

[In Confidence]

Office of the Minister of Agriculture  
Chair, Cabinet Legislation Committee

## **Commodity levy orders on avocados and potatoes under the Commodity Levies Act 1990**

### **Proposal**

1. This paper recommends that the Cabinet Legislation Committee (the Committee) authorise the submission of the following commodity levy orders to the Executive Council:
  - a. Commodity Levies (Avocados) Order 2019; and
  - b. Commodity Levies (Potatoes) Order 2019.
2. Commodity levy orders made under the Commodity Levies Act 1990 (the Act) are submitted directly to the Committee without receiving prior Cabinet policy approval. This is because the Act specifies all of the policy criteria that need to be met for the making of an order.

### **Background**

#### *The Commodity Levies Act 1990*

3. The Act enables primary industries to collectively fund non-commercial, 'industry-good' activities such as research and development through their national representative bodies. The Act provides for the responsible Minister to impose a mandatory levy on a commodity at the request of an industry organisation, provided that there is sufficient support from potential levy payers in that industry. Commercial growers are primarily responsible for paying the levy.
4. Commodity levy orders, the instruments responsible for imposing a levy, are initiated and developed by industry organisations and last a maximum of six years. Levy orders set the maximum levy rates payable and specify the purposes for which levy funds may be spent. Industry organisations determine how the levies are spent and at what rate they are collected through annual consultation with levy payers.
5. The Act sets out a number of requirements that I, as responsible Minister, must be satisfied have been met before recommending the making of an order. These include:
  - a. that a support referendum for the proposed levy was held, in which over half of those who participated in the referendum supported the proposed levy;
  - b. that the referendum was adequately publicised, including meaningful consultation with potential levy payers to ensure that they were aware of the referendum's implications and were able to participate;
  - c. that the referendum was competently devised; and

- d. that the uses of the levy funds relate closely to the interests of potential levy payers.
6. The Ministry for Primary Industries (MPI) currently administers 29 commodity levy orders that together collect around \$130 million per year. Industries included span the agriculture, horticulture, viticulture, fisheries and forestry sectors.

## Policy

### *The proposed levy orders*

7. In December 2018, I received applications for two commodity levy orders under the Act, detailed below:

**Table 1: Commodities to be levied and applicant organisations**

Commodity	Applicant organisation
Avocados	New Zealand Avocado Growers Association Incorporated (NZ Avocado)
Potatoes	Potatoes New Zealand Incorporated (Potatoes NZ)

8. The proposed orders will replace the Commodity Levies (Avocados) Order 2013 and the Commodity Levies (Potatoes) Order 2013. These orders expire on 10 June 2019 and 12 May 2019 respectively.
9. The proposed levy order on avocados includes no material changes to the existing order. The proposed levy order on potatoes is similar to the existing order, with some minor changes:
- a. changing the basis of calculation for the levy on exported potatoes from 'Free on Board' (FOB) value to gross sales value at the first point of sale. This will mean that domestic and export potatoes are levied on the same basis. Currently, exporters are paying a higher amount of levy as FOB value includes costs such transportation, customs and handling fees; and
  - b. the protection or improvement of potato plant health, including by way of biosecurity readiness and response, has been included as an additional purpose for which the levy may be spent.
10. The maximum levy rates for both orders are to remain unchanged from the current orders. Table 2 below details these rates and provides further information on the proposed levies.

**Table 2: Key information regarding the proposed levies**

<b>Applicant organisation</b>	<b>Number of growers</b>	<b>Maximum levy rate</b>	<b>Levy rate for 2019/20</b>	<b>Estimated levy income 2019/20</b>
NZ Avocado	1,800	<u>Domestic</u> : 3% of sales value <u>Export</u> : 50c per tray	<u>Domestic</u> : 3% of sales value <u>Export</u> : 35c per tray	\$3.2 million
Potatoes NZ	170	1% of sales value	0.85% of sales value	\$1.55 million

*Compliance with the requirements of the Act*

11. A key requirement of the Act is that the proposed levy orders have the majority support of potential levy payers, in terms of both number of voters and on a weighted basis. Table 3 below shows that in referenda held by each organisation, the majority of growers who voted supported the proposed levies.

**Table 3: Summarised referenda results**

<b>Commodity</b>	<b>Yes vote – by percentage of growers</b>	<b>Yes vote – by percentage of weighted vote</b>	<b>Overall participation rate</b>
Avocados	80% (domestic) 88% (export)	82% (trays exported) 88% (trays exported)	25%
Potatoes	82%	89% (production value)	41%

12. Potatoes NZ's referendum had a participation rate of 41 percent while NZ Avocado's referendum had a participation rate of 25 percent. The average participation rate for all commodity levy referenda over the past six years is 39 percent. The Act does not specify a minimum participation rate.
13. I consider that both industry organisations made considerable efforts to consult with potential levy payers about the levy proposal, and publicise the holding of the support referendum. I therefore consider that the low participation rates in the referenda are unlikely to be a consequence of potential levy payers being uninformed about the referenda.
14. MPI has examined the structure of the ballot material and results from the independent returning officer, and has advised me that the support referenda were competently devised, sufficiently publicised and distributed, and that all potential levy payers had been given a reasonable opportunity to vote.
15. I am satisfied that both applications meet all the requirements of the Act. I therefore recommend that the Committee authorise the submission of these orders to the Executive Council.
16. More detailed analysis of each commodity levy order application is provided in the attached appendices:

- a. Appendix One: Commodity Levies (Avocados) Order 2019; and
- b. Appendix Two: Commodity Levies (Potatoes) Order 2019.

### **Timing and 28-day rule**

17. Both orders are to come into force on 10 June 2019, following 28 days of Gazette notification.

### **Compliance**

18. The proposed levy orders comply with the following:
  - the principles of the Treaty of Waitangi;
  - the rights and freedoms contained in the New Zealand Bill of Rights Act 1990 and the Human Rights Act 1993; and
  - the principles and guidelines set out in the Privacy Act 1993.

### **Regulations Review Committee**

19. I consider that there are no grounds under Standing Order 319 for the proposed orders to be brought to the special attention of the House of Representatives.

### **Certification by Parliamentary Counsel**

20. The commodity levy orders detailed in this paper have been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

### **Impact Analysis**

21. The Regulatory Quality Team at the Treasury has determined the regulatory decisions sought in this paper to be exempt from the requirement to provide a Regulatory Impact Assessment, due to the minor impact of the proposed levies on individuals, businesses and not-for-profit entities.

### **Publicity**

22. MPI will notify NZ Avocado and Potatoes NZ when the orders are made, who will then publicise the making of these orders to their levy payers.

### **Proactive Release**

23. Following Cabinet consideration, I intend to consider the release of this paper in full.

### **Consultation**

24. The Ministry of Business, Innovation and Employment, the Treasury, and Te Puni Kōkiri were consulted on this paper and their feedback has been incorporated. The Department of the Prime Minister and Cabinet was also informed. NZ Avocado and Potatoes NZ were also consulted during the drafting of the levy orders.

## Recommendations

The Minister of Agriculture recommends that the Committee:

1. **Note** that the New Zealand Avocado Growers Association Incorporated has applied for a new levy order on avocados under the Commodity Levies Act 1990, to replace the Commodity Levies (Avocados) Order 2013, which expires on 10 June 2019;
2. **Note** that Potatoes New Zealand Incorporated has applied for a new levy order on potatoes under the Commodity Levies Act 1990, to replace the Commodity Levies (Potatoes) Order 2013, which expires on 12 May 2019;
3. **Note** that I have determined that both applications comply with the requirements of the Commodity Levies Act 1990;
4. **Note** that these orders will come into force on 10 June 2019; and
5. **Authorise** the submission of the following commodity levy orders to the Executive Council:
  - a. Commodity Levies (Avocados) Order 2019; and
  - b. Commodity Levies (Potatoes) Order 2019.

Authorised for Lodgement

Hon Damien O'Connor  
Minister of Agriculture

## Appendix One: Commodity Levies (Avocados) Order 2019

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### *Industry background*

1. Avocados are New Zealand's third largest horticultural export (excluding wine), generating over \$147 million in export revenue in 2017. Around 75 percent of avocados grown in New Zealand are exported.
2. The industry is comprised of approximately 1,800 commercial growers, who collectively manage over 4,000 hectares of mainly Hass variety avocados. Avocados are primarily grown in the Bay of Plenty and Northland.

### *The proposed levy order*

3. The proposed levy will be imposed on all avocados grown in New Zealand for commercial purposes. The levy is payable to NZ Avocado, who will spend levy funds on behalf of levy payers.
4. The levy will be calculated on two different bases:
  - a. For avocados intended for domestic consumption - the levy will be calculated on the sales value (excluding GST) at the first point sale, before the deduction of any costs or charges; and
  - b. For avocados exported from New Zealand – the levy will be calculated on the number of kilograms exported, calculated by reference to 5.5kg tray equivalents.
5. The maximum levy rates for both avocados intended for domestic consumption and export avocados will remain unchanged from the current order. Table 1 below shows the maximum and initial levy rates under the proposed levy order.

**Table 1: Maximum and initial levy rates**

Market	Basis	Maximum levy rate	Levy rate for the initial levy year
Domestic	Sales value	3%	3%
Export	Per tray exported	50 cents	35 cents

6. For every year subsequent to the initial levy year, the levy rate will be set at NZ Avocado's Annual General Meeting or Special General Meeting, to be held prior to the commencement of the levy year (year ended 30 April).
7. Under the proposed order, NZ Avocado estimates that it will collect approximately \$3.2 million in levy revenue in the initial levy year.

### *Use of levy funds*

8. Levy monies collected under the proposed order will be used for a number of non-commercial, industry-good purposes relating to the avocado industry.

These include:

- a) administration of NZ Avocado;
  - b) industry communications;
  - c) promotion, market access and market development;
  - d) research, development and extension;
  - e) biosecurity; and
  - f) quality management systems.
9. Levy payers will be consulted prior to each levy year on NZ Avocado's proposed levy expenditure for the upcoming year.

#### *Cost and benefits of the levy*

10. The proposed levy will allow NZ Avocado to continue to deliver its industry-good activities, which notably include:
  - a. grower representation;
  - b. publication of the AvoScene industry magazine;
  - c. supporting market access and development, including ensuring food safety and phytosanitary requirements continue to be met;
  - d. research into cultivar development; and
  - e. protection and improvement of avocado tree health.
11. I consider that the proposed order will provide benefits that significantly outweigh the costs imposed by the levy. This sentiment is endorsed by strong support from those who voted in the levy referendum, which indicates that the majority of those who voted believe there will be a net benefit from the continuation of a compulsory levy.
12. The activities undertaken by NZ Avocado are industry-good in nature. It is therefore difficult to restrict the benefits of these activities to strictly those paying the levy. There is therefore a clear free-rider problem if these activities were to be funded by a voluntary levy. I consider that the activities undertaken by NZ Avocado would not be possible or would be underprovided if the levy were to be collected on a voluntary basis.

#### *Support for the levy proposal*

13. NZ Avocado held a support referendum for the proposed levy over September-October 2018, through online and postal voting. Ballot papers were posted on 1 September 2018, with voting closing on 2 October 2018. This allowed roughly four weeks for growers to vote.
14. The Act requires that the proposed order has the majority support of those who voted in the levy referendum, in terms of both number of voters and on a weighted basis. Tables 2 and 3 below show that the majority of growers who participated in the referendum supported the proposed levy.

**Table 2: Support for a compulsory levy on avocados grown and sold for consumption in New Zealand.**

<i>Vote</i>	<i>Number of growers</i>		<i>Production volume</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Number of 5.5kg Trays</i>	<i>Percentage</i>
Yes	355	80%	530,000	82%
No	90	20%	115,000	18%
Total	445	100%	645,000	100%

**Table 3: Support for a compulsory levy on avocados grown in New Zealand and exported.**

<i>Vote</i>	<i>Number of growers</i>		<i>Production volume</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Number of 5.5kg Trays</i>	<i>Percentage</i>
Yes	392	88%	1,128,000	88%
No	53	12%	161,000	12%
Total	445	100%	1,289,000	100%

## **Appendix Two: Commodity Levies (Potatoes) Order 2019**

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### *Industry background*

1. Potatoes are New Zealand's largest horticultural crop in terms of production hectares and volumes produced. Potatoes are grown primarily for the domestic market, with 94 percent of potatoes harvested in 2016 being consumed or processed in New Zealand.
2. The industry is made up of approximately 170 commercial growers who collectively employ around 2,500 workers. In 2017, the industry generated \$982 million in sales revenue.

### *The proposed levy order*

3. The proposed levy will be imposed on all potatoes grown in New Zealand for commercial purposes. The levy is payable to Potatoes NZ, who will spend levy funds on behalf of levy payers.
4. The levy will be charged at a single rate. The maximum rate of the levy will remain at one percent of the gross sale value at the first point of sale, or notional process value in the case of potatoes processed prior to the first point of sale. The actual levy rate for the initial 2019-2020 levy year will also remain unchanged at 0.85 percent.
5. For every year subsequent to the initial levy year, the levy rate will be set at Potatoes NZ's Annual General Meeting or Special General Meeting, to be held prior to the commencement of the levy year (year ended 30 September).
6. Under the proposed order, Potatoes NZ estimates that it will collect approximately \$1.55 million in levy revenue in the initial levy year.

### *Use of levy funds*

7. Levy monies collected under the proposed order will be used to fund a number of non-commercial, industry-good activities relating to the potato industry. These include:
  - a) research and development;
  - b) market development and promotion;
  - c) development of quality assurance;
  - d) education and training;
  - e) information and communication;
  - f) protection or improvement of the health of potato plant, including by way of biosecurity readiness and response;
  - g) grower representation; and
  - h) the day-to-day administration of Potatoes NZ.

8. Levy payers will be consulted prior to each levy year on Potatoes NZ's proposed levy expenditure for the upcoming year.

*Cost and benefits of the levy*

9. The proposed levy will allow Potatoes NZ to continue to deliver its industry-good activities, outlined in paragraph 7 above.
10. I consider that the proposed order will provide benefits that significantly outweigh the costs imposed by the levy. This sentiment is endorsed by strong support from those who voted in the levy referendum, which indicates that the majority of those who voted believe there will be a net benefit from the continuation of a compulsory levy.
11. The activities undertaken by Potatoes NZ are industry-good in nature. It is therefore difficult to restrict the benefits of these activities to strictly those paying the levy. There is therefore a clear free-rider problem if these activities were to be funded by a voluntary levy. I consider that the activities undertaken by Potatoes NZ would not be possible or would be underprovided if the levy were to be collected on a voluntary basis.

*Support for the levy proposal*

12. Potatoes NZ held a support referendum for the proposed levy over April-May 2018, through online and postal voting. Ballot papers were posted on 23 April 2018, with voting closing on 25 May 2018. This allowed just over four weeks for growers to vote.
13. The Act requires that the proposed order has the majority support of those who voted in the levy referendum, in terms of both number of voters and on a weighted basis. Table 1 below shows that of those growers who participated in the referendum, 82 percent supported the proposed levy order (89 percent by production value).

**Table 1: Results of the Potatoes NZ levy referendum**

<i>Vote</i>	<i>Number of growers</i>		<i>Value of production</i>	
	<i>Number</i>	<i>Percentage</i>	<i>Value (\$)</i>	<i>Percentage</i>
Yes	58	82%	\$95,400,000	89%
No	13	18%	\$12,320,000	11%
Total	71	100%	\$107,720,000	100%