

Monitoring and enforcement of non-diversification provisions

Monitoring Plan

12-month supply business activities – 2019 and 2022 Producer Votes

Introduction

1. This paper sets out a brief outline of the proposed process for KNZ's monitoring of Zespri's ZGS 12-month supply activities following the producer vote held in February 2019 (**2019 Producer Vote**) and the producer vote held in 2022 to amend/extend the parameters of the 12-month supply activities which did not obtain the required approval threshold (**2022 Producer Vote**).

2. Resolution 1 (**Resolution**) of the 2019 Producer Vote was:

“That the producers agree to Zespri carrying out the following activity:

- (a) 12-month supply business: growing, procuring and selling kiwifruit grown in overseas countries including without limitation the following -
 - (i) Use in overseas countries of plant varieties of kiwifruit owned by Zespri;
 - (ii) Managing growing practices by overseas growers;
 - (iii) Managing the supply chain from overseas grower to market;
 - (iv) Marketing and market development for fruit grown overseas.

On the basis that:

- (b) the agreement to carrying out the 12-month supply business does not include commercially growing and procuring kiwifruit in China or Chile; and
 - (c) the agreement will apply to the 12-month supply business, or to any component of that activity if Zespri, KNZ or any other relevant authority decides that the activity, or any component of the activity, does not support the core business, as defined in Reg 10A of the Kiwifruit Export Regulations.”
3. Zespri obtained the required number of votes in respect of the Resolution in the 2019 Producer Vote, however given the ‘contingent’ wording of clause (c), the Resolution only comes into effect if ‘triggered’ by Zespri, KNZ or any other relevant authority deciding that the activity, or any component of the activity does not support core business as defined in Reg 10A.
 4. Zespri, by way of a letter dated 9 August 2021, ‘triggered’ clause (c) of the Resolution by advising KNZ that Zespri has determined that the ZGS activities no longer support the core business, as defined in Regulation 10A of the Kiwifruit Export Regulations 1999 (**Regulations**). Zespri accordingly withdrew the prior notice dated 25 September 2017 in respect of its 12-month supply business activities.
 5. As Zespri did not obtain the required proportion of votes for the 2022 Producer Vote, it cannot carry out the proposed activities extending or amending the parameters approved in the 2019 Producer Vote. However, Zespri can continue to carry out the activities that were approved by the 2019 Producer Vote.

KNZ's Role

6. KNZ has an on-going function under Reg 33 of ensuring that any activities undertaken by Zespri do not stray outside of the parameters of:
 - 6.1. core business; or
 - 6.2. any activity approved as 'supports core business' under Reg 10A; or
 - 6.3. any activity approved by a producer vote under Reg 11.
7. As a result of the 2019 and 2022 Producer Votes, KNZ's function is to monitor all current and future activities undertaken by Zespri in respect of its 12-month supply business (including ZGS activities) to ensure the activities do not stray outside the parameters of the activities approved by the 2019 Producer Vote.
8. KNZ also has the role of monitoring whether Zespri has minimised, as far as reasonably practicable, the risks arising for producers who have not agreed to the activity (Reg 11(1)(c)).

Determining the parameters

9. Based on the terms of the 2019 Producer Vote Resolution, the materials provided to producers during the 2019 Producer Vote process and taking into consideration the context of general understanding by producers of what activities Zespri was undertaking in respect of 12-month supply business activities at the time of the 2019 Producer Vote, KNZ has identified key parameters of the 12-month supply business activities and ZGS operations approved by producers in this Resolution.
10. The parameters and commitments identified in this monitoring plan are not exhaustive and KNZ is responsible for monitoring all commitments made in respect of the 2019 Producer Vote Resolution.
11. For the avoidance of doubt, the parameters and commitments identified in this monitoring plan will not restrict Zespri's core business activities as defined in Regulation 2 of the Regulations.
12. Any deviation from these parameters is likely to be outside the scope of the producer approval, and further approval will be required (in advance of commencement) for those activities.

Parameters of 12-month supply business activities approved by producers

13. 12-month supply business activities include:
 - 13.1. use in overseas countries of PVRs of kiwifruit owned by Zespri;
 - 13.2. procurement of non-New Zealand-grown kiwifruit from overseas growing locations to fill the gap when New Zealand grown fruit is not available;
 - 13.3. entering into contracts for nursery propagation, cultivation, production and associated distribution of plant material to Zespri approved growers;
 - 13.4. proof of concept work in early-stage locations, applying Zespri processes to existing orchards to establish feasibility of commercial growing and procurement;

- 13.5. managing growing practices by Zespri approved overseas growers, including working with local growers and government to establish improved growing practices;
 - 13.6. authorising overseas growers to grow Zespri licensed varieties and entering into supply agreements for the growing and distribution of non-New Zealand-grown kiwifruit;
 - 13.7. managing the supply chain from overseas growers to market, including kiwifruit quality management, pre-harvest certification activities, supply chain relations, fruit packaging management, shipping logistics and coordination and supply chain planning; and
 - 13.8. marketing and market development for non-New Zealand grown kiwifruit.
14. *Volume and variety limits.*
- 14.1. Up to 5,000 ha of SunGold planted offshore.
 - 14.2. Up to 20 million trays of non-New Zealand grown Green kiwifruit purchased by Zespri.
 - 14.3. Up to 1,000 ha of any other new variety planted offshore.
15. *Location Exclusions.*
- 15.1. Zespri will not grow or procure kiwifruit grown in China or Chile (other than for research and development activities as part of Zespri core business).
16. *Other commitments.*
- 16.1. Zespri will manage the supply and sale of kiwifruit over the transition between NZ and ZGS fruit supply at the start and end of the NZ season , when both NZ and 12-month supply fruit is available, Zespri will prioritise NZ fruit sales to avoid disruption of sales and promotional planning and maximise the benefits of 12-month supply and to ensure the returns to NZ kiwifruit growers are not adversely affected by non-NZ supply fruit.
 - 16.2. Offshore growers authorised to grow Zespri varieties will pay a royalty to Zespri for the use of the Zespri PVR.
 - 16.3. Zespri will not own orchards outside New Zealand (other than for research and development activities as part of Zespri core business).
 - 16.4. Zespri shares will not be made available to offshore growers of Zespri fruit. Offshore growers may only hold shares in Zespri if they are also a New Zealand grower and hold them in that capacity.
 - 16.5. Kiwifruit grown offshore will be required to meet the Zespri quality standards equivalent to those applied to New Zealand grown kiwifruit.

Minimising Risks

- 17. *Risks:* Zespri identified a number of risks during the 2019 Producer Vote process. The risks and mitigations were reviewed and updated in the materials provided for 2022 Producer Vote and the relevant risks and mitigations are outlined below:

Risk	Mitigation
<p>Brand reputation and customer perception</p> <ul style="list-style-type: none"> • Risk of a food safety breach which causes brand reputation damage • Sustainability/environment and/or social responsibility issues 	<ul style="list-style-type: none"> • Zespri Kiwifruit produced or procured by ZGS has equivalent standards and auditing systems in place to NZ fruit • ZGS growers have equivalent independently audited food safety assurance systems to NZ such as GAP (other than Korea where this is currently under review as part of the Zespri GAP refresh) • ZGS growers must comply with the Zespri crop protection programme and residue testing checks compliance like in NZ • Reinforcement of protocols through grower training and education • Zespri oversight of growers and post-harvest facilities with experienced staff on the ground
<p>Financial risks</p> <ul style="list-style-type: none"> • Risk of ZGS and NZ fruit competing in the same market during season cross-over • Risk of markets being over-supplied • Risk of cost to NZ growers from operating the ZGS business 	<ul style="list-style-type: none"> • Prioritising NZ fruit sales is the key principle in achieving the transition between seasons. In doing this, the aim is to ensure that NZ fruit sales are not disadvantaged by the presence of ZGS fruit. • Market allocations are planned based on this principle and we review plans regularly based on seasonal circumstances and transit times working to ensure consistency in quality and avoid disruption of sales and promotional planning. • The season cross-over is monitored and reported to industry • ZGS covers all of its own overheads and contributes to wider Zespri costs on a user-pays basis (by volume or time). As ZGS grows, it will contribute more to the costs of running Zespri • As production increases from newly planted hectares, ZGL will regularly assess demand and supply to ensure that ZGS is not producing more fruit than is demanded by the markets
<p>Intellectual Property</p> <ul style="list-style-type: none"> • Risk that Zespri knowledge and techniques are used by competitor growers • Risk of PVR leakage 	<ul style="list-style-type: none"> • All growers agree to confidentiality provisions when signing contracts and growers are reminded of this with disclaimers on all documents. Only authorised SunGold Kiwifruit growers can attend Zespri technical events • Legal systems exist in ZGS production countries to address unauthorised planting which will be utilised where appropriate • ZGS creates legitimate opportunities for overseas growers to plant SunGold Kiwifruit

	<p>in ZGS production countries. Generally speaking, anyone who meets our requirements and wants to grow SunGold Kiwifruit can do that through our partners</p> <ul style="list-style-type: none"> • ZGS has been operating for over 20 years and we provides growers with the opportunity to be part of a growing community of authorised Zespri partners which creates additional incentive for growers and the community to report unauthorised planting activity, as well as creating a network of people that improve Zespri’s ability to become aware of unauthorised activity early • Zespri has skilled staff in place in ZGS production countries who are part of the local growing community and are more able to identify potential unauthorised plantings • Only Zespri authorised growers can access SunGold nursery stock and grow SunGold Kiwifruit • All planting is audited and recorded • Zespri accredits only reputable nursery partners and monitors plant material development • Growth is currently planned for existing countries of Italy, France, Japan, Korea and Greece and potentially the USA. The approval allows planting in any country other than China and Chile so expansion in additional locations is also possible subject to Zespri’s assessment of the relevant PVR enforcement environment.
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18. In addition to the mitigation measures set out in the above table, Zespri confirmed in 2019 that it would take the following mitigation measures to protect producers from the risk that the 12-month supply business affects their returns:

18.1. Putting in place intellectual property protection through registration, enforcement and contractual obligations that protect Zespri interests.

18.2. Having skilled staff on the ground in overseas jurisdictions with the know-how to implement and enforce Zespri standards for fruit produced for sale overseas, as well as to maintain close relationships with local kiwifruit producers and communities. This in turn enables Zespri to maintain oversight of activities and identify risks proactively.

18.3. In new jurisdictions there is a great deal of time spent assessing viability and the business case, alongside the ability to effectively enforce and protect Zespri's interests. Each jurisdiction will have issues in common with others and some have unique risks that have to be taken into account.

Monitoring Plan

19. The following details a proposed monitoring plan for KNZ.
20. *Scope of the monitoring programme.*
 - 20.1. Zespri must not carry out any activities that are not within the parameters of the activities approved in the 2019 Producer Vote. Without limiting KNZ's monitoring and enforcement functions under the Regulations, KNZ sets out below the scope of the monitoring programme for the 12-month supply business activities undertaken by Zespri.
 - a) KNZ will monitor and assess whether any activities undertaken by Zespri are outside the parameters of the 12-month supply business activities approved by the 2019 Producer Vote.
 - b) ZGL will provide annual reporting to KNZ on the 12-month supply business activities undertaken by Zespri and its compliance with the parameters approved by the 2019 Producer Vote, including a review of the relevant risks and mitigations in respect of the activities, as well as an interim update which provides a summary of planted and producing hectares in ZGS locations.
 - c) KNZ may request Zespri to supply information or documentation in respect of its 12-month supply business activities and engage third parties to complete further investigations.
 - 20.2. KNZ may amend the scope of the monitoring programme as it considers necessary.
21. *Assessment Process.*
 - 21.1. KNZ's assessment process should be efficient and proportionate in terms of scope and resources (i.e KNZ Board need to be satisfied to a reasonable standard that the activities fall within the parameters of the activities approved by the 2019 Producer Vote).

Timeframes

22. KNZ will confirm reasonable timeframes with Zespri in respect of the provision of information to KNZ.
23. KNZ may amend the timeframes of the monitoring programme as it deems necessary.