a mediator:

- (a) each party to the dispute; and
- (b) each representative of a party allowed by the mediator to attend the conference.

### **35 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,—
  - (a) seek and receive any evidence that the mediator thinks desirable to resolve the dispute; and
  - (b) make any investigations and inquiries that the mediator thinks desirable to resolve the 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.

### **36 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) A mediator who resolves a dispute under subclause (1) 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 mediator's decision.

### **37 Cost of mediation**

Each party must pay its own costs in relation to the mediation.

### **38 Appeal to District Court**

- (1) A party to a dispute who is dissatisfied with the mediator's decision under clause 36 may appeal to a District Court against the decision.
- (2) The appeal must be brought by the filing of a notice of appeal—
  - (a) within 28 days after the making of the decision concerned; or
  - (b) within any longer time 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
  - (b) notify the appellant and the other parties to the dispute; and
  - (c) serve a copy of the notice of appeal on every other party to the dispute.
- (4) Every party to the dispute may appear and be heard at the hearing of the appeal.
- (5) The District Court may confirm, vary, or reverse the mediator's decision.

- (6) The filing of a notice of appeal does not operate as a stay of any process for the enforcement of the mediator's decision.

*Revocation*

**39 Revocation**

- (1) The Commodity Levies (Vegetables and Fruit) Order 2007 (SR 2007/161) is revoked.
- (2) Despite subclause (1), amounts of levy money that became payable to HortNZ before the commencement of this order under the Commodity Levies (Vegetables and Fruit) Order 2007 continue to be due and payable as if that order had not been revoked.

Rebecca Kitteridge,  
Clerk of the Executive Council.

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**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 June 2013, replaces the Commodity Levies (Vegetables and Fruit) Order 2007. The order imposes levies on—

- vegetables and fruit:
- fresh tomatoes:
- fresh vegetables:
- process vegetables.

The levies are payable to Horticulture New Zealand Incorporated.

Under section 12 of the Commodity Levies Act 1990, this order will be deemed to be revoked at the close of 30 June 2014 unless it is confirmed by an Act of Parliament passed on or before that date. If the order is confirmed, it will then be revoked 6 years after it is made, by virtue of section 13(1) of the Commodity Levies Act 1990, unless it is revoked or extended before then.

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2013/143

**Commodity Levies (Vegetables and  
Fruit) Order 2013**

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

Date of notification in *Gazette*: 16 May 2013.

This order is administered by the Ministry for Primary Industries.

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