

New Zealand Horticulture Export Authority (Walnuts) Order 2019

Proposal

1. This paper recommends that the Cabinet Legislation Committee (the Committee) authorise the submission of the New Zealand Horticulture Export Authority (Walnuts) Order 2019 (the Order) to the Executive Council.
2. The Order declares walnuts a prescribed product under the New Zealand Horticulture Export Authority Act 1987 (the Act), and establishes the Walnut Industry Group Incorporated (the Industry Group) as the recognised product group for walnut exporting under the Act.
3. The Order has been submitted directly to the Committee without receiving prior Cabinet policy approval. This is because the Act specifies the policy criteria that need to be met for the making of an Order.

Background

The New Zealand Horticulture Export Authority Act 1987

4. The Act established the New Zealand Horticulture Export Authority (the Authority). The primary function of the Authority is to promote the effective export marketing of New Zealand's horticultural products prescribed under the Act.
5. The Act provides a regulatory framework for export licensing, which horticultural product groups can choose to opt into via an Order in Council. Once under the Act, only licensed exporters can export that product, with licences granted to exporters who comply with the industry-agreed export marketing strategy for that product.
6. The Act allows product groups to apply minimum grade standards across industry exports, enabling New Zealand producers and exporters to protect and enhance the reputation of their products in overseas markets and better manage risks to market access. The framework also facilitates greater coordination and collaboration between producers and exporters through industry-agreed export marketing strategies.
7. The Authority undertakes three core functions:
 - a. considering and approving product groups' export marketing strategies;
 - b. granting export licences to exporters who meet industry-agreed standards; and
 - c. monitoring and enforcing exporters' compliance with product groups' export marketing strategies.

8. There are currently 85 export licences held across nine recognised product groups under the Act. Notable industries under the Act include: avocados, summerfruit, buttercup squash, and kiwifruit to Australia.

The New Zealand Walnut Industry

9. The New Zealand walnut industry is small, with around 500 hectares in planted area, mostly in and around the Canterbury region. Walnuts are largely produced for the domestic market, with an estimated farm gate value of NZ\$1.6 million in 2018.
10. The industry has seen significant expansion in the last ten years, with annual production having increased from approximately 45 tonnes in 2008 to an estimated 220 tonnes in 2018. The Industry Group has forecast this to rise to around 400 tonnes by 2023.
11. The value of walnut exports has averaged around NZ\$32,000 a year over the last six years. The Industry Group has estimated that this will rise to over NZ\$400,000 by 2025, as plantings come into commercial productivity.

Policy

The proposed Order

12. In February 2019, I received an application from the Walnut Industry Group (Industry Group) for an Order in Council recognising walnuts as a prescribed product, and declaring the Industry Group as the recognised product group for walnut exporting under the Act.
13. The Industry Group wish to protect the reputation of New Zealand produced walnuts in international markets by using the Act to set and enforce minimum quality standards.
14. The Industry Group is concerned about the reputational damage that the export of lower-quality walnuts may have on the industry. While this is not a significant issue currently given the small volume of walnuts exported, it is important to the industry that a robust export regime is in place, particularly as walnut exports are projected to rise significantly in the next five years.
15. All New Zealand produced walnuts of any tree of the genus *Juglans* (family *Juglandaceae*) will be included as a prescribed product in the Order. This includes fresh, frozen and chilled walnuts (shelled and unshelled) but excludes further processed walnut products and imported walnuts.

Costs and benefits

16. Under the Section 34 of the Act, only licensed exporters will be able to export walnuts from New Zealand. Licensed exporters will be required to meet the industry-agreed export marketing strategy for walnut exporting, approved by the Authority. Minimum quality standards are key to every export marketing strategy under the Act.
17. The proposed Order will also enable the industry to include country of origin labelling and traceability requirements as part of its export marketing strategy. The Industry Group has previously raised concerns with the Ministry for Primary Industries (MPI) about the import of poorer quality walnuts which are subsequently re-packaged and exported as New Zealand product.
18. The Authority has indicated that, given the small volume of walnut exports, walnut exporters will initially be eligible for a licence exemption under Section 40 of the Act. A licence exemption is provided in situations where it is not practical or appropriate to undergo the full licence application process, and allows exporters to 'test the market' by exporting a small volume of product.
19. The cost of a licence exemption under the New Zealand Horticulture Export Authority (Fees and Levies) Regulations 2017 (the Regulations) is currently NZ\$400 per annum. The likely cost of a full export licence for walnut growers would otherwise work out to approximately NZ\$500 per annum.
20. Under the Regulations, the Industry Group must pay a minimum annual levy of NZ\$500 to the Authority. While the majority of walnut producers are likely to meet any minimum standards set in the export marketing strategy, there may be costs imposed on producers who may need to improve their orchard management and quality assurance systems to meet these standards.
21. Section 33 of the Act states that the Industry Group may at any time request that the Order be revoked. For the Order to be revoked, the Minister must be satisfied that the producers and exporters of the product support the revocation, or that it is no longer in the interest of the export marketing of that product or wider public interest for that product to continue to be a prescribed product.

Statutory requirements for declaring a prescribed product

22. Under Section 25 of the Act, I must be satisfied that the following conditions have been met before recommending that walnuts be declared a prescribed product:
 - a. that the product group has asked that I make the recommendation;
 - b. that I am satisfied that the producers and exporters of the product support the making of the recommendation;
 - c. that I am satisfied that the product group would be suitable to carry out the functions of a recognised product group under the Act; and
 - d. that I have decided whether one or more varieties or cultivars should be excluded from the product.

Request made by the product group

- 23.** On 13 February 2019, I received a letter from Nelson Hubber, the immediate past Chairman of the Industry Group, requesting that I recommend the making of an Order in Council recognising walnuts as a prescribed product, and declaring the Industry Group as the recognised product group for walnut exporting under the Act.

Support for the proposed Order

- 24.** Section 25(A) of the Act requires the proposed Order to be supported by at least 60 percent of producers (producing at least 60 percent of the product) and 60 percent of exporters (exporting at least 60 percent of the product) who participated in a vote.
- 25.** A vote of support for the proposed Order was held at the Industry Group's Annual General Meeting (AGM) in September 2018. Voters had the opportunity to vote in person or electronically. The Order received the unanimous support of all 37 participants who voted (out of 79 members identified in the Industry Group's database)¹. The participation rate for the vote was 47 percent.
- 26.** The Industry Group made considerable efforts to inform producers and exporters about the holding and nature of the vote. Efforts undertaken by the Industry Group include:
- a.** circulating voting forms to all of its members prior to the AGM;
 - b.** sending letters to potential exporters informing them of the vote;
 - c.** following up with those producers and exporters that did not attend the AGM; and
 - d.** placing a public notice in the *Christchurch Press* to give producers and exporters not on the Industry Group's database an opportunity to vote.
- 27.** MPI has examined the voting process used by the Industry Group. Based on MPI's advice I consider that the process was properly and fairly conducted, and that the vote sufficiently demonstrated that walnut producers and exporters support the Order.

Suitability to carry out functions of a recognised product group

- 28** Section 25(2) outlines a number of considerations that I must have regard to in assessing the suitability of the Industry Group to act as a recognised product group under the Act, including:
- a.** the size and nature of its membership;
 - b.** the extent to which it fairly represents the full range of producer and exporter interests;

¹ Although the Industry Group made considerable efforts to inform potential exporters, no votes were received by current walnut exporters. This may be due to the low volumes of walnut exports concerned. It is MPI's view that despite this, the Industry Group's application still meets the requirements of the Act, as current and potential exporters were provided a reasonable opportunity to vote.

- c. the existence, size and nature of other bodies which represent the walnut industry; and
 - d. the views of the Authority on the Industry Group's suitability as a recognised product group under the Act.
29. The Industry Group's rules allow for membership of both walnut producers and exporters. I am not aware of any other group representing the New Zealand walnut industry.
30. The Authority wrote to me in February 2019, to express its support for the Industry Group's application. The Authority considers the Industry Group suitable to be a recognised product group under the Act, and considers there to be sufficient benefit to the industry from coming under the Authority structure.

Exclusion of varieties and cultivars

31. No varieties or cultivars will be excluded. All New Zealand produced walnuts of any tree of the genus *Juglans* (family *Juglandaceae*) will be included as a prescribed product in the Order.
32. I am satisfied that the Industry Group's application meets all the requirements of the Act. I therefore recommend that the Committee authorise the submission of the Order to the Executive Council.

Timing and 28-day rule

33. If approved by Cabinet, the Order is to come into force on 1 August 2019, following 28 days of Gazette notification.

Compliance

34. MPI has assessed that the Order complies with:
 - 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

35. 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

36. The Order has been certified by the Parliamentary Counsel Office as being in order for submission to Cabinet.

Impact Analysis

37. The Regulatory Quality Team at the Treasury has determined that the regulatory decisions sought in this paper are exempt from the requirement to provide a Regulatory Impact Assessment as they have no or minor impacts on individuals, businesses and not for-profit entities.

Publicity

38. MPI will notify the Industry Group when the Order is made, who will then publicise the making of the Order to members of the walnut industry. The Authority will also be notified at this point.

Proactive Release

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

Consultation

2. The Ministry of Business, Innovation and Employment, the Treasury, Te Puni Kōkiri, and the Ministry of Foreign Affairs and Trade were consulted on this paper and their feedback has been incorporated. The Department of the Prime Minister and Cabinet was also informed. The Industry Group and the Authority were consulted during the drafting of the Order.

Recommendations

The Minister of Agriculture recommends that the Committee:

1. **Note** that the Walnut Industry Group Incorporated has submitted an application for an Order in Council under the New Zealand Horticulture Export Authority Act 1987 (the Act), which will:
 - a. declare walnuts a prescribed product under the Act; and
 - b. declare the Walnut Industry Group Incorporated as the recognised product group for walnut exporting under the Act;
2. **Note** that I have determined that the Walnut Industry Group Incorporated's application meets the requirements of the Act;
3. **Note** that the proposed Order is to come into force on 1 August 2019; and
4. **Authorise** the submission of the New Zealand Horticulture Export Authority (Walnuts) Order 2019 to the Executive Council.

Authorised for Lodgement

Hon Damien O'Connor
Minister of Agriculture