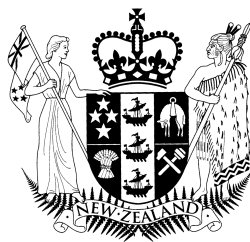


**Reprint
as at 18 August 2020**



Commodity Levies (Summerfruit) Order 2014

(LI 2014/278)

Commodity Levies (Summerfruit) Order 2014: revoked, on 18 August 2020, by clause 39 of the Commodity Levies (Summerfruit) Order 2020 (LI 2020/141).

Jerry Mateparae, Governor-General

Order in Council

At Wellington this 18th day of August 2014

Present:

The Right Hon John Key presiding in Council

Pursuant to section 4 of the Commodity Levies Act 1990, His Excellency the Governor-General makes the following order, acting—

- (a) on the advice and with the consent of the Executive Council; and
- (b) on the recommendation of the Minister for Primary Industries given in accordance with sections 5 and 6 of that Act.

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Note

Changes authorised by subpart 2 of Part 2 of the Legislation Act 2012 have been made in this official reprint.
Note 4 at the end of this reprint provides a list of the amendments incorporated.

This order is administered by the Ministry for Primary Industries.

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Order

1 Title

This order is the Commodity Levies (Summerfruit) Order 2014.

2 Commencement

This order comes into force on 29 September 2014.

Order: confirmed, on 11 December 2015, by section 10(d) of the Subordinate Legislation (Confirmation and Validation) Act 2015 (2015 No 119).

3 Interpretation

(1) In this order, unless the context otherwise requires,—

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

- (a) buying summerfruit from a commercial grower (other than through another collection agent) for resale, processing, or export; or
- (b) selling, processing, or exporting summerfruit on behalf of a commercial grower

commercial grower or **grower** means a person whose business is or includes producing summerfruit for commercial purposes

first point of sale, in the case of export for sale, means when the summerfruit is accepted for export by a licensed summerfruit exporter

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

Heinz Wattie's means Heinz Wattie's Limited

levy means the levy imposed by clause 4

levy year means,—

- (a) for the first levy year, the period starting on 29 September 2014 and ending on 31 August 2015;
- (b) for the final levy year, the period starting on 1 September 2019 and ending on 17 August 2020;
- (c) in every other case, a 1-year period starting on 1 September and ending on 31 August

notional process value means the amount of money (exclusive of GST and before the deduction of any costs or charges) that, in the opinion of SNZI, a commercial grower would reasonably have been expected to pay for summerfruit processed by the grower, if the grower had purchased the summerfruit for processing

processed includes bottled, canned, dehydrated, evaporated, dried, freeze-dried, frozen, juiced, pressed, or preserved,—

- (a) whether as summerfruit or as concentrate, pulp, puree, sauce, or some other product; and
- (b) whether alone or with other ingredients

selling price—

- (a) means the price at which the summerfruit is sold at the first point of sale (exclusive of GST and before the deduction of any costs or charges); and
- (b) includes—
 - (i) any other payment made to the grower by the purchaser in relation to the sale of the summerfruit:
 - (ii) the value, as determined by SNZI, of any goods or services provided free of charge or below market value to the grower by the purchaser in relation to the sale of the summerfruit

SNZI means Summerfruit New Zealand Incorporated

summerfruit means apricots, cherries, nectarines, peaches, and plums, and includes hybrids of those fruits.

- (2) Summerfruit processed over a period of more than a day must be treated, for the purposes of this order, as having been processed on the day the processing commenced.
- (3) A reference in this order to the payment or recovery of a levy must be read as including the payment or recovery of any GST payable on the levy.

Clause 3(1) **first point of sale**: inserted, on 6 December 2018, by clause 4(2) of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

Clause 3(1) **FOB value**: revoked, on 6 December 2018, by clause 4(1) of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

Imposition

4 **Imposition**

A levy is imposed on summerfruit grown by commercial growers for commercial purposes.

Exemption

5 **Certain summerfruit exempt from levy**

Summerfruit sold to Heinz Wattie's on contract for processing is exempt from the levy.

6 Suspension and revival of exemption

Suspension

- (1) If SNZI is satisfied that any of the requirements specified in subclause (2) are not met, SNZI may suspend the exemption described in clause 5.
- (2) The requirements are that—
 - (a) Heinz Wattie's imposes a research and development levy on summerfruit sold to it on contract for processing; and
 - (b) the rate of the research and development levy is equal to or greater than the relevant rate of levy set under this order; and
 - (c) Heinz Wattie's makes available to SNZI the research information arising from its use of the research and development levy.
- (3) Before suspending the exemption, SNZI must give Heinz Wattie's a reasonable opportunity to be heard on the matter.
- (4) If SNZI suspends the exemption,—
 - (a) SNZI must give written notice of the suspension and the date on which, in accordance with paragraph (b), the suspension takes effect; and
 - (b) the exemption ceases to apply on and from the date specified in the notice (which must be the first day of a month that starts at least 7 days after the date of publication of the notice in the *Gazette* under subclause (7)(d)).

Revival

- (5) If, having suspended the exemption, SNZI is satisfied that all of the requirements specified in subclause (2) are met, SNZI may revive the exemption with effect on and from the first day of any month.
- (6) If SNZI revives the exemption,—
 - (a) SNZI must give written notice of its revival and the date on which the exemption takes effect; and
 - (b) the exemption applies on and from the date specified in the notice.

Notice requirements

- (7) Written notice required under subclause (4) or (6) must be given—
 - (a) to Heinz Wattie's; and
 - (b) to the extent practicable (whether by newsletter or other means), to commercial growers who SNZI considers will be affected by the suspension or revival; and
 - (c) in an industry publication produced by SNZI; and
 - (d) in an issue of the *Gazette* that is published not earlier than the dates of the notices given under paragraphs (a) and (b).

*Amount***7 Calculation**

SNZI must calculate the levy for summerfruit sold in New Zealand as follows:

- (a) on the basis of the selling price of the summerfruit, for summerfruit sold in New Zealand as whole fresh fruit or exported as whole fresh fruit by, or on behalf of, the commercial grower:
- (b) on the basis of the notional process value of the summerfruit, for summerfruit processed by, or on behalf of, the commercial grower.

Clause 7: replaced, on 6 December 2018, by clause 5 of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

8 Rates

- (1) SNZI may set the levy at 2 different rates, as follows:
 - (a) a rate for apricots, nectarines, peaches, and plums (and any hybrids of those fruits):
 - (b) a rate for cherries.
- (2) The rate for apricots, nectarines, peaches, and plums (and any hybrids of those fruits) must not exceed 1.75% of the selling price or the notional process value, as the case may be.
- (3) The rate for cherries must not exceed 1% of the selling price or the notional process value, as the case may be.
- (4) SNZI must fix the actual rates of the levy for the first levy year in accordance with its rules.
- (5) For each subsequent levy year, SNZI must set the actual levy rates at either of the following meetings held before the start of the levy year:
 - (a) the annual general meeting:
 - (b) a special general meeting called for the purpose.
- (6) If SNZI does not set the actual levy rate for a levy year, the levy rate currently applying continues to apply.

Clause 8(2): amended, on 6 December 2018, by clause 6(1) of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

Clause 8(3): amended, on 6 December 2018, by clause 6(2) of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

9 Notification

- (1) SNZI must notify the actual levy rates—
 - (a) in the *Gazette*; and
 - (b) in an industry publication produced by SNZI; and
 - (c) on SNZI's Internet site.

- (2) SNZI must notify the actual levy rates as soon as practicable after setting them.

Payment

10 Payee

The levy is payable to SNZI.

11 Payers

- (1) Commercial growers are primarily responsible for paying the levy.
- (2) If a commercial grower uses a collection agent, the agent must pay the levy.
- (3) The collection agent may charge SNZI a collection fee of not more than 4% of the levy payable (exclusive of GST) plus the GST payable on the fee by deducting the fee plus GST before paying the levy to SNZI.
- (4) The collection agent may recover the levy on summerfruit bought from the commercial grower by deducting the amount of the levy from the payment made to the commercial grower for the summerfruit.
- (5) The collection agent may recover the levy on summerfruit sold, processed, or exported on the commercial grower's behalf by recovering the amount of the levy as a debt due from the grower.

12 Conscientious objection to payee

If a commercial grower or collection agent objects on conscientious or religious grounds to paying the levy to SNZI,—

- (a) the grower or agent must pay the equivalent amount to the Director-General of the Ministry for Primary Industries; and
- (b) the Director-General must pay the amount to SNZI.

13 Information to determine payment

- (1) For the purpose of determining the amount of levy payable by a commercial grower, every grower who sells, processes, or exports the grower's own summerfruit in any month must, in relation to each fruit type, provide to SNZI, with the amount of levy for the month, written notice of—
 - (a) the selling price and quantity of summerfruit sold by the grower; and
 - (b) the notional process value and quantity of summerfruit processed for sale by the grower; and
 - (c) the selling price and quantity of summerfruit exported by the grower.
- (2) For the purpose of determining the amount of levy payable by a collection agent, every agent who buys summerfruit from a commercial grower or sells, processes, or exports summerfruit on behalf of a grower in any month must, in relation to each fruit type, provide to SNZI, with the amount of levy for the month, written notice of—

- (a) the full name and contact details of the grower from whom the summerfruit was bought; and
 - (b) the purchase price and quantity of summerfruit bought from the grower; and
 - (c) the quantity of summerfruit sold, processed, or exported by the agent on behalf of the grower and the price paid for, or the value placed on, that quantity; and
 - (d) the amount of levy collected and paid to SNZI in relation to that quantity; and
 - (e) the amount of collection fee deducted in relation to that quantity (if any); and
 - (f) the rate at which the levy was calculated.
- (3) SNZI may request a commercial grower or a collection agent to provide any other information that SNZI reasonably requires in order to determine the levy that the grower or agent must pay.
 - (4) SNZI must make the request by email or post.
 - (5) The grower or agent must provide the requested information as soon as practicable.

Clause 13(1)(c): replaced, on 6 December 2018, by clause 7 of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

14 Due and latest dates for payment

- (1) The due date for payment of the levy to SNZI is—
 - (a) the date of sale, in the case of summerfruit sold—
 - (i) by the commercial grower; or
 - (ii) by an agent on behalf of the grower; or
 - (b) the date of processing, in the case of summerfruit—
 - (i) processed without having been sold by the commercial grower; or
 - (ii) processed by a collection agent on behalf of the grower; or
 - (c) the date of export, in the case of summerfruit exported—
 - (i) by the commercial grower; or
 - (ii) by a collection agent on behalf of the grower.
- (2) The latest date for payment of the levy is the 20th day of the month after the month in which the due date occurs.

15 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, the following amounts must be paid to SNZI in addition to the amount otherwise payable:

- (a) 5% of the amount of the unpaid levy:
- (b) 2% of the amount of the unpaid levy (excluding additional levies owing under this clause) for each month that the amount is outstanding.

Spending

16 Purposes

- (1) SNZI must spend all levy paid to it for the following purposes relating to summerfruit or the growing of summerfruit:
 - (a) product development:
 - (b) research, including market research:
 - (c) market development:
 - (d) protection or improvement of plant health:
 - (e) development and implementation of quality assurance programmes:
 - (f) education, information, or training:
 - (g) day-to-day administration of SNZI.
- (2) SNZI must not spend any levy money on commercial or trading activities.
- (3) SNZI must invest the levy until it spends the levy.

17 Consultation

- (1) SNZI must consult commercial growers who pay the levy on how it proposes to spend the levy.
- (2) For the purposes of subclause (1), SNZI must consult growers who pay the levy—
 - (a) at its annual general meeting:
 - (b) at any special general meeting called for that purpose.
- (3) For the purposes of subclause (2), SNZI must—
 - (a) distribute to growers the account records for the levy in the previous levy year and the spending proposals for the following levy year:
 - (b) allow growers who pay the levy and who attend the meeting to speak on all matters relating to the spending of the levy money.

Records

18 Commercial growers

- (1) A commercial grower must collect the following information for each levy year:
 - (a) the selling price and quantity of each type of summerfruit sold by the grower to someone other than a collection agent; and

- (b) the notional process value and quantity of each type of summerfruit processed by the grower; and
 - (c) the selling price and quantity of each type of summerfruit exported by the grower; and
 - (d) the name and contact details of each collection agent to whom the grower has sold summerfruit, or who has sold, processed or exported summerfruit on the grower's behalf; and
 - (e) the selling price and quantity of each type of summerfruit sold to an agent; and
 - (f) the selling price and quantity of each type of summerfruit sold by an agent on behalf of the grower; and
 - (g) the notional process value and quantity of each type of summerfruit processed by an agent on behalf of the grower; and
 - (h) the selling price and quantity of each type of summerfruit exported by an agent on behalf of the grower; and
 - (i) the amount of levy money paid by the grower to SNZI; and
 - (j) the rate or rates at which the levy was paid to SNZI.
- (2) The grower must keep the information for at least 2 years after the date on which the levy is paid to SNZI.

Clause 18(1)(c): amended, on 6 December 2018, by clause 8(1) of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

Clause 18(1)(h): amended, on 6 December 2018, by clause 8(2) of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

19 Collection agents

- (1) A collection agent must collect the following information for each levy year:
- (a) the name and contact details of each commercial grower from whom the agent bought summerfruit, or on whose behalf the agent sold, processed, or exported summerfruit; and
 - (b) the selling price and quantity of each type of summerfruit bought by the agent from a grower; and
 - (c) the selling price and quantity of each type of summerfruit sold by the agent on behalf of a grower; and
 - (d) the notional process value and quantity of each type of summerfruit processed by the agent on behalf of a grower; and
 - (e) the selling price and quantity of each type of summerfruit exported by the agent on behalf of a grower; and
 - (f) the amount of money paid to each grower for summerfruit, the date of payment, the rate at which the levy was deducted, and the amount deducted; and

- (g) the amount of levy paid by the agent to SNZI and the date of payment;
and
 - (h) the amount of the collection fee deducted (if any).
- (2) The agent must keep the information for at least 2 years after the date on which the levy is paid to SNZI.

Clause 19(1)(e): amended, on 6 December 2018, by clause 9 of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

20 SNZI

- (1) SNZI must collect the following information for each levy year:
- (a) each amount of levy paid to it:
 - (b) when the amount of levy was paid to it:
 - (c) who paid the amount of levy:
 - (d) how it spent or invested all levy paid to it:
 - (e) the selling price or notional process value of all summerfruit in relation to which a levy was paid.
- (2) SNZI must keep the information for at least 2 years after the date on which the levy is paid to SNZI.

Clause 20(1)(e): amended, on 6 December 2018, by clause 10 of the Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216).

21 Confidentiality

- (1) This clause applies to information obtained—
- (a) under the Commodity Levies Act 1990 in relation to this order; or
 - (b) under or because of this order.
- (2) An officer or employee of SNZI, or any person involved in collecting the levy, must not disclose the information to anyone other than an officer or employee of SNZI.
- (3) However, SNZI may disclose the information—
- (a) for any of the following purposes:
 - (i) the production of records or accounts under section 17(1) of the Commodity Levies Act 1990:
 - (ii) the production of a statement under section 25 of the Commodity Levies Act 1990:
 - (iii) the giving of evidence in legal proceedings taken under or in relation to this order:
 - (iv) determining the voting entitlements of commercial growers:
 - (v) counting the votes of commercial growers:

- (vi) statistical and research purposes that do not involve the disclosure of personal information:
- (vii) invoicing for and collecting levies:
- (b) with the consent of every identifiable person to whom it relates:
- (c) if the disclosure is required by law.

Disputes

22 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 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 29.

23 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).

24 Conferences under control of mediators

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 email or post; and
- (c) preside at the conference.

25 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.

26 Conferences to be held in private

Only the parties to a dispute, the mediator, and representatives the mediator allows to attend may attend a conference organised by the mediator.

27 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.

28 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.

29 Mediators may resolve disputes 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 the decision.
- (3) The parties must comply with the mediator's decision.

30 Cost of mediation

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

31 Appeal to District Court

- (1) A party to a dispute who is dissatisfied with the mediator's decision 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 of 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) Each 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.

*Compliance audits***32 Remuneration of auditors**

SNZI must remunerate a person appointed as an auditor under section 15 of the Commodity Levies Act 1990 at a rate determined by the Minister for Primary Industries after consultation with SNZI.

Michael Webster,
Clerk of the Executive Council.

Reprints notes

1 *General*

This is a reprint of the Commodity Levies (Summerfruit) Order 2014 that incorporates all the amendments to that order as at the date of the last amendment to it.

2 *Legal status*

Reprints are presumed to correctly state, as at the date of the reprint, the law enacted by the principal enactment and by any amendments to that enactment. Section 18 of the Legislation Act 2012 provides that this reprint, published in electronic form, has the status of an official version under section 17 of that Act. A printed version of the reprint produced directly from this official electronic version also has official status.

3 *Editorial and format changes*

Editorial and format changes to reprints are made using the powers under sections 24 to 26 of the Legislation Act 2012. See also <http://www.pco.parliament.govt.nz/editorial-conventions/>.

4 *Amendments incorporated in this reprint*

Commodity Levies (Summerfruit) Order 2020 (LI 2020/141): clause 39

Commodity Levies (Summerfruit) Amendment Order 2018 (LI 2018/216)

Subordinate Legislation (Confirmation and Validation) Act 2015 (2015 No 119): section 10(d)