

IMPORTANT

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COMMODITY LEVY ORDER AMENDMENT

Proposal to realign the Summerfruit Commodity Levy Order definition with industry practice

A review of the levy collection process and the wording of the Summerfruit Commodity Levy Order (2014) has identified concerns about whether it is being calculated consistently by all collection agents. In particular, the interpretation of the **FOB value** is not precise and is open for different interpretations.

The definition of FOB value in the Order is:

FOB value means the value of the summerfruit specified in the declaration in, attached to, or forming part of, the **customs entry** (ie before the deduction of any costs or charges).

It is our understanding that the majority of exporters however, deduct the levy based on the *grower return*, ie after costs and any losses have been accounted for. We're pretty sure that growers believe that this is how their levy should be deducted.

However, it is MPI's view that this practice differs from the definition of FOB in the Summerfruit Commodity Levy Order (2014). They inform us that 'grower return' is an incorrect interpretation of FOB and should not be used.

The situation has come about because of a few small tweaks to the 2002 and 2008 Levy Orders. The changes were minor at the time and the implications didn't register. It is not because anyone is trying to fiddle the levy.

The problem and the solution

By deducting the levy using this definition of FOB, it means that export growers would be paying more levy. Meanwhile levy deducted from growers who supply the local market are paying the levy based on *grower return*. This is clearly inequitable and needs to be remedied.

Therefore, Summerfruit NZ is seeking to amend the Summerfruit Commodity Levy Order (2014) to reflect both industry practice and growers' understanding of how they pay the levy.

We discussed this issue with growers at the AGM and they agreed with our approach, passing a motion that was unanimously carried to:

Amend the current wording of the Levy Order. The levy should be deducted on grower return not FOB.

To amend the Order, MPI require us to:

- consult with growers, which we plan to do in the coming weeks
- conduct a referendum
- submit an application to the Minister to amend the Levy Order.

After discussions with MPI and our lawyer, we think that the best way to amend the Order is to:

- remove all reference to *FOB value* from the Levy Order
- replace references to *FOB value* with *selling price** and amend the definition to specify any deductions that may be made prior to the *selling price* being determined.

While this may result in change for some collection agents, it will clear up the inconsistency.

**Selling price = grower return*

The referendum

The levy referendum will be specifically on this issue, ie on:

- removing *FOB*, and
- changing the definition of *selling price*.

This amendment needs to be in place before the next season or exporters will be required to deduct levy as currently specified in the Order, ie the value declared on the customs declaration, before the deduction of costs.

The wheels of government grind slowly, especially when there is an election happening, so the amendment vote needs to happen by late August.

We are still working through the exact wording of the amendment, however this will be distributed as soon as it is finalised. All information will be distributed via *Prunings* and the website.

If you have any questions about this proposed amendment please do give me a call or send me an email. It's important that everyone understands the intent of this amendment and the implications.

Marie Dawkins

Some important points

All growers can vote in this referendum whether they currently export or not.

There will be no change to any other parts of the Summerfruit Commodity Levy Order.

If a grower was to vote *No* in this referendum the levy would continue to be collected.

A *No* vote will mean the definition of FOB is unchanged and the levy must be deducted at that point.

A *Yes* vote will mean changing the wording to reflect the current practice.

It is truly in your interest to vote in this referendum.