

In Confidence

Office of the Minister of Agriculture
Chair, Cabinet Legislation Committee

Commodity Levies (Strawberries) Order 2020

Proposal

1. This paper recommends that the Cabinet Legislation Committee (the Committee) authorise the submission of the Commodity Levies (Strawberries) Order 2020 (the Order) to the Executive Council.
2. This is a new commodity order which would replace the voluntary funding arrangements that Strawberry Growers New Zealand Incorporated currently have in place. The proposed order would come into effect on 1 April 2020.
3. Commodity levy orders made under the Commodity Levies Act (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

4. 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 majority support from potential levy payers in that industry. Commercial growers are primarily responsible for paying the levy.
5. 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 the levy funds may be spent. Industry organisations determine how the levies are spent within the purposes specified, and what levy rates will be set at through annual consultation with levy payers.
6. The Act requires that the proposed levy is supported by the majority of voting levy payers in a support referendum, that the referendum was competently devised and publicised, and the use of levy funds relate closely to the interests of potential levy payers.
7. The Ministry for Primary Industries (MPI) currently administers 32 commodity levy orders that together collect around \$130 million per year. Industries included span the agriculture, horticulture, viticulture, fisheries and forestry sectors.

The New Zealand Strawberry Industry

8. The New Zealand Strawberry industry is made up of 163 commercial growers, who collectively grow approximately 15 million strawberry plants.
9. Auckland is the largest strawberry growing area in New Zealand, producing 65 percent of strawberries across the greater Auckland region.
10. In 2018 the New Zealand strawberry industry generated approximately \$35 million in total sales, with \$21.2 million from domestic sales and \$8.8 million from exports.
11. New Zealand's main export markets are in Asia to countries including Thailand, Singapore, Taiwan, Malaysia and Hong Kong.

Policy

The Proposed Order

12. On 29 August 2019, I received an application from Strawberry Growers New Zealand Incorporated (Strawberry NZ) for a new commodity levy order on strawberries under the Commodity Levies Act 1990 (the Act).
13. Strawberry NZ is the industry association which currently represents the interests of 60 strawberry growers. It is administered by an Executive Board made up of grower-elected representatives. Its purpose is to "grow better strawberries together" by identifying industry wide issues and initiatives that can be dealt with on a whole of industry level and provide representation for strawberry growers on these issues.
14. Strawberry NZ is currently funded through voluntary membership fee paid by 60 of the 163 commercial strawberry growers. Its primary source of funding is from dividends paid to Strawberry NZ by its subsidiary company, New Zealand Berryfruit Propagators Limited (NZBPL).
15. The proposed levy will be imposed on all strawberries grown in New Zealand for commercial purposes. The levy will be collected by runner growers who will charge growers \$26 per 1000 plants sold, and forward the levy to Strawberry NZ. Plant sales under 1000 plants will not be levied. Strawberry NZ expects to collect \$362,000 in levy revenue during the first year (2020/21).
16. For every year subsequent to the initial levy year, the levy rate will be set at the Strawberry NZ Annual General Meeting, to be held prior to the commencement of the levy year. The maximum levy rate will be \$35 per 1000 plants.

Use of Levy Funds

17. Levy monies under the proposed order will be used to fund a number of non-commercial, industry good activities relating to the strawberry industry. These include:
 - a. biosecurity;
 - b. research and development;
 - c. food safety;
 - d. export market access and intelligence;
 - e. plant evaluation;
 - f. industry representation; and
 - g. management and administration of Strawberry NZ.
18. Strawberry NZ will consult with levy payers on its proposed levy expenditure through grower's representatives and at the Strawberry NZ Annual General Meeting prior to the start of each levy year.

Costs and Benefits of the levy

19. The proposed levy will allow Strawberry NZ to continue to deliver its industry good activities, outlined in paragraph 16 above.
20. 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, the majority of whom believe there is a net benefit from the continuation of a compulsory levy.
21. Strawberry NZ is seeking to change its current funding arrangements (as described in paragraph 13 above) and introduce a compulsory commodity levy for several reasons:
 - a. Growers who are not clients of NZBPL still benefit from the projects undertaken by Strawberry NZ including disease management, pesticide development and testing, new variety development and food safety and point of sale quality measures. As NZBPL's share of the strawberry plant market is forecast to decrease, this free-rider problem will increase.
 - b. The introduction of a commodity levy would make Strawberry NZ independent from NZBPL. This would:
 - i. increase transparency and ensure that Strawberry NZ is an inclusive entity representing growers of all commercial plant varieties and breeders;
 - ii. provide Strawberry NZ with certainty of funding, thereby allowing the organisation to improve budgeting and medium to long term expenditure planning. This would enable the industry to respond to the current and emerging challenges it faces. This is particularly important given NZBPL's share of the strawberry plant market is forecast to decrease.

Compliance with the requirements of the Act

22. Section 5(2) of the Act requires proposed levy orders to be supported by the majority of potential levy payers, in terms of both number of voters and on a weighted basis. In the referendum held by Strawberry NZ from 14 June 2019 to 12 July 2019, 42 growers (or 84 percent) of the 50 growers who voted, supported the proposed levy. These respondents represent 71 percent on a weighted basis.

Table 1: Results of the Strawberry NZ levy referendum

<i>Vote</i>	<i>Growers</i>		<i>Plants used for strawberry production</i>	
	<i>Number of growers</i>	<i>Percentage</i>	<i>Number of Plants</i>	<i>Percentage</i>
Yes	42	84%	7,158,500	71%
No	8	16%	2,920,500	29%
Total	50	100%	10,079,000	100%

23. MPI has examined the structure of the ballot material and results from the independent returning officer, and has advised me that the support referendum was competently devised, sufficiently publicised and distributed, and that all potential levy payers have been given a reasonable opportunity to vote.
24. I am satisfied that the application meets all the requirements of the Act. I therefore recommend that the Committee authorise the submission of this order to the Executive Council.

Timing and 28-day rule

25. The order is to come into force on 1 April 2020. This will allow for 28 days of Gazette notification.

Compliance

26. The order complies 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

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

Certification by Parliamentary Counsel

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

Impact Analysis

29. 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 levy on individuals, businesses and not-for-profit entities.

Publicity

30. MPI will notify Strawberry NZ when the order is made, who will then publicise the making of the order to its levy payers.

Proactive Release

31. Following Cabinet consideration, I intend to proactively release this paper in full within 30 business days.

Consultation

32. The Ministry of Business, Innovation and Employment, the Ministry of Foreign Affairs and Trade, 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. Strawberry NZ was consulted during the drafting of the order.

Recommendations

The Minister of Agriculture recommends that the Committee:

1. **Note** that Strawberry New Zealand Incorporated has applied for a new levy order on strawberries under the Commodity Levies Act 1990, to replace its current voluntary funding arrangements;
2. **Note** that I have determined that the application complies with the requirements of the Commodity Levies Act 1990;
3. **Note** that this order will come into force on 1 April 2020; and
4. **Authorise** the submission of the Commodity Levies (Strawberries) Order 2020 to the Executive Council.

Authorised for Lodgement

Hon Damien O'Connor
Minister of Agriculture