



KNZ REPORT FOR NZ KIWIFRUIT PRODUCERS

PRODUCER VOTE ON ONE-SEASON TRIAL OF
CHINESE GROWN GOLD3 KIWIFRUIT

2021

1. Overview

Kiwifruit New Zealand's ('KNZ') role is to monitor and enforce Zespri's compliance with the mitigation measures in the Kiwifruit Export Regulations 1999 ('Regulations'). The Regulations prohibit Zespri from carrying out any activities that are not its core business, unless those activities 'support core business', as defined in Regulation 10A, or are approved by a producer vote under Regulation 11 ('producer vote').

KNZ's role is not to decide about the desirability of an activity, or manage the risks undertaken by Zespri, or decide whether those risks are appropriate or whether the benefits of an activity outweigh the risks involved. Rather, KNZ's role is to ensure that producer oversight is engaged where it ought to be. It is up to producers to make the decision in relation to the proposed activity.

As discussed further below, KNZ's specific function in the present context of a producer vote is to monitor whether Zespri has carried out an appropriate process to meet the requirements of Regulation 11. This includes ensuring producers are sufficiently informed to properly exercise their vote. This is particularly important in circumstances where Zespri is the primary source of information provided to producers.

Zespri has confirmed the process it intends to follow to inform all producers under Regulation 11 and has provided a copy of the information brochure to KNZ. KNZ has provided Zespri with advice as to what is necessary to satisfy the regulatory test of "informed" (section 5 below). Zespri has been asked to apply the principles of this definition of "informed" to the information it provides to producers so that such information is clear, balanced and any statements made are based on fact or reasonable assumptions.

2. Background

On 28 October 2020 Zespri gave notice to KNZ under Regulation 10A ('Prior Notice') that it proposed to carry out an activity that was not core business, being a three year trial of a commercial procurement model for Chinese-grown Gold3 kiwifruit.

The KNZ Board made a preliminary determination that the notified activity in the Prior Notice met the first leg of the Regulation 10A test and was likely to enhance performance of Zespri's core business. However, after consideration of the risks and the mitigation measures proposed to reduce any risk, KNZ concluded there were areas that posed more than a low risk to the interests of producers and therefore the notified activity did **not** meet the definition of 'supports core business' under Regulation 10A. A Draft Decision setting out the reasons for KNZ's position was conveyed to Zespri on 11 January 2021.

On 15 January 2021 Zespri advised KNZ that it wished to 'withdraw' its Prior Notice for a three year trial. After further consideration, Zespri notified KNZ that it proposed to hold a producer vote in respect of the proposed activity, namely a one season commercial trial. Zespri has acknowledged that some aspects of the proposed commercial trial do not support core business and pose more than low risk to the interests of producers.

As indicated above, the proposed activities that are the subject of the producer vote have been modified to a one season trial of a commercial procurement model for Chinese-grown Gold3 kiwifruit of up to 200,000 trays and being sold in China under the Zespri brand. While the proposed activities for this producer vote have been modified from the activities proposed under Zespri's Regulation 10A Prior Notice (as detailed in section 2 above), issues discussed in KNZ's Draft Decision and the report provided by Sapere Group Consulting may be of interest to producers to consider. Producers can access redacted versions of Zespri's Prior Notice, the Sapere report and KNZ's Draft Decision on the KNZ website (<https://www.knz.co.nz/official-information-act-oia-releases/>).

3. Regulations

Under Regulation 11, Zespri is prohibited from carrying out activities that are not core business and do not support core business unless it has first:

- a. carried out a process in which all producers have been:
 - (i) informed of the proposed activities; and
 - (ii) asked to agree by vote to Zespri carrying out the proposed activities;
- b. obtained the required proportion of votes in support of proposed activities; and
- c. minimised, as far as is reasonably practical, the risks arising for producers who have not agreed to the proposed activity.

KNZ is required by Regulation 33 to monitor and enforce Zespri's compliance with Regulation 11. The intent of these provisions is to establish the appropriate level of control by producers over Zespri's engagement in activities that are not 'core business'. It is important to note that KNZ's role is not to itself decide the scope, direction, or scale of non-core activities. The decision about the desirability of an activity, its risks, or whether the benefits of an activity outweigh the risks involved are all decisions for producers. Rather, KNZ's role is to ensure that producer oversight is engaged, and they have the information necessary to enable them to vote on an informed basis.

4. Process

KNZ's specific function is to monitor whether Zespri has carried out an appropriate process that meets the requirements of Regulation 11. As part of this KNZ will monitor:

- the process in which Zespri intends to inform producers of the proposed activity, including the steps Zespri take to ensure all producers receive the information in a timely manner and will be able to exercise their vote;
- whether sufficient information is being provided to producers in a form that is sufficiently clear in its presentation, to ensure producers are in a position to make an informed decision on the risks to their interests from the proposed activity;
- how the votes will be weighed and counted and that the required proportion of votes under Regulation 11 has been obtained in support of the proposed activity; and
- if the required proportion of votes has been obtained in support of the proposed activity, whether Zespri has and continues to minimise, as far as reasonably practical, the risks arising for producers who have not agreed to the activity.

5. 'Informed'

KNZ has considered its approach to assessing whether producers have been "informed of the proposed activities" in the context of Regulation 11. As part of this assessment KNZ is required to consider whether Zespri has provided adequate information to producers to allow them to be sufficiently informed to properly exercise their vote.

KNZ believes a high standard of disclosure is required on the basis that, the proposed activities are outside Zespri's core business as mandated by the Regulations, the decision is more significant than a "business as usual" proposal and could carry significant strategic implications for the industry and New Zealand kiwifruit producers. It is also important to note that producers are captured suppliers to a single desk exporter, so do not have alternative options to sell their fruit.

KNZ considers that for producers to be "informed" they need full disclosure of the proposed activities and any risks or benefits for producers as a result of undertaking those activities such that it would be sufficient for a prudent kiwifruit producer to reach an informed assessment. This includes consideration of the following principles:

- information should be clearly presented in a balanced or neutral manner;
- information should be accurate and not misleading (including the omission of any information);
- any factual assertions or projections should be supported by sufficient evidence and analysis to demonstrate robustness, and key assumptions should be clearly identified;
- alternative options should be considered, including the advantages and disadvantages of the various courses of action;
- producer interests affected by the proposed activities should be identified (noting that these may be different to the interests of Zespri and/or shareholders) and any risks and benefits to them should be explained in detail;
- information gaps should be identified and producers advised when reliable evidence is not available; and
- information as to how, if the vote is passed, Zespri would minimise, as far as reasonably practical, the risks arising for producers who voted against the activity.

Zespri has confirmed the process it intends to adopt to inform all producers of the proposed activities, this includes:

- circulating an information brochure to producers by email, post and publication on the Zespri website and Canopy;
- organising a series of 'Producer Vote – Zespri Town Halls' covering topics relevant to the producer vote, moderated by NZKGI;
- providing additional information and opportunities to engage on the producer vote through the Canopy website; and
- establishing a dedicated producer vote website where relevant information will be published, including FAQs.

6. Conclusion

KNZ has reviewed the information brochure prepared by Zespri in relation to the producer vote and has provided comments on the brochure, including areas for Zespri to consider amending to ensure producers have been provided adequate information to allow them to exercise their votes in the manner contemplated by Regulation 11.

KNZ will monitor the voting process, and the results, and will continue its monitoring and enforcement functions based on the outcome of the vote.



Kristy McDonald QC
Chair

