Ministry for Primary Industries
Manatū Ahu Matua

Further proposed amendments to the Kiwifruit Export Regulations 1999

Regulatory Impact Statement

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Growing and Protecting New Zealand

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1 Agency disclosure statement

This Regulatory Impact Statement (RIS) has been prepared by the Ministry for Primary Industries (MPI).

It analyses a single transitional issue arising from forthcoming amendments to the Kiwifruit Export Regulations 1999 (the Regulations) contained in the Kiwifruit Export Amendment Regulations 2017 (the Amendment Regulations). The Amendment Regulations are to be considered by Cabinet shortly. This RIS considers the extent to which amendments to the non-diversification rule will affect Zespri's sunk investments in legacy non-core business activities, and options for mitigating adverse impacts.

This analysis has been quantified only in broad terms. This is because a detailed cost-benefit analysis would require commercially sensitive information that is not publicly available. It is also because Zespri's legacy non-core business activities need to be considered in detail by both Zespri and Kiwifruit New Zealand before a determination can be made as to whether a particular activity will be subjected to the amended non-diversification rule.
We do not believe there are any other substantial gaps in the analysis. Our proposed monitoring of the changes will assist us to gauge the extent to which the impacts meet expectations.

Emma Taylor, Acting Director Sector Policy, Ministry for Primary Industries

26 June 2017

Executive summary

1. New Zealand's kiwifruit industry is a regulated industry. Last year Cabinet agreed to amend the Kiwifruit Export Regulations 1999 (the Regulations) [CBC-16-MIN-0013 refers], including a number of changes to the non-diversification rule. This rule, when amended in accordance with Cabinet's policy approval, will prohibit Zespri from undertaking activities that do not support its core business unless kiwifruit growers (producers) have approved the activity, and the risk posed by the activity is minimised as far as practicable for those producers who do not approve.

2. On the basis of this policy approval, MPI has been working with Parliamentary Counsel Office to draft the Kiwifruit Export Amendment Regulations 2017 (the Amendment Regulations). During drafting it became clear that further consideration was required on the issue of how forthcoming amendments to the non-diversification rule would apply with respect to Zespri's sunk investments in its historic non-core business activities. This issue had not been considered as part of the original Cabinet approval.

3. In 2015/16 alone, Zespri's historic investments in non-core business activities generated over $287 million in revenue for the company. The value of these sunk investments could be adversely affected by forthcoming amendments unless an effective transition provision is adopted.

4. This regulatory impact analysis is solely concerned with analysing options for transitioning Zespri's historic investments to the amended non-diversification rule. Three options are identified. Option one is to progress with the amendments to the non-diversification rule without providing an explicit transition provision. Option two is to provide a two year period in which the current non-diversification rule continues to apply with respect Zespri's legacy non-core business activities. After this two year period, Zespri's activities would need to comply with the amended non-diversification rule.

5. The preferred option, option three, gives Zespri a choice as to how it transitions existing activities on to the amended non-diversification rule. The option provides a default two year transition provision for all of Zespri's legacy activities. Alternatively, Zespri can opt for an indefinite exception for specified contracts and assets it entered into before 1 April 2017 where it discloses these contracts and assets to Kiwifruit New Zealand (the industry regulator) by 1 February 2018 in sufficient detail.

6. This approach will ensure that the value of Zespri's historic investments are not adversely affected by forthcoming regulatory changes, will continue to ensure that producers are able to control the risks that they are exposed to going forward, and imposes only necessary costs on Zespri and Kiwifruit New Zealand to implement.

2 Status-quo

2.1 NEW ZEALAND'S KIWIFRUIT INDUSTRY

7. By volume, New Zealand is the second largest kiwifruit exporting country after Italy and holds approximately 30 percent of the global market share of kiwifruit exports. By value, New Zealand is the largest kiwifruit exporting country. Zespri operates at the premium end of the market.

8. Growing steadily over the past thirty years, kiwifruit is now one of New Zealand's major export industries and the most valuable horticulture export. The majority of New Zealand-grown kiwifruit is exported, with only around two to three percent consumed in New Zealand. Less than one percent is used in processed products.

9. Zespri is New Zealand's sole exporter of kiwifruit to all countries other than Australia. Zespri currently exports around 96 percent of New Zealand's total kiwifruit crop. It had global sales of about $1.9 billion for the year to 31 March 2016, of which $1.7 billion came from the sale of New Zealand-grown kiwifruit.[1] Zespri currently sells kiwifruit in 53 countries.

10. Forecasts for growth are strong. In 2015/16 Zespri exported about 117 million trays of New Zealand-grown kiwifruit, and sold nearly 14 million trays of overseas-grown kiwifruit in overseas markets. By 2020/21 Zespri forecasts that it will export about 180 million trays of New Zealand-grown kiwifruit, and will sell an additional 30 million trays of overseas-grown kiwifruit – 37% volume growth over the next four years. Zespri is aiming to more than double its global revenue by 2025, to $4.5 billion.

2.2 THE REGULATORY MODEL

11. The Kiwifruit Industry Restructuring Act 1999 (the Act) and the Kiwifruit Export Regulations 1999 (the Regulations) set the current industry structure. The Act and Regulations establish Zespri as the sole exporter of New Zealand-grown kiwifruit to all countries other than Australia. They also establish the entity Kiwifruit New Zealand to monitor Zespri and enforce the Regulations.

12. This arrangement is commonly referred to as the Single Point of Entry or 'single desk'. The Regulations make some provision for other marketers to sell New Zealand-grown kiwifruit overseas through collaborative marketing arrangements with Zespri, but this is a relatively small proportion of New Zealand's overall kiwifruit exports.[2]

13. Under the Regulations, all kiwifruit growers wishing to export to countries other than Australia must enter into a supply contract with Zespri (either directly or through a supply entity). This means that Zespri is a monopsony buyer of New Zealand-grown kiwifruit for export.

14. The single desk arrangement has enabled the kiwifruit industry to improve the value of its exports by making use of economies of scale, setting standards for high fruit quality, developing markets, and investing in research and development. This has assisted

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[1] Zespri also sells kiwifruit grown in overseas markets in order to maintain 12 month supply to customers.

[2] In 2014/15, 2% of New Zealand grown kiwifruit were exported to countries other than Australia through Collaborative Marketing arrangements with Zespri.

Zespri to compete effectively on the international stage, and to develop and maintain a premium for its kiwifruit. Kiwifruit growers benefit from the price that Zespri pays for their fruit.

15. While the single desk supports the industry to achieve a premium for their fruit, it also creates a number of risks. In creating a monopsony the single desk:

- concentrates risk throughout the industry. Kiwifruit growers are reliant on the price that Zespri pays for their produce. If Zespri's strategy is not successful, the industry as a whole does not perform well;
- captures kiwifruit growers. With a captured supply, the incentives on Zespri to operate in a cost effective way and to offer its suppliers a top price for their kiwifruit are reduced; and
- concentrates market power, which, unless safeguarded against, could be used for anti-competitive gains. Domestically, the kiwifruit industry is fully competitive and any firm can invest in post-harvest services, in kiwifruit-related business activities, and (with approval of the regulator) can export kiwifruit in collaboration with Zespri. However, unless appropriately monitored, Zespri could leverage its privileged export right to compete unfairly against other firms in the kiwifruit industry.

16. The Regulations balance the benefits of the single desk structure against the associated risks. The Regulations set out three rules that restrict Zespri's operation as part of mitigating the risks posed by Zespri's monopsony.

17. One of these rules is the non-diversification rule (regulation 11). The current non-diversification rule requires that Zespri must get the approval of its providers of capital before it undertakes an activity that is not necessary for the core business (defined in the Regulations as the purchase of New Zealand-grown kiwifruit for export to markets other than Australia). The non-diversification rule creates an ongoing requirement that Zespri complies with the rule. That is, the rule is not time bound (i.e. assessed only once when Zespri begins an activity). This rule distinguishes between:

- defined core business activities, which are not subject to the non-diversification rule;[3]
- activities that are necessary for the core business, which are not subject to the non-diversification rule; and
- all other activities, which are subject to the non-diversification rule.

18. Zespri's principal non-core business activities are its overseas-supply programme (where Zespri purchases and sells kiwifruit grown in northern hemisphere countries) and its ownership of proprietary cultivars of kiwifruit (e.g. the SunGold cultivar). Zespri's historic investments in these activities has generated significant returns for shareholders, enhanced the sale of New Zealand-grown kiwifruit, and underpins the industry's growth over recent years, along with its plans for future growth.

19. In 2015/16, Zespri purchased 14.5 million trays of kiwifruit from overseas-sources. In value terms, the overseas-supply programme generated $183.7 million in revenue for

[3] Core business is defined as the purchase of New Zealand-grown kiwifruit for export to markets other than Australia.

Zespri in 2015/16 and delivered an overall before tax profit of $10.4 million. In 2016, Zespri auctioned licences to grow up to 400 hectares of its gold kiwifruit cultivar. This resulted in around $95 million in revenue for the company. Zespri has planned to auction a further 1,200 hectares over the next few years.

20. To date, Zespri has undertaken these activities either on the basis that they are necessary for the core business or with the approval of its providers of capital.

2.3 CABINET HAS DECIDED TO AMEND THE REGULATIONS

21. Last year Cabinet agreed to amend the Regulations [CBC-16-MIN-0013 refers]. Since then, MPI has been working with Parliamentary Counsel Office and key industry stakeholders – including Zespri, Kiwifruit New Zealand, and New Zealand Kiwifruit Growers Incorporated – to develop the Kiwifruit Export Amendment Regulations 2017 (the Amendment Regulations). The Amendment Regulations have now been drafted.

22. Cabinet approved amendments to the non-diversification rule so that Zespri must get the approval of 75 percent of voting kiwifruit producers (rather than providers of capital), both on a supply weighted and per producing entity basis, before it can undertake non-core business activities subject to the rule. The rule continues to distinguish between activities, but with some further changes:

   - defined core business activities (as amended) are not subject to the non-diversification rule;
   - activities that <u>support</u> the core business (rather than activities which are <u>necessary</u> for the core business) are not subject to the non-diversification rule, but are subject to a new prior notice rule, which requires Zespri to inform Kiwifruit New Zealand about the activity before carrying it out; and
   - all other activities, which are diversified activities, are subject to the amended non-diversification rule.

23. The Amendment Regulations amend the definition of Zespri's core business to include the marketing of New Zealand-grown kiwifruit, market development for New Zealand-grown kiwifruit, and research and development relating to kiwifruit. Zespri's overseas supply programme and its ownership of proprietary cultivars were specifically not included in the amended definition of core business. This is because these activities have the potential to pose a higher degree of risk to the interests of captured kiwifruit growers and therefore require continued regulatory oversight.

24. The Amendment Regulations provide a test for determining whether an activity supports the core business. An activity supports the core business where:

   - it enhances the performance of the core business; and
   - the risk posed by the activity, after considering any measures put in place to mitigate the risk, is no greater than low.

25. Non-core business activities are only subjected to the non-diversification rule where it does not meet the supports core business test. Zespri is only required to notify Kiwifruit New Zealand about a non-core business activity that supports the core business.

26. During drafting, it became clear that the policy approval underpinning the amendments was not sufficiently comprehensive to ensure the Amendment Regulations achieved the intended policy outcomes. In particular, no advice was provided to Cabinet on how amendments to the non-diversification rule would affect past, sunk investments made by Zespri in non-core business activities. Consequently, no decision had been taken on how these historic investments should be affected by the amendments.

27. This regulatory impact analysis is solely concerned with analysing options for transitioning Zespri's historic activities to the amended non-diversification rule. All other policy proposals contained in the Amendment Regulations have been the subject of a previous Regulatory Impact Analysis.

3 Problem Definition

28. The problem is that the value of Zespri's sunk investments in non-core business activities could be adversely affected by forthcoming amendments unless an effective transition provision is adopted.

29. As the non-diversification rule creates an ongoing compliance requirement (referred to in paragraph 17 above), the activities that Zespri has historically undertaken on the grounds that it is necessary for core business will, when the Amendment Regulations come into force, immediately need to be considered against the "supports" core business test. Activities which Zespri was undertaking with the approval of its suppliers of capital will immediately require re-approval by at least 75% of kiwifruit growers.

30. It is not possible to define the value of sunk investments that will be adversely affected by the Amendment Regulations. This is because Zespri and Kiwifruit New Zealand will need to give specific consideration to each non-core business activity to determine whether it supports the core business, or whether it does not (in which case it is subject to the amended non-diversification rule).

31. The amended non-diversification rule will create uncertainty and significant business disruption with respect to the Zespri's ability to continue to own proprietary cultivars of kiwifruit and fulfil its overseas-supply contracts. This will adversely affect the value of the sunk investments Zespri has made into these activities. Zespri will have to stop doing an activity that is subject to the rule until it can arrange a vote of producers and then get the support of 75 percent of kiwifruit growers. This delay, uncertainty and disruption would affect both Zespri and its business partners.

32. Further, if one of Zespri's assets or contracts was found to be subject to the amended non-diversification rule, and if Zespri was unable to get the approval of 75 percent of kiwifruit growers, it would be required to sell the asset or stop performing the contract.[4] This would destroy the value of the sunk investment Zespri made into that particular contract or asset. It could also expose Zespri to significant civil legal risk as it would likely be required to breach its contracts. Zespri made these investments in reliance of the current regulatory regime.

33. In approving the policy to amend the non-diversification rule, no consideration was given to how the amended rule would impact the sunk investments in Zespri's legacy non-core business activities. The policy change was designed improve investment certainty for Zespri, provide an environment conducive to growth, and to ensure effective grower oversight of activities that have the potential to pose risks to their interests.

[4] It is not likely that producers would vote against Zespri's continuing with its historic non-core business activities. These activities are delivering a significant return for its shareholders and indirectly enhance Zespri's ability to sell New Zealand-grown kiwifruit (benefiting producers). However, even subjecting these activities to a vote of producers would create significant business disruption and result in uncertainty, impacting not only Zespri, but its shareholders and business partners.

4 Objectives

34. Clause 7 of the Amendment Regulations sets out that the non-diversification rule is designed to strike a balance between:

- manging the risks posed by activities that are not the core business (by subjecting them to oversight by kiwifruit growers), while
- encouraging innovation within the kiwifruit industry.

35. In considering the purpose of the non-diversification rule (outlined in para 33 above), it has been determined that options for transitioning Zespri's historic non-core business activities on to the new amended non-diversification rule should be considered against the following objectives:

- avoid adversely affecting the value of sunk investments and provide certainty for Zespri and its business partners;[5]
- ensure the non-diversification rule enables kiwifruit growers to control their risk exposure; and
- be administratively efficient.

[5] This is necessary for maintaining an environment conducive to innovation and investment within the kiwifruit industry.

5 Options

5.1 OPTION 1: STATUS QUO

36. Under this option, Zespri's historic business activities would become subject to the amended non-diversification rule upon the Amendment Regulations coming into effect.

5.1.1 Impact on Zespri's sunk investments / certainty for business partners

37. This option would result in significant business disruption for Zespri and its business partners. Upon the Amendment Regulations coming into effect Zespri would need to determine whether its historic non-core business activities support the core business, or otherwise cease the activity until it could arrange for a vote of kiwifruit growers. Zespri suspending an activity would likely result in it breaching its contracts with business partners and lead to a loss of value for shareholders.

38. If Zespri was unable to get grower support for any activity that does not support the core business, it would have to cease the activity, destroying the value of sunk investments in that activity. This is not likely to happen as kiwifruit growers (the group voting on the activity) often also have interests as a Zespri shareholder (the group whose interests are affected by the vote). However, there is not a perfect alignment and it is possible that kiwifruit growers could prioritise their interests as growers over that of their interests as shareholders.

39. It is not clear whether Zespri's existing activities (in whole or in part) would be found to support the core business under the new test, and therefore not subject to the non-diversification rule. It is therefore not possible to quantify the scale of impact. However, Zespri's overseas supply programme and its ownership of proprietary cultivars generated a combined revenue for Zespri in 2015/16 of over $278 million.

5.1.2 Impact on producer oversight

40. The amended non-diversification rule better protects captured kiwifruit growers than the old rule. In requiring all of Zespri's activities to comply with the new rule, growers' ability to control their risk exposure is maximised.

5.1.3 Administrative efficiency

41. This option would require Zespri and Kiwifruit New Zealand to reassess all of Zespri's current activities immediately, upon the Amendment Regulations coming into effect, to determine whether they support the core business. This is a significant undertaking.

42. Zespri and Kiwifruit New Zealand would have no opportunity to undertake this analysis unless the commencement date of the Amendment Regulations is delayed. Practically, neither Zespri nor Kiwifruit New Zealand could implement this option within the required timeframes. In the interim period, Zespri would be in breach of the Regulations.

5.1.4 Conclusion

43. MPI does not prefer this option because it is impractical to implement and because it fails to provide certainty for Zespri's sunk investments and its business partners.

5.2 OPTION 2: TWO YEAR TRANSITION

44. This option would create a transition provision in the Amendment Regulations, with the effect that Zespri could continue its historic non-core business activities for two years where only activities not necessary for the core business are subject to the current non-diversification rule. After this two year period, all of Zespri's activities that do not support the core business would need to comply with the amended non-diversification rule. This option would give Zespri two years in which to ensure that all of its activities complied with the Regulations, or to otherwise cease the activity. Despite the transition, all of Zespri's non-core business activities would be subject to the new prior-notice rule upon the Amendment Regulations coming into effect.

5.2.1 Impact on Zespri's sunk investments / certainty for business partners

45. This option gives Zespri and its business partners forewarning about the extent to which Zespri's sunk investments will be affected by the amended non-diversification rule (i.e. it provides time for the "supports core business test" to be applied). This means that Zespri would have time to either arrange for a grower vote for any historic activity that is found to be subject to the non-diversification rule, or to otherwise exit from the activity in a planned and least-costly way.

46. However, forewarning would not provide complete certainty. There would be some disruption to Zespri and its business partners throughout the two year period while the regulatory status of existing contract or asset remained undetermined. Companies would be reluctant to consider variations or extensions of existing agreements while status of the original agreement remained undetermined. This could affect Zespri's ability to pursue its robust growth objectives.

47. Further, if Zespri was unable to get grower support for activities that do not support the core business it would have to cease to undertake the activity or become subject to Kiwifruit New Zealand enforcement action. This would mean that the value of sunk investments in that activity would be destroyed – contracts would need to be terminated, and assets sold, despite ongoing value to the business.

5.2.2 Impact on producer oversight

48. The amended non-diversification rule better protects captured kiwifruit growers than the current rule. This option would ensure an orderly transition of all of Zespri's current business activities to the new rule and maximise grower's ability to control their risk exposure.

5.2.3 Administrative efficiency

49. Zespri and Kiwifruit New Zealand would have two years in which to consider existing activities to determine whether they are subject to the amended non-diversification rule. This allows for an orderly transition.

5.2.4 Conclusion

50. MPI does not prefer this option because it has the potential to cause some disruption to the operation of the kiwifruit industry.

5.3 OPTION 3: TWO YEAR TRANSITION FOR ACTIVITIES, WITH A PERMANENT GUARANTEE FOR SPECIFIED CONTRACTS AND ASSETS

51. This option would provide two years for Zespri to transition its historic activities, as outlined in option two. However, it would also provide an ongoing guarantee that Zespri could continue to own and operate specified assets and perform specified contracts where it was undertaking those activities before 1 April 2017 (assets and contracts are a subset of "activities" for the purpose of the Amendment Regulations).[6] The guarantee would cease to apply when the term of an existing contract expires or the asset is sold. Any variation made to an existing contract would have to be considered against the supports core business test to determine whether it is subject to the amended non-diversification rule.

52. Zespri would be required to notify Kiwifruit New Zealand within six months of the Amendment Regulations coming into effect of any contract or asset that Zespri was seeking to have guaranteed, and in sufficient detail to enable the continued operation of the non-diversification and prior notice rules.

5.3.1 Impact on Zespri's sunk investments / certainty for business partners

53. This option would provide maximum certainty for Zespri and its business partners. It would ensure that the value of sunk investments would not be undermined. Zespri would be able to continue to undertake activities that it has been permitted to undertake under the current regulatory regime.

5.3.2 Impact on producer oversight

54. The amended non-diversification rule better protects captured kiwifruit growers than the current rule. This option would ensure an orderly transition of the majority of Zespri's current business activities to the new rule.

55. Only specified contracts and assets which are reported to Kiwifruit New Zealand, and which Zespri has historically undertaken, would be excluded from the application of the new rule. Any variation to a term of an existing contract would need to be considered against the supports core business test for a determination to be made about whether or not it is subject to the non-diversification rule. This option ensures strong grower oversight of Zespri's non-core business activities, not materially different to that offered by options one and two.

5.3.3 Administrative efficiency

56. This option creates a two-step implementation process. In the first step, Zespri would need to determine specific contracts and assets that it believes would benefit from a permanent exception. Any contract or asset that Zespri fails to notify Kiwifruit New

[6] 1 April 2017 was selected to maintain the regulatory integrity of the non-diversification rule in light of Zespri's prior knowledge of a proposed permanent exception.

Zealand of within six months would have the benefit of the two year transition, allowing for an orderly transition.

57. The permanent exception does create some additional compliance costs for both Zespri and Kiwifruit New Zealand, relative to option two. In order to keep the administrative costs of this option low, Zespri has the choice of whether it will seek a permanent exception for specified contracts and assets or whether it will take the default two year transition for an activity. Zespri has thousands of contracts and assets which may be affected by the transition. Zespri must be able to exercise a choice as to which transition method it adopts to ensure that the additional administrative costs are only incurred where necessary.

58. Overall, these additional administrative costs are not expected to be material in the context of a $2 billion industry, or in consideration of the value of sunk investments.

5.3.4 Conclusion

59. Option 3 best meets the objectives. It provides certainty to Zespri and its contracted business partners. It ensures the value of Zespri's sunk investments in specified assets and contracts that Zespri has been permitted to undertake under the current Regulations are not adversely affected by the Amendment Regulations. It ensures that any assets or contracts excepted from the application of the amended non-diversification rule is strictly applied. This ensures that kiwifruit growers are able to control any new risk they are exposed to. This option is not materially more costly for Zespri to implement than option two.

5.4 IMPACT ANALYSIS SUMMARY

60. Table 1 below summarises the analysis on the options.

Table 1: Summary of options analysis

Options	**Avoid prejudicing value of sunk investments / certainty for Zespri and business partners**	**Enable kiwifruit growers to control their risk exposure**	**Administrative efficiency**	**Conclusion**
Option 1: Status quo	- • Significant business disruption for Zespri, its partners, and shareholders - likely resulting in Zespri breaching its contracts and being subject to damages • Likely loss of value in sunk investments. • It is not possible to quantify the scale of impact without a regulatory determination as to whether Zespri's overseas supply programme and its PVR ownership (in whole or in part) were found to support the core business. These activities alone resulted in a combined revenue for Zespri in 2015/16 of over $278 million.	+ • In requiring all of Zespri's activities comply with the new rule, grower's ability to control their risk exposure is maximised.	- • This option cannot practically be implemented within required timeframes. Zespri would find itself in breach of the Regulations and subject to enforcement action by Kiwifruit New Zealand.	Does not meet objectives
Option 2: Two year transition	-/+ • The two year transition would provide time in which Zespri could arrange for a grower vote on any historic activity that is found to be subject to the amended non-diversification rule. • There would remain some uncertainty for Zespri and its business partners as to the ongoing validity of Zespri's historic investments. This lack of certainty could imperil further investment in non-core business activities and impede Zespri's growth objectives.	+ • All of Zespri's current business will become subject to the amended non-diversification rule within two years, maximising grower's ability to control their risk exposure.	+ • Two years allows for an orderly transition for all activities.	Partially meets objectives
Option 3: Two year transition, with additional protections for assets owned and contracts entered into	+ • No detrimental effect on the value of sunk investments and maximum certainty. Zespri would be able to continue to undertake activities that it has been permitted to undertake historically. There would be certainty for Zespri and its business partners about the regulatory requirements that apply to Zespri's legacy business activities.	+ • This option provides robust protections for kiwifruit growers. The majority of Zespri's current business activities will become subject to the amended non-diversification rule within two years. Only specified contracts and assets which are reported to Kiwifruit New Zealand, and which Zespri has historically undertaken, would be excluded from the application of the new rule. Any variation to a term of an existing contract would immediately be subject to the amended non-diversification rule.	+ • Two years allows for an orderly transition for most activities. • The optional requirement that Zespri identify contracts and assets within six months would be marginally more costly for both Zespri and Kiwifruit New Zealand than option two. However, it is not expected to be a material difference in the context of a $2 billion industry or the value of Zespri's non-core business activities.	Meets objectives

6 Consultation

61. Key industry stakeholders – Zespri, Kiwifruit New Zealand, and New Zealand Kiwifruit Growers Incorporated – were consulted on this proposal. Four exposure drafts of the Amendment Regulations were provided to the identified stakeholders for comment.

62. Issues raised by key stakeholders on the problem and alternative options have been considered. In particular, comments focused on the lingering uncertainty that would remain for Zespri and its business partners if only a two year transition was provided for historic investments. MPI addressed this through developing option three. Zespri and New Zealand Kiwifruit Growers Incorporated support option three. Kiwifruit New Zealand has taken no position on the policy issues raised in this paper, but has stated that both options two or three can be implemented.

63. In preparation of the above policy, MPI consulted with the Ministry of Foreign Affairs and Trade, the Ministry of Business, Innovation and Employment, Te Puni Kōkiri and the Treasury. This paper incorporates all feedback provided by the consulted agencies.

64. The MPI Regulatory Impact Analysis Panel has reviewed the Regulatory Impact Statement prepared by MPI and considers that the information and analysis summarised in the Regulatory Impact Statement meets the quality assurance criteria.

7 Conclusions and recommendations

65. In summary, MPI recommends the following changes to the Regulations:

- that Zespri can continue for a period of two years any activity it was carrying out prior to the Amendment Regulations coming into effect, despite the non-diversification rule; and
- that the assets Zespri owned and operated, and the contracts it had entered into, as at 1 April 2017, be exempted from the non-diversification rule and the prior notice rule where:
  - Zespri substantiates to Kiwifruit New Zealand the contracts entered into and the assets it owned and operated as at 1 April 2017 within six months of the Amendment Regulations coming into effect, and
  - Zespri provides sufficient detail about these assets and contracts to enable Kiwifruit New Zealand to administer the non-diversification and prior notice rules.

8 Implementation plan

66. The Amendment Regulations have been drafted in anticipation of Cabinet approving this policy. MPI anticipates the Amendment Regulations commencing on 1 August 2017.

67. Zespri and Kiwifruit New Zealand are preparing for regulatory change. Both have been consulted on the proposal and believe the option can be implemented within the required timeframes.

68. Implementation will involve Zespri identifying which of its contracts and assets it will seek a permanent exception for, and notifying Kiwifruit New Zealand accordingly. Zespri will have a further two years in which to bring its remaining activities in compliance with the Amendment Regulations. Failure to do so within the specified timeframe will mean that Zespri either must cease to do the activity or Kiwifruit New Zealand would be entitled to take enforcement action, as provided for in the Regulations and Zespri's export authorisation.

9 Monitoring, evaluation and review

69. The wider policy changes already approved by Cabinet enhance MPI's monitoring of the Regulations. In particular, MPI will have regular and closer involvement with the regulating body through reviewing three-yearly Statement of Intent and annual discussions around performance. This will include reporting on the non-diversification rule.

70. As per current practice, Kiwifruit New Zealand will continuously monitor Zespri's activities against the non-diversification rule to ensure its compliance with the Regulations.