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Food Regulation Treaty

**Agreement between the Government of Australia
and the
Government of New Zealand
Concerning a Joint Food Standards System**

Entry into force: 6 July 2010

Incorporating changes from 6 July 2010 exchange of letters amending the Agreement (3 March 2010) with the original 1996 Treaty. Documents sourced from Australian Treaties Library Austlii/DFAT internet database.

Australian Treaty Series, [2008] ATS 15
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A copy of the exchange of letters signed by the NZ Food Safety Minister (24 February 2010) and the Parliamentary Secretary for Health (3 March 2010) is attached.

**This is an internal working document created by the
Food Governance Section,
Research, Regulation and Food Branch,
Regulatory Policy and Governance Division
Department of Health and Ageing**

AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW ZEALAND CONCERNING A JOINT FOOD STANDARDS SYSTEM

AUSTRALIA AND NEW ZEALAND (hereinafter called “the Member States”):

CONSCIOUS of the longstanding friendship and close historic, political, economic and geographic relationship;

RECOGNISING the development of a closer economic relationship and the strengthening of their ties since the commencement of the Australia New Zealand Closer Economic Relations Trade Agreement done at Canberra on 28 March 1983;^[1]

AWARE that this relationship will be significantly strengthened through the development of a system for establishing joint food standards in Australia and New Zealand;

ACKNOWLEDGING their commitment to securing trade liberalisation and an outward-looking approach to trade;

CONSCIOUS of the need to avoid the development of unnecessary barriers to trade and of their obligations in this regard under the Agreement establishing the World Trade Organization done at Marrakesh on 15 April 1994;^[2]

AFFIRMING their commitment to an assessment process for food standards characterised by transparency, timeliness and accountability, including a commitment to consultation and public involvement;

DESIRING to establish, maintain, and strengthen a framework for the harmonisation of food standards and the elaboration of a joint Australia New Zealand Food Standards Code; and

ACKNOWLEDGING the existence and operation of the Food Regulation Agreement and noting that it has replaced the 1991 Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards;

HAVE AGREED as follows:

¹ ATS 1983 No. 2 and 1984 No. 1, p. iii (erratum); ILM 22 p. 945; NZTS 1983 No. 1; UNTS 1329 p. 175.

² ATS 1995 No. 8, ILM 33 p. 1125.

Article 1

Definitions

For the purposes of this Agreement, unless the context otherwise requires:

- (a) the term “Australia New Zealand Food Standards Code” means the joint food standards code to be established pursuant to this Agreement;
- (b) the term “Australia New Zealand Food Standards System” means the joint system for determining food standards established pursuant to this Agreement;
- (c) the term “Council” means the Australia and New Zealand Food Regulation Ministerial Council established pursuant to the Food Regulation Agreement;
- (d) the term “Standing Committee” means the Food Regulation Standing Committee established pursuant to the Food Regulation Agreement;
- (e) the term “Board” means the Board of Food Standards Australia New Zealand established by Australian legislation and referred to in Annex B of this Agreement;
- (f) the term “Authority” means the statutory authority Food Standards Australia New Zealand established by Australian legislation and referred to in Annex B of this Agreement;
- (g) the term “Food Regulation Agreement” means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory signed on 3 November 2000, as amended from time to time;
- (h) the term “lead Minister” means a member of the Council who has been nominated by that member’s government to have the right to vote on a resolution proposed by the Council;
- (i) the term “Australian Minister” means the Minister of the Commonwealth Government of Australia who is responsible for the Commonwealth health portfolio;
- (j) the term “New Zealand Minister” means the Minister of the Government of New Zealand nominated by the Government of New Zealand to be the New Zealand lead Minister on the Council responsible for representations to the Council in relation to matters with which the Australia New Zealand Food Standards System is concerned;
- (k) the term “food standard” includes a food standard developed as a result of an urgent application or an urgent proposal;
- (l) the term “approved food standard” means a draft food standard that has been approved by the Authority and notified to the Council but has not been published by the Authority; and
- (m) the terms “New Zealand Food Standard(s)” and “Australian Food Standard(s)” mean any standard(s) or requirement(s) under New Zealand or Australian law respectively relating to matters which fall within the scope of the Australia New Zealand Food Standards System.

Article 2

Objectives

The objectives of the Member States in concluding this Agreement are:

- (a) to reduce unnecessary barriers to trade;
- (b) to adopt a joint system for the development and promulgation of food standards;
- (c) to provide for the timely development, adoption, and review of food standards appropriate for both Member States in accordance with the principles in Annex A of this Agreement; and
- (d) to facilitate the sharing of information between the Member States on matters relating to food.

Article 3

Scope

- (1) This Agreement shall apply to the development of the Australia New Zealand Food Standards System.
- (2) Subject to paragraph (3) of this Article, the Member States agree that the Australia New Zealand Food Standards System will include the development and maintenance of joint food standards and may include any related guidelines, codes of practice, and any supporting material, that relate to any of the following:
 - (a) the safety of food, including its microbiological status;
 - (b) the composition of food, including the maximum or minimum amounts, where appropriate, of contaminants, residues, additives or other substances that may be present in food;
 - (c) the method of sampling and testing the food to determine its composition and safety;
 - (d) the production, manufacture or preparation of food;
 - (e) materials, containers, appliances or utensils used in relation to food;
 - (f) the packaging, storage, carrying, delivery, or handling of food;
 - (g) any information about food including labelling, promotion and advertising;
 - (h) such other matters affecting food as may affect the health of persons consuming food; and
 - (i) the interpretation of other standards.
- (3) Unless otherwise agreed in accordance with paragraph (4) of this Article, the scope of the Australian New Zealand Food Standards System does not include:
 - (a) the specification of maximum residue limits for agricultural and veterinary chemicals in food;
 - (b) the specification of food hygiene provisions including requirements for food safety programs or other means of demonstrating the safety and compliance of foods; or

- (c) export requirements relating to third country trade.

However, the Member States agree that all food standards contained in the Australian Food Standards Code as at the date of signature of this Agreement, other than Standard A14 (Residues in Food) to the extent that it relates to matters contained in subparagraph (a) of this paragraph, are included within the scope of the Australia New Zealand Food Standards System.

- (4) The Member States acknowledge that the scope of the Australia New Zealand Food Standards System may be extended and developed by mutual agreement following consultations within the Council.
- (5) The provisions of this Agreement shall in no way affect the cooperation between the Member States and their agencies on health and food-related issues falling outside the Australia New Zealand Food Standards System established by this Agreement.

Article 4

The Australia New Zealand Food Standards System

- (1) The Annexes to this Agreement constitute integral parts of this Agreement.

Principles:

- (2) The Member States agree that food standards developed under the Australia New Zealand Food Standards System shall be consistent with the “Principles Underpinning the Australia New Zealand Food Standards System” attached as Annex A of this Agreement.

Organisation of the Australia New Zealand Food Standards System:

- (3) The Member States agree that the procedures applicable to the determination and implementation of food standards shall be in accordance with the arrangements set out in Annex B of this Agreement.

Consultation between the Member States regarding relevant legislation:

- (4) Australia shall not introduce any amendments to the Australian legislation establishing the Authority, or move government amendments to that legislation, without effective consultation with New Zealand during their development. Australia shall use its best endeavours, including reflection of New Zealand’s position in any relevant papers for the Australian Commonwealth government, to reach agreement with New Zealand on these, and any other, amendments to the Australian legislation.
- (5) New Zealand shall consult with Australia before introducing any amendments to the New Zealand Food Act concerning issues within the scope of this Agreement and New Zealand shall take these views into consideration when developing these amendments.

Review of approved or existing food standards:

- (6) Member States may only request the Authority to review an approved or existing food standard in accordance with the process set out in Annex C of this Agreement.

Principles and procedures to be followed where different conditions in Australia or New Zealand indicate that variations to standards are required:

- (7) The Member States agree that the obligation of New Zealand to implement food standards is subject to the principles and procedures attached as Annexes D and E of this Agreement.

Transitional provisions:

- (8) Prior to the adoption of the Australia New Zealand Food Standards Code transitional arrangements shall apply as set out in Annex F of this Agreement.

Article 5

Adoption of food standards

- (1) Subject to Annexes D, E and F of this Agreement, each Member State shall take such legislative or other steps as are necessary to adopt or incorporate, without amendments, as food standards in force under the law of that Member State, the food standards that are from time to time:
 - (a) developed and approved by the Authority that are not the subject of review by the Authority at the request of the Council or that have not been rejected by the Council; and
 - (b) notified in the Commonwealth of Australia Gazette and the New Zealand Gazette;

such food standards to take effect without undue delay in both Member States on a date, which may be different for each Member State, as specified in the Commonwealth of Australia Gazette and the New Zealand Gazette.

- (2) Subject to Annexes D and E of this Agreement, neither Member State shall, subsequent to the steps taken pursuant to paragraph (1) of this Article, amend the food standards referred to in that paragraph other than in accordance with this Agreement.
- (3) Subject to Annexes D and E of this Agreement, neither Member State shall by legislation or by other means establish or amend a food standard falling within the scope of this Agreement other than in accordance with this Agreement.
- (4) To the extent possible, Australia will implement its obligations under this Article in accordance with the provisions of the Food Regulation Agreement.

Article 6

Funding, performance, and accountability

- (1) The Australia New Zealand Food Standards System will be funded jointly by Australia and New Zealand based on a pro rata to population share of the total agreed cost as determined in writing pursuant to paragraph (3) of this Article.
- (2) The Member States shall consult in advance of any final decision on funding for the Authority, at a timely point in the budget cycle of each Member State.
- (3) By the end of February of any year in which this Agreement remains in force, officials of the New Zealand Minister and officials of the Authority shall

commence consultations regarding the funding and performance arrangements under the Australia New Zealand Food Standards System relating to:

- (a) the services to be provided by the Authority to New Zealand;
 - (b) the performance and accountability requirements pertaining to those services;
 - (c) the total agreed cost; and
 - (d) the payments to be made by New Zealand for the services provided by the Authority.
- (4) The New Zealand Minister and the Chairperson of the Authority shall agree in writing on the arrangements referred to in paragraph (3) of this Article by the end of June of that year.

Article 7

Relationship of this Agreement to the Trans-Tasman Mutual Recognition Arrangement

Member States acknowledge their intention that the provisions of the Trans-Tasman Mutual Recognition Arrangement apply to food, subject to any necessary exemptions determined in accordance with the procedures laid down in that Arrangement.

Article 8

Consultations

- (1) The Member States shall, at the written request of either, promptly enter into consultations with a view to seeking an early, equitable and mutually satisfactory solution, if the Member State which requested the consultations considers that:
 - (a) an obligation under this Agreement has not been, is not being, or may not be fulfilled; or
 - (b) the achievement of any of the objectives of this Agreement is being or may be frustrated.
- (2) In addition to any consultations that might be held pursuant to paragraph (1) of this Article, Member States shall consult at the written request of either in relation to any provisions in respect of which Annex D of this Agreement applies.

Article 9

Review

- (1) Member States agree to conduct, and conclude, no later than three years after the date of entry into force of this Agreement, a review of the effectiveness of the Australia New Zealand Food Standards System with a view to agreeing to and implementing any necessary improvements. Thereafter, Member States agree to conduct and conclude such reviews at any time mutually agreed by an exchange of letters between the New Zealand Minister and the Australian Minister. Such a review shall be conducted and concluded before the conclusion of the review of the Food Regulation Agreement.

- (2) In participating in the review, Australia, in recognition of the operation of the Food Regulation Agreement, shall ensure the effective input and representation of the views of the parties to that Agreement.

Article 10

Amendment

If either of the Member States considers that an amendment to this Agreement would be desirable, it may request consultations with the other Member State to this end. Any agreed amendments shall be comprised in an exchange of letters between the Member States which shall include a reference to the date on which the amendments shall come into force.

Article 11

Participation of third parties

- (1) The Member States may agree to the association of any other State with this Agreement.
- (2) The terms of such association shall be negotiated between the Member States and the other State.

Article 12

Termination

- (1) Either Member State may at any time give notice in writing through diplomatic channels to the other Member State of its decision to terminate this Agreement.
- (2) The Agreement shall terminate twelve months after the date of receipt of notice by the other Member State.

Article 13

Entry into force

The Member States shall notify each other through diplomatic channels of the completion of their respective statutory and constitutional requirements for the entry into force of this Agreement. This Agreement shall enter into force on the date of the later notification or such later date as may be agreed between the Member States.[3]

³ Notes to this effect were exchanged 1-5 July 1996. The Agreement entered into force 5 July 1996.

IN WITNESS WHEREOF the undersigned, being duly authorised by their respective Governments, have signed this Agreement.

DONE in duplicate at Wellington this 5th day of December, 1995.

FOR THE GOVERNMENT OF
AUSTRALIA:

[Signed:]

ANDREW THEOPHANOUS

FOR THE GOVERNMENT OF
NEW ZEALAND:

[Signed:]

KATHERINE O'REGAN

ANNEX A

PRINCIPLES UNDERPINNING THE AUSTRALIA NEW ZEALAND FOOD STANDARDS SYSTEM

- (1) Food standards shall be developed under the Australia New Zealand Food Standards System in accordance with the following principles:
 - (a) the protection of public health and safety;
 - (b) the provision of adequate information relating to food to enable consumers to make informed choices;
 - (c) the prevention of misleading or deceptive conduct;
 - (d) the facilitation of access to markets, including:
 - (i) the promotion of fair trading;
 - (ii) the promotion of consistency between the domestic food standards of the Member States and international food standards; and
 - (iii) the desirability of efficient and internationally competitive food industries; and
 - (e) the need for standards to be based on risk analysis using the best available scientific evidence and risk management principles.
- (2) In addition, food standards developed under the Australia New Zealand Food Standards System shall be:
 - (a) developed with regard to any written policy guidelines formulated by the Council for this purpose and notified to the Authority.
 - (b) developed with regard to the objective of promoting trade and commerce;
 - (c) consistent with the obligations of both Member States under the Agreement establishing the World Trade Organization done at Marrakesh on 15 April 1994;
 - (d) consistent with domestic laws and regulations of both Member States, other than existing food standards that are intended to be superseded by food standards developed under the Australia New Zealand Food Standards System;
 - (e) of a generic nature where possible; and
 - (f) subject to the principles set out in Parts B, C and D of the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies endorsed by the Council of Australian Governments and the New Zealand Code of Good Regulatory Practice.

ANNEX B
ORGANISATION OF THE AUSTRALIA NEW ZEALAND
FOOD STANDARDS SYSTEM

I Essential elements

- (1) The Australia New Zealand Food Standards System will be based on an extension of the existing Australian system to include New Zealand.
- (2) The Australian system comprises the system specified in the Food Regulation Agreement and in the Australian Food Standards Australia New Zealand Act 1991.
- (3) The Australia New Zealand Food Standards System includes, in particular, the development of the Australia New Zealand Food Standards Code.
- (4) Consultation arrangements will permit equal participation in the Australia New Zealand Food Standards System by Australian and New Zealand industry, government, and community stakeholders.
- (5) The Australia New Zealand Food Standards System shall identify and evaluate any differing health and safety, trade, environmental or cultural factors in the development of appropriate food standards.
- (6) Amendments to this Agreement, the Australian Food Standards Australia New Zealand Act 1991, or the Food Regulation Agreement, shall maintain the level of influence of New Zealand in the Australia New Zealand Food Standards System.

II Definitions and Membership of Bodies

- (1)(a) The Government of New Zealand shall appoint one or more Ministers who have responsibility for matters with which the Food Regulation Agreement is concerned to be a member or members of the Council.
- (b) The Government of New Zealand shall have one vote on a proposed resolution of the Council, as do each of the Parties to the Food Regulation Agreement.
- (c) The vote of the Government of New Zealand may only be cast by the New Zealand Minister.
- (2)(a) Three members of the Board shall be appointed by the Australian Minister on the nomination of the New Zealand Minister. They shall have expertise in one or more of the following fields:
 - (i) public health;
 - (ii) consumer affairs;
 - (iii) food science;
 - (iv) food allergy;
 - (v) human nutrition;
 - (vi) medical science;
 - (vii) microbiology;
 - (viii) food safety;
 - (ix) biotechnology;
 - (x) veterinary science;
 - (xi) the food industry;

- (xii) food processing or retailing;
- (xiii) primary food production;
- (xiv) small business;
- (xv) international trade;
- (xvi) government;
- (xvii) food regulation.

Two of these members shall have expertise in one or more of any of the fields listed above. The third member shall have expertise in one or more of the fields listed in (i) to (x) above.

- (b) When determining nominees for the Board, the New Zealand Minister shall give due consideration to, amongst other things, the Board's having an appropriate balance of skills covering the above areas of expertise.
 - (c) The Council shall be consulted by the Australian Minister in relation to the nominations made by the New Zealand Minister but the Council's agreement shall not be necessary for the appointments to be made.
 - (d) The members of the Board to be appointed by the Australian Minister, other than those nominated by the New Zealand Minister, shall be appointed after consultation with, and the agreement of, the Council.
 - (e) Nominations shall be accepted from both New Zealand and Australian public bodies and organisations, including consumer organisations, for the purposes of appointments to the Board by the Australian Minister.
 - (f) The number of Board members from New Zealand is not restricted to those nominated by the New Zealand Minister.
- (3)(a) The Council shall be supported by the Standing Committee. The Standing Committee shall provide advice to the Council in relation to the Council's policy development role. Policy development will take place within Working Groups established by the Standing Committee and comprising representatives of all interested jurisdictions. The Standing Committee will comprise the heads of Departments or Ministries for which Ministers on the Council have portfolio responsibility, and a senior representative of the Australian Local Government Association.
- (b) New Zealand shall be represented, where it considers appropriate, on any committee or other body established by the Standing Committee or the Ministerial Council.
 - (c) The Council and Standing Committee shall be supported by a secretariat with an administrative function only. The Secretariat shall be provided by the Australian Commonwealth Department of Health and Aged Care, or its successor.

III Operations of the Authority

The Authority shall maintain an office in New Zealand and undertake activities in New Zealand to permit full participation by New Zealand industry, government and community stakeholders in the process of development of food standards.

IV Implementation under Australian and New Zealand domestic law

The Member States shall implement the obligations expressed in this Agreement under appropriate domestic legislation.

ANNEX C
REVIEW OF APPROVED OR EXISTING FOOD STANDARDS

I Identification of Need for Review

- (1) The Council shall request the Authority to review an approved food standard or an existing food standard if the Council considers that:
 - (a) it is not consistent with existing policy guidelines set by the Council;
 - (b) it is not consistent with the objectives of the legislation which establishes the Authority;
 - (c) it does not protect public health and safety;
 - (d) it does not promote consistency between domestic and international food standards where these are at variance;
 - (e) it does not provide adequate information to enable informed choice;
 - (f) it is difficult to enforce and/or comply with in both practical or resource terms;
 - (g) it places an unreasonable cost burden on industry or consumers;
 - (h) it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
 - (i) it is inappropriate on the grounds of exceptional environmental or cultural factors.
- (2) For existing standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may request the Authority to take any action the Council considers appropriate (including, without limitation, requesting the Authority to prepare a proposal for the development of a food standard to replace, amend, or revoke the food standard or advising the Authority that no further action is required).
- (3) For approved standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may decide to amend or reject the food standard.
- (4) The Council shall publicly announce its reasons for rejecting a standard under paragraph (3).

ANNEX D
EXCEPTIONAL CIRCUMSTANCES

- (1) For the purposes of this Annex, the Member States acknowledge that:
- (a) their joint objective is for the same standards to apply in both Member States wherever possible; and
 - (b) in light of that objective they will pursue all available avenues to ensure a joint standard applies in both countries before utilising any of the measures under this Annex.

The following provisions set out the principles and procedures to be followed in exceptional circumstances where different conditions in Australia or New Zealand necessitate a modification, separate standard, or an opt-out.

- (2) In this Annex, ‘prescribed grounds’ means exceptional health, safety, third country trade, environmental, or cultural grounds.
- (3) A standard or part of a standard may be inappropriate for New Zealand and in the case of a separate standard a separate standard may be required for Australia or New Zealand only on prescribed grounds.
- (4) The following notification procedure applies when an exceptional circumstance necessitates different conditions in Australia or New Zealand:
- (a) where the New Zealand Minister informs the Council under paragraph (7) that a modification for New Zealand is required, the New Zealand Minister shall:
 - (i) inform the Council of the relevant prescribed grounds for the modification; and
 - (ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand;
 - (b) where a Member State informs the Council under paragraph (11) that a separate standard will be required for that Member State, the Member State shall:
 - (i) inform the Council of the relevant prescribed grounds on which the separate standard will be required; and
 - (ii) provide a note detailing those prescribed grounds and the reasons why a separate standard will be required for the Member State; and
 - (iii) in the case of New Zealand, provide in the note referred to in subparagraph (ii), the reasons why a modification would not be adequate to deal with the exceptional circumstance;
 - (c) where the New Zealand Minister informs the Council that New Zealand will need to opt out of a food standard under paragraph (14), the New Zealand Minister shall:
 - (i) inform the Council of the relevant prescribed grounds for the opt out; and
 - (ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand; andprovide in the note referred to in subparagraph (ii), the reasons why a modification or separate standard would not be adequate to deal with the exceptional circumstance.

- (5) The Council shall make public any note provided under paragraph (4)(a), (b), or (c).
- (6) Measures taken under this Annex shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

I New Zealand modification

- (7) If, while a food standard is under development by the Authority, the New Zealand Minister considers that a part or parts of the food standard would be inappropriate for New Zealand on one or more of the prescribed grounds or the Authority advises the New Zealand Minister that a part or parts of the food standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds, the New Zealand Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(a) that a modification for New Zealand is required.
- (8) The New Zealand Minister shall, after informing the Council of the need for a modification, request the Authority to prepare a modification to the relevant part or parts of the standard under development so as to make them appropriate for New Zealand.
- (9) Where notification is given under paragraph (7), the Authority shall develop a modification for New Zealand.
- (10) Any resulting modification that comes into effect for New Zealand shall be included in the food standard in the Australia New Zealand Food Standards Code.

II Separate Standard

- (11) If, while a food standard is under development by the Authority, the New Zealand Minister or the Australian Minister considers that on one or more of the prescribed grounds a separate food standard is needed for that Member State or the Authority advises the New Zealand Minister or the Australian Minister that a separate standard may be needed for the Member State on exceptional health, safety, or environmental grounds, the Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(b) that a separate food standard will be required for that Member State.
- (12) Where notification is given under paragraph (11) the Authority shall also develop a separate food standard for that Member State, subject to agreement being reached on any necessary modifications to the funding and performance arrangements.
- (13) Any resulting food standard that comes into effect shall apply only in the Member State for which it was ultimately developed.

III New Zealand opt-out

- (14) Where the New Zealand Minister considers that a standard under development or an approved food standard would be inappropriate for New Zealand on one or more of the prescribed grounds and that the process for a modification or separate standard is not appropriate or the Authority advises the New Zealand Minister that the standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds and the process for a modification or separate standard

is not appropriate, the New Zealand Minister may, in a timely manner, inform the Council in accordance with the notification procedure in paragraph (4)(c) that New Zealand needs to opt out of the food standard.

- (15) In the event of the New Zealand Minister informing the Council that New Zealand needs to opt out of a food standard in accordance with paragraph (14) then:
 - (a) in the case of a food standard under development, the Authority shall continue to develop the food standard for Australia only; and
 - (b) in the case of a food standard from which New Zealand opted out while it was either under development or an approved food standard, the food standard shall be applicable only in Australia.
- (16) Where New Zealand has opted out of a food standard under this Part of this Annex, the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that the standard does not apply in New Zealand.

ANNEX E
TEMPORARY FOOD STANDARDS

- (1) For the purposes of this Annex, the Member States acknowledge that in some instances issues affecting public health and safety or environmental conditions may need to be addressed urgently by a Member State or an Australian jurisdiction on a temporary basis.
- (2) Where a Member State or Australian jurisdiction represented on the Council determines that there is an issue affecting public health and safety or environmental conditions that needs to be addressed urgently, and that the circumstances do not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, the Member State or Australian jurisdiction may adopt a temporary food standard under its own food laws.
- (3) Paragraph (2) only applies if the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the temporary food standard and of the reasons and available evidence.
- (4) The relevant Member State or Australian jurisdiction shall, on adopting the temporary food standard, make an immediate request to the Authority to raise a proposal relating to the matters covered in the temporary food standard.
- (5) The Authority shall, on receiving that request, expeditiously raise a proposal and give appropriate priority to its progression.
- (6) The temporary food standard adopted under paragraph (4) shall apply only until a draft food standard developed as a consequence of the proposal raised under paragraph (5) is either adopted or rejected or the proposal is abandoned.

ANNEX F
TRANSITIONAL PROVISIONS

Until the Australia New Zealand Food Standards Code referred to in paragraph (3) of this Annex comes into effect the following provisions will apply to facilitate trade between the Member States.

- (1) Where the New Zealand Minister considers that an Australian Food Standard is appropriate for adoption in New Zealand, such Australian Food Standard may be adopted in New Zealand as a New Zealand Food Standard.
- (2) On the date that this Agreement enters into force, Australian Food Standards in the Australian Food Standards Code shall be adopted in New Zealand and as a result dual standards shall apply in New Zealand. From this date, food may be produced and/or sold in New Zealand in accordance with either Australian Food Standards or New Zealand Food Standards. Existing arrangements relating to matters falling outside the scope of the Australia New Zealand Food Standards System shall continue to apply.
- (3) On a date to be mutually determined between the Member States by an exchange of letters between the New Zealand Minister and the Australian Minister, the food standards in Vol. II of the Australian Food Standards Code within the scope of this Agreement shall be adopted by New Zealand and Australia as the Australia New Zealand Food Standards Code. Those provisions in New Zealand Food Standards which correspond to standards in the Australia New Zealand Food Standards Code shall cease to apply.

LETTERS EXCHANGED BETWEEN NEW ZEALAND AND AUSTRALIA

Hon Mark Butler
Parliamentary Secretary for Health and Ageing
Australia

Dear Parliamentary Secretary Butler,

I have the honour to refer to the *Agreement between the Government of New Zealand and the Government of Australia Concerning a Joint Food Standards System* done at Wellington on 5 December 1995, as amended, (hereinafter referred to as “the Agreement”), the review of the Agreement pursuant to its Article 9, and consultations between our two Governments convened under its Article 10 with a view to amendment of the Agreement.

I have the further honour to inform you that at the conclusion of the aforementioned review and consultations between our two Governments, the following amendments to the text of the Agreement were agreed:

1. The eighth paragraph of the Preamble to the Agreement shall be replaced with the following:

ACKNOWLEDGING the existence and operation of the Food Regulation Agreement and noting that it has replaced the 1991 Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards;

2. Sub-paragraph (g) of Article 1 (Definitions) of the Agreement shall be replaced with the following:

(g) the term “Food Regulation Agreement” means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory signed on 3 November 2000, as amended from time to time;

and the term “Food Regulation Agreement 2000” shall be replaced with the term “Food Regulation Agreement” throughout the Agreement.

3. The words “Annex D” in paragraph 7 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words “Annexes D and E”.

4. The words “Annex E” in paragraph 8 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words “Annex F”.

5. The words “Annex D and E” in paragraph 1 Article 5 (Adoption of Food Standards) shall be replaced with the words “Annexes D, E and F”.

6. The words “Annex D” in paragraphs 2 and 3 of Article 5 (Adoption of Food Standards) shall be replaced with the words “Annexes D and E”.

7. Paragraph 2 of Article 8 (Consultations) of the Agreement shall be replaced with the following:

(2) In addition to any consultations that might be held pursuant to paragraph (1) of this Article, Member States shall consult at the written request of either in relation to any provisions in respect of which Annex D of this Agreement applies.

8. Sub-paragraph (2)(f) of Annex A (Principles Underpinning the Australia New Zealand Food Standards System) shall be replaced with the following:

(f) subject to the principles set out in Parts B,C and D of *the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies* endorsed by the Council of Australian Governments and the New Zealand Code of Good Regulatory Practice.

9. Annex C (Review of Approved or Existing Standards) of the Agreement shall be replaced with the following:

“ANNEX C

REVIEW OF APPROVED OR EXISTING FOOD STANDARDS

I Identification of Need for Review

(1) The Council shall request the Authority to review an approved food standard or an existing food standard if the Council considers that:

- (a) it is not consistent with existing policy guidelines set by the Council;
- (b) it is not consistent with the objectives of the legislation which establishes the Authority;
- (c) it does not protect public health and safety;
- (d) it does not promote consistency between domestic and international food standards where these are at variance;
- (e) it does not provide adequate information to enable informed choice;
- (f) it is difficult to enforce and/or comply with in both practical or resource terms;
- (g) it places an unreasonable cost burden on industry or consumers;
- (h) it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
- (i) it is inappropriate on the grounds of exceptional environmental or cultural factors.

(2) For existing standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may request the Authority to take any action the Council considers appropriate (including, without limitation, requesting the Authority to prepare a proposal for the development of a food standard to replace, amend, or revoke the food standard or advising the Authority that no further action is required).

(3) For approved standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may decide to amend or reject the food standard.

(4) The Council shall publicly announce its reasons for rejecting a standard under paragraph (3).”

10. Annex D (Principles and Procedures to be Followed where Different Conditions in Australia or New Zealand Indicate Variations to Standards are Required) of the Agreement shall be replaced with the following:

“ANNEX D

EXCEPTIONAL CIRCUMSTANCES

(1) For the purposes of this Annex, the Member States acknowledge that:

- (a) their joint objective is for the same standards to apply in both Member States wherever possible; and
- (b) in light of that objective they will pursue all available avenues to ensure a joint standard applies in both countries before utilising any of the measures under this Annex.

The following provisions set out the principles and procedures to be followed in exceptional circumstances where different conditions in Australia or New Zealand necessitate a modification, separate standard, or an opt-out.

(2) In this Annex, ‘prescribed grounds’ means exceptional health, safety, third country trade, environmental, or cultural grounds.

(3) A standard or part of a standard may be inappropriate for New Zealand and in the case of a separate standard a separate standard may be required for Australia or New Zealand only on prescribed grounds.

(4) The following notification procedure applies when an exceptional circumstance necessitates different conditions in Australia or New Zealand:

(a) where the New Zealand Minister informs the Council under paragraph (7) that a modification for New Zealand is required, the New Zealand Minister shall:

- (i) inform the Council of the relevant prescribed grounds for the modification; and
- (ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand;

(b) where a Member State informs the Council under paragraph (11) that a separate standard will be required for that Member State, the Member State shall:

- (i) inform the Council of the relevant prescribed grounds on which the separate standard will be required; and
- (ii) provide a note detailing those prescribed grounds and the reasons why a separate standard will be required for the Member State; and

(iii) in the case of New Zealand, provide in the note referred to in subparagraph (ii), the reasons why a modification would not be adequate to deal with the exceptional circumstance;

(c) where the New Zealand Minister informs the Council that New Zealand will need to opt out of a food standard under paragraph (14), the New Zealand Minister shall:

- (i) inform the Council of the relevant prescribed grounds for the opt out; and
- (ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand; and
- (iii) provide in the note referred to in subparagraph (ii), the reasons why a modification or separate standard would not be adequate to deal with the exceptional circumstance.

(5) The Council shall make public any note provided under paragraph (4)(a), (b), or (c).

(6) Measures taken under this Annex shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

I New Zealand modification

(7) If, while a food standard is under development by the Authority, the New Zealand Minister considers that a part or parts of the food standard would be inappropriate for New Zealand on one or more of the prescribed grounds or the Authority advises the New Zealand Minister that a part or parts of the food standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds, the New Zealand Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(a) that a modification for New Zealand is required.

(8) The New Zealand Minister shall, after informing the Council of the need for a modification, request the Authority to prepare a modification to the relevant part or parts of the standard under development so as to make them appropriate for New Zealand.

(9) Where notification is given under paragraph (7), the Authority shall develop a modification for New Zealand.

(10) Any resulting modification that comes into effect for New Zealand shall be included in the food standard in the Australia New Zealand Food Standards Code.

II Separate Standard

(11) If, while a food standard is under development by the Authority, the New Zealand Minister or the Australian Minister considers that on one or more of the prescribed grounds a separate food standard is needed for that Member State or the Authority advises the New Zealand Minister or the Australian Minister that a separate standard may be needed for the Member State on exceptional health, safety, or environmental grounds, the Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(b) that a separate food standard will be required for that Member State.

(12) Where notification is given under paragraph (11) the Authority shall also develop a separate food standard for that Member State, subject to agreement being reached on any necessary modifications to the funding and performance arrangements.

(13) Any resulting food standard that comes into effect shall apply only in the Member State for which it was ultimately developed.

III New Zealand opt-out

(14) Where the New Zealand Minister considers that a standard under development or an approved food standard would be inappropriate for New Zealand on one or more of the prescribed grounds and that the process for a modification or separate standard is not appropriate or the Authority advises the New Zealand Minister that the standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds and the process for a modification or separate standard is not appropriate, the New Zealand Minister may, in a timely manner, inform the Council in accordance with the notification procedure in paragraph (4)(c) that New Zealand needs to opt out of the food standard.

(15) In the event of the New Zealand Minister informing the Council that New Zealand needs to opt out of a food standard in accordance with paragraph (14) then:

(a) in the case of a food standard under development, the Authority shall continue to develop the food standard for Australia only; and

(b) in the case of a food standard from which New Zealand opted out while it was either under development or an approved food standard, the food standard shall be applicable only in Australia.

(16) Where New Zealand has opted out of a food standard under this Part of this Annex, the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that the standard does not apply in New Zealand.”

11. The title of present Annex E of the Agreement shall be replaced with the following:

**“ANNEX F
TRANSITIONAL PROVISIONS”**

12. A new Annex E shall be inserted in the Agreement as follows:

**“ANNEX E
TEMPORARY FOOD STANDARDS**

(1) For the purposes of this Annex, the Member States acknowledge that in some instances issues affecting public health and safety or environmental conditions may need to be addressed urgently by a Member State or an Australian jurisdiction on a temporary basis.

(2) Where a Member State or Australian jurisdiction represented on the Council determines that there is an issue affecting public health and safety or environmental conditions that needs to be addressed urgently, and that the circumstances do not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, the Member State or Australian jurisdiction may adopt a temporary food standard under its own food laws.

(3) Paragraph (2) only applies if the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the temporary food standard and of the reasons and available evidence.

(4) The relevant Member State or Australian jurisdiction shall, on adopting the temporary food standard, make an immediate request to the Authority to raise a proposal relating to the matters covered in the temporary food standard.

(5) The Authority shall, on receiving that request, expeditiously raise a proposal and give appropriate priority to its progression.

(6) The temporary food standard adopted under paragraph (4) shall apply only until a draft food standard developed as a consequence of the proposal raised under paragraph (5) is either adopted or rejected or the proposal is abandoned.”

I have the honour to propose that, if the foregoing is acceptable to the Government of Australia, then this letter and your letter in reply to that effect shall together constitute an exchange of letters amending the Agreement, which shall enter into force on the date on which both Governments have notified each other through an exchange of notes that their respective domestic processes necessary for the entry into force of the exchange of letters have been completed.

Please accept the assurances of my highest consideration.

(signed)

Hon Kate Wilkinson
Minister for Food Safety
New Zealand

Wellington, 24 February 2010

The Hon Kate Wilkinson MP
Minister for Food Safety
Private Bag 18 888
Parliament Buildings
Wellington New Zealand 6160

Dear Minister Wilkinson

I have the honour to refer to your letter of 24 February 2010, which reads as follows:

"I have the honour to refer to the *Agreement between the Government of New Zealand and the Government of Australia Concerning a Joint Food Standards System* done at Wellington on 5 December 1995, as amended, (hereinafter referred to as "the Agreement"), the review of the Agreement pursuant to its Article 9, and consultations between our two Governments convened under its Article 10 with a view to amendment of the Agreement.

I have the further honour to inform you that at the conclusion of the aforementioned review and consultations between our two Governments, the following amendments to the text of the Agreement were agreed:

1. The eighth paragraph of the Preamble to the Agreement shall be replaced with the following:

ACKNOWLEDGING the existence and operation of the Food Regulation Agreement and noting that it has replaced the 1991 Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory in relation to the adoption of uniform food standards;

2. Sub-paragraph (g) of Article 1 (Definitions) of the Agreement shall be replaced with the following:

(g) the term "Food Regulation Agreement" means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory signed on 3 November 2000, as amended from time to time;

and the term "Food Regulation Agreement 2000" shall be replaced with the term "Food Regulation Agreement" throughout the Agreement.

3. The words "Annex D" in paragraph 7 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words "Annexes D and E".

4. The words "Annex E" in paragraph 8 of Article 4 (The Australia New Zealand Food Standards System) of the Agreement shall be replaced with the words "Annex F".

5. The words "Annex D and E" in paragraph 1 Article 5 (Adoption of Food Standards) shall be replaced with the words "Annexes D, E and F".

6. The words "Annex D" in paragraphs 2 and 3 of Article 5 (Adoption of Food Standards) shall be replaced with the words "Annexes D and E".

7. Paragraph 2 of Article 8 (Consultations) of the Agreement shall be replaced with the following:

(2) In addition to any consultations that might be held pursuant to paragraph (1) of this Article, Member States shall consult at the written request of either in relation to any provisions in respect of which Annex D of this Agreement applies.

8. Sub-paragraph (2)(f) of Annex A (Principles Underpinning the Australia New Zealand Food Standards System) shall be replaced with the following:

(f) subject to the principles set out in Parts B,C and D of *the Principles and Guidelines for National Standard Setting and Regulatory Action by Ministerial Councils and Standard Setting Bodies* endorsed by the Council of Australian Governments and the New Zealand Code of Good Regulatory Practice.

9. Annex C (Review of Approved or Existing Standards) of the Agreement shall be replaced with the following:

“ANNEX C

REVIEW OF APPROVED OR EXISTING FOOD STANDARDS

I Identification of Need for Review

(1) The Council shall request the Authority to review an approved food standard or an existing food standard if the Council considers that:

- (a) it is not consistent with existing policy guidelines set by the Council;
- (b) it is not consistent with the objectives of the legislation which establishes the Authority;
- (c) it does not protect public health and safety;
- (d) it does not promote consistency between domestic and international food standards where these are at variance;
- (e) it does not provide adequate information to enable informed choice;
- (f) it is difficult to enforce and/or comply with in both practical or resource terms;
- (g) it places an unreasonable cost burden on industry or consumers;
- (h) it is not consistent with the principles for the establishment of food standards set down in this Agreement, including consistency with both countries' World Trade Organization obligations and consistency with the domestic laws and regulations of both countries; and/or
- (i) it is inappropriate on the grounds of exceptional environmental or cultural factors.

(2) For existing standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may request the Authority to take any action the Council considers appropriate (including, without limitation, requesting the Authority to prepare a proposal for the development of a food standard to replace, amend, or revoke the food standard or advising the Authority that no further action is required).

(3) For approved standards, subsequent to a review undertaken in accordance with paragraph (1) of this Annex, the Council may decide to amend or reject the food standard.

(4) The Council shall publicly announce its reasons for rejecting a standard under paragraph (3).”

10. Annex D (Principles and Procedures to be Followed where Different Conditions in Australia or New Zealand Indicate Variations to Standards are Required) of the Agreement shall be replaced with the following:

“ANNEX D

EXCEPTIONAL CIRCUMSTANCES

(1) For the purposes of this Annex, the Member States acknowledge that:

(a) their joint objective is for the same standards to apply in both Member States wherever possible; and

(b) in light of that objective they will pursue all available avenues to ensure a joint standard applies in both countries before utilising any of the measures under this Annex.

The following provisions set out the principles and procedures to be followed in exceptional circumstances where different conditions in Australia or New Zealand necessitate a modification, separate standard, or an opt-out.

(2) In this Annex, ‘prescribed grounds’ means exceptional health, safety, third country trade, environmental, or cultural grounds.

(3) A standard or part of a standard may be inappropriate for New Zealand and in the case of a separate standard a separate standard may be required for Australia or New Zealand only on prescribed grounds.

(4) The following notification procedure applies when an exceptional circumstance necessitates different conditions in Australia or New Zealand:

(a) where the New Zealand Minister informs the Council under paragraph (7) that a modification for New Zealand is required, the New Zealand Minister shall:

(i) inform the Council of the relevant prescribed grounds for the modification; and

(ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand;

(b) where a Member State informs the Council under paragraph (11) that a separate standard will be required for that Member State, the Member State shall:

(i) inform the Council of the relevant prescribed grounds on which the separate standard will be required; and

(ii) provide a note detailing those prescribed grounds and the reasons why a separate standard will be required for the Member State; and

(iii) in the case of New Zealand, provide in the note referred to in subparagraph (ii), the reasons why a modification would not be adequate to deal with the exceptional circumstance;

(c) where the New Zealand Minister informs the Council that New Zealand will need to opt out of a food standard under paragraph (14), the New Zealand Minister shall:

(i) inform the Council of the relevant prescribed grounds for the opt out; and

(ii) provide a note detailing those prescribed grounds and the reasons why the proposed standard is inappropriate for New Zealand; and

(iii) provide in the note referred to in subparagraph (ii), the reasons why a modification or separate standard would not be adequate to deal with the exceptional circumstance.

(5) The Council shall make public any note provided under paragraph (4)(a), (b), or (c).

(6) Measures taken under this Annex shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

I New Zealand modification

(7) If, while a food standard is under development by the Authority, the New Zealand Minister considers that a part or parts of the food standard would be inappropriate for New Zealand on one or more of the prescribed grounds or the Authority advises the New Zealand Minister that a part or parts of the food standard may be inappropriate for New Zealand on exceptional health, safety, or environmental grounds, the New Zealand Minister may, in a timely manner, before the draft standard has been approved by the Authority, inform the Council in accordance with the notification procedure in paragraph (4)(a) that a modification for New Zealand is required.

(8) The New Zealand Minister shall, after informing the Council of the need for a modification, request the Authority to prepare a modification to the relevant part or parts of the standard under development so as to make them appropriate for New Zealand.

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standard.

(15) In the event of the New Zealand Minister informing the Council that New Zealand needs to opt out of a food standard in accordance with paragraph (14) then:

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(b) in the case of a food standard from which New Zealand opted out while it was either under development or an approved food standard, the food standard shall be applicable only in Australia.

(16) Where New Zealand has opted out of a food standard under this Part of this Annex, the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that the standard does not apply in New Zealand.”

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TRANSITIONAL PROVISIONS”**

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TEMPORARY FOOD STANDARDS**

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(2) Where a Member State or Australian jurisdiction represented on the Council determines that there is an issue affecting public health and safety or environmental conditions that needs to be addressed urgently, and that the circumstances do not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, the Member State or Australian jurisdiction may adopt a temporary food standard under its own food laws.

(3) Paragraph (2) only applies if the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the temporary food standard and of the reasons and available evidence.

(4) The relevant Member State or Australian jurisdiction shall, on adopting the temporary food standard, make an immediate request to the Authority to raise a proposal relating to the matters covered in the temporary food standard.

(5) The Authority shall, on receiving that request, expeditiously raise a proposal and give appropriate priority to its progression.

(6) The temporary food standard adopted under paragraph (4) shall apply only until a draft food standard developed as a consequence of the proposal raised under paragraph (5) is either adopted or rejected or the proposal is abandoned.”

I have the honour to propose that, if the foregoing is acceptable to the Government of Australia, then this letter and your letter in reply to that effect shall together constitute an exchange of letters amending the Agreement, which shall enter into force on the date on which both Governments have notified each other through an exchange of notes that their respective domestic processes necessary for the entry into force of the exchange of letters have been completed.

Please accept the assurances of my highest consideration.”

I have the honour to advise that the foregoing is acceptable to the Government of Australia and that, accordingly, your letter and this letter in reply shall together constitute an exchange of letters amending the Agreement, which shall enter into force on the date on which both Governments have notified each other through an exchange of notes that their respective domestic processes necessary for the entry into force of this exchange of letters have been completed.

Please accept the assurances of my highest consideration.

(signed)

MARK BUTLER
Parliamentary Secretary for Health
Australia
3 March 2010