

**EXCHANGE OF LETTERS, DONE AT CANBERRA ON 27 SEPTEMBER-
25 OCTOBER 2001, CONSTITUTING AN AGREEMENT BETWEEN THE
GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW
ZEALAND AMENDING THE AGREEMENT BETWEEN THE
GOVERNMENT OF AUSTRALIA AND THE GOVERNMENT OF NEW
ZEALAND ESTABLISHING A SYSTEM FOR THE DEVELOPMENT OF
JOINT FOOD STANDARDS OF 1995.**

Documents tabled on 12 March 2002:

- **National Interest Analysis**
- **Text of the proposed treaty action**
- **Regulation Impact Statement**

Exchange of Letters, done at Canberra on 27 September-25 October 2001, constituting an Agreement between the Government of Australia and the Government of New Zealand amending the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards of 1995.

NATIONAL INTEREST ANALYSIS

Proposed binding treaty action

1. It is proposed to bring into force the Exchange of Letters amending the Agreement between the Government of Australia and the Government of New Zealand Establishing a System for the Development of Joint Food Standards (the Agreement) done at Wellington on 5 December 1995. The Exchange of Letters was signed by Australia on 27 September 2001 and by New Zealand on 25 October 2001. An Exchange of Notes will notify the completion of all our necessary domestic processes for the entry into force of the Exchange of Letters.

Date of proposed binding treaty action

2. It is proposed that Australia notify New Zealand that Australia's domestic processes necessary for the entry into force of the Exchange of Letters have been completed as soon as practicable after the expiry of the 15 sitting day tabling period. The Exchange of Letters will 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.

3. The target date for entry into force of the Exchange of Letters is 30 June 2002. Commencement of the amendments to the Agreement on that date will enable remaining provisions of the *Australia New Zealand Food Authority Amendment Act 2001* (ANZFA Amendment Act) to commence on 1 July 2002.

Date of tabling of the proposed treaty action

4. The Exchange of Letters and this National Interest Analysis will be tabled on 12 March 2002.

Summary of the purpose of the proposed treaty action and why it is in the national interest

5. The entry into force of the Exchange of Letters will update the joint Australia New Zealand Food Standards System by giving effect to food regulatory reforms set out in the Council of Australian Governments (COAG) inter-governmental Food Regulation Agreement (FRA) of 3 November 2000 and the ANZFA Amendment Act which received Royal Assent on 10 July 2001. The COAG reforms aim to deliver a more streamlined, efficient and nationally focused food regulatory system for Australia that will enhance public health and safety. Those provisions of the ANZFA Amendment Act not yet in force will commence on the first day after the Exchange of Letters amending the Agreement enters into force. The amendments to the Agreement also address the recommendations of the Review which was conducted under Article 9 of the Agreement, and released in November 1999.

6. The Agreement created a system that enables the adoption of common Trans-Tasman food standards. The amendments to the Agreement will enable this system to be maintained, thus continuing to reduce unnecessary barriers to trade between the two countries. Trans-Tasman bilateral trade in food products has grown steadily in recent years with A\$1.3 billion for imports and exports combined in 1999-2000.

Reasons for Australia to take the proposed treaty action

7. The current Agreement, which entered into force on 5 July 1996, established a joint food standards system for Australia and New Zealand by extending the then Australia only food standards system to include New Zealand. The Agreement specifies that Australia and New Zealand are to adopt food standards developed under the “Australia New Zealand Food Standards System” (Annex A (1)) and that the “Australia New Zealand Food Standards System” will be based on an extension of the (then) existing Australian system to include New Zealand (Annex B I (1)).

8. On 3 November 2000, the Commonwealth, States and Territories signed the COAG FRA which specifies new food regulatory arrangements for Australia. The reforms to the Australian food regulatory system are designed to implement governments’ objective of improving the efficiency, timeliness, responsiveness and transparency of the food standards setting processes, whilst at the same time protecting public health and safety. They aim to rectify inefficiencies in Government processes and structures, including a lack of clarity and consistency in agency roles and responsibilities and inefficient food standards setting processes. They address stakeholder concerns that the current system is complex and fragmented.

9. If Australia were to adopt food standards developed under the new food regulatory arrangements without first amending the Agreement to incorporate the new arrangements, we would be in breach of our obligation to adopt food standards developed under the Australia New Zealand Food Standards System as it is currently defined by the Agreement.

10. The proposed amendments to the Agreement will ensure that it accurately reflects the new food regulatory arrangements. The specific objectives of the proposed amendments are to:

- reflect the new food regulatory arrangements specified in the FRA and the ANZFA Amendment Act;
- enable Australia and New Zealand to adopt the food standards developed by the new statutory authority Food Standards Australia New Zealand (FSANZ) in accordance with these new food regulatory arrangements;
- incorporate recommended changes arising from the 1999 Review of the effectiveness of the Australian New Zealand Food Standards System; and
- reflect the continuing development of Closer Economic Relations between Australia and New Zealand and the fact that the joint Australia New Zealand Food Standards System should be maintained.

11. Amending the Agreement will benefit Australia by ensuring the joint Australia New Zealand system for the development and promulgation of food standards reflects the new arrangements in the FRA. Maintaining a trans-Tasman market for food products based on

common standards helps to reduce unnecessary barriers to trade. In 1999-2000, Australia exported A\$578m of food to New Zealand and imported A\$736m from New Zealand*.

Obligations

12. For the most part, the obligations imposed by the proposed amendments to the Agreement simply reflect the new Australian food regulatory arrangements and implement Australia's commitment to New Zealand to enable New Zealand to continue to adopt food standards developed under the Australian food regulatory system. Where relevant, they also mirror the requirements of the ANZFA Amendment Act. The Agreement refers to Australia and New Zealand collectively as "Member States". This terminology is adopted to reflect the fact that Article 11 of the Agreement allows for the association of other parties to the Agreement. This is a standard feature of treaties between Australia and New Zealand adopted in the context of Closer Economic Relations. The exchange of Notes does not affect this arrangement or this terminology.

13. Annex A sets out obligations associated with the development of food standards. Annex B prescribes how the Australia New Zealand Food Standards System is to be organised, including obligations concerning the composition of the Board of FSANZ and consultation regarding Board appointments. Annex C sets out the conditions under which food standards may be reviewed. Annex D sets out the principles and procedures to be followed where exceptional circumstances may require the development of separate standards for Australia and New Zealand.

14. A central theme in negotiating the amendments to the Agreement with New Zealand was that there be no diminution of New Zealand's influence in the governance of the food regulation system. Under the proposed amendments, New Zealand will be able to appoint more than one Minister to the Ministerial Council, although it will retain only a single vote (Annex B II (1)). New Zealand will also be entitled to directly nominate three members to the Board of FSANZ (Annex B II (2)(a)). Any future amendments to the Agreement, the *Food Standards Australia New Zealand Act 1991* (as the ANZFA Act will become known) or the FRA 2000 must maintain New Zealand's level of influence in the Australia New Zealand Food Standards System (Annex B I (6)). New Zealand and Australian "industry, government and community stakeholders" must have "equal participation" in consultation arrangements regarding the Food Standards System (Annex B I (4)).

15. New Zealand will also be entitled to be represented on any committee established by the Australia and New Zealand Food Regulation Ministerial Council or Food Regulation Standing Committee of senior officials (Annex B II (3)(b)).

16. Australia will be required to consult with and use its best endeavours to reach agreement with New Zealand on the development of any amendments to relevant Australian legislation (Article 4(4)). (A similar obligation is placed on New Zealand in terms of consulting on any amendments to the New Zealand Food Act).

17. Annex C will give New Zealand (and Australia) the right to request that the Ministerial Council review an approved Food Standard on the grounds of "exceptional health, safety, third country trade, environmental or cultural factors" (Annex C I (2)). The New Zealand Minister will retain the discretion to vary from an approved Standard, if that Standard is

* Source: Agriculture, Fisheries and Forestry – Australia, *Australian Food Statistics 2001*, pp 67,77. Grains and oilseeds have been deducted from the total.

considered inappropriate due to one of the listed grounds (Annex D II (2-4)). The Agreement stipulates, however, that such a variation shall not create a barrier to trade unless “exceptional health, safety and environmental concerns exist” (Annex D II (5)).

18. Member States will be required to consult in advance on decisions regarding funding for FSANZ (Article 6 (2)). Consultation on funding and performance arrangements for the joint food standards system are to commence by the end of February each year and to be agreed in writing by the end of June each year (Article 6 (3-4)).

19. The Member States are required to conduct a review of the effectiveness of the Australia New Zealand Food Standards System (essentially a review of the amended Agreement) before the conclusion of the review of the FRA (Article 9). This is to ensure that New Zealand’s views can then be taken into consideration in the review of the FRA. The FRA requires that its review be completed within 5 years of its commencement on 3 November 2000.

Implementation

20. New Zealand was consulted in the design of the new food regulatory system, however it is not a party to the FRA. For this reason the FRA requires that the new system be formally agreed to by New Zealand, via amendments to the Agreement, before the reforms can be fully implemented.

21. Amendments to the ANZFA Act were also required to bring the FRA and the reforms into effect: the ANZFA Amendment Act received Royal Assent on 10 July 2001. The major provisions of the ANZFA Amendment Act are not yet in effect but will commence the day after the entry into force of the corresponding amendments to the Agreement. This will ensure that Australia does not breach its current international obligations under the Agreement to adopt only those food standards developed under the current food regulatory arrangements.

22. Appointments to the Board of FSANZ will need to be in place at the time the Exchange of Notes enters into force. Amendments to the Australia New Zealand Food Authority Regulations 1994 were required in order to prescribe the names of Australian and New Zealand organisations from which nominations are to be sought in relation to the appointment of members to certain positions on the FSANZ Board. The amended regulations are now in place and the nomination process has commenced.

23. The Exchange of Letters agreeing the text of the amendments to the Agreement was completed on 25 October 2001. The Exchange of Letters provides for entry into force via an Exchange of Notes between Australia and New Zealand, notifying that our respective domestic processes have been completed. The amendments to the Agreement were tabled in the New Zealand Parliament on 31 October 2001 and are being examined by their Foreign Affairs, Defence and Trade Select Committee.

Costs

24. The Australia New Zealand Food Standards System will continue to 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 (Article 6). The maintenance of a joint food standards system is budget neutral.

Consultation

25. The Australian Prime Minister announced a review of food regulation in his March 1997 statement, *More Time for Business*. The Food Regulation Review Committee represented key government, consumer and industry stakeholders and was chaired by Dr Bill Blair OAM. The Committee undertook significant consultation amongst government, industry, business, consumers and the community in general, receiving over 170 submissions and conducting public hearings and workshops, before preparing its report, *Food: A Growth Industry* (the Blair Report). There were also limited consultations or information sessions conducted after the Blair Report was released.

26. The model for the new food regulatory system was developed through a formal process established by COAG Senior Officials to develop a whole-of-government response to the Blair Report recommendations. This involved consultation with Commonwealth and State/Territory Government Departments and submissions from the following Ministerial Councils: the Australia New Zealand Food Standards Council, the Agriculture and Resource Management Council of Australia and New Zealand, and the Ministerial Council of Forestry, Fisheries and Aquaculture. Food industry organisations and public health and consumer groups were informally consulted during the process of developing the model.

27. The New Zealand Government sent representatives to attend relevant meetings of the COAG Senior Officials Working Group and was consulted in relation to New Zealand involvement in the new food regulatory system, the drafting of legislative changes, and implications for the Agreement. Further consultation was undertaken by Australian and New Zealand officials in order to work through the policy and legal issues associated with the changes to the food regulation arrangements.

28. The food regulatory reforms were again considered by the community in the course of the passage of the ANZFA Amendment Act through the Parliament. The Australia New Zealand Food Authority Amendment Bill 2001 was considered by the Senate Community Affairs Legislation Committee which tabled its report in April 2001. Eleven submissions were received by the Committee, including from ANZFA, the Australian Food and Grocery Council (AFGC) and the Australian Consumers Association (ACA). The ACA, AFGC and the Public Health Association of Australia also appeared at the hearing, along with relevant government agencies. Amendments to the Bill included increasing the number of FSANZ Board Members from ten to twelve and specifying that three members are to be nominated by the New Zealand Health Minister. These changes are also reflected in the proposed amendments.

29. The proposed amendments to the Agreement were also notified to the States and Territories through the Standing Committee on Treaties' Schedule of Treaty Action which has been kept up to date throughout the process. To date there has been only one request for further information, and no comments received. The States and Territories have been kept informed of progress on the implementation of the food regulation reforms, including the legislation and the Agreement negotiations, and provided with the opportunity to comment, via regular updates provided to meetings of the Food Regulation Standing Committee and the Australia New Zealand Food Standards Council (ANZFSC).

30. A separate process which fed into the amendments to the Agreement was a Review (under Article 9) of the Agreement which commenced in November 1998 and reported in November 1999. The Australia New Zealand Food Authority Advisory Committee (ANZFAAC) and the Senior Food Officers (SFOs) from each State and Territory were consulted on the operation and effectiveness of the Agreement. A survey of key Australian and New

Zealand non-government stakeholders also took place. Concerns raised about the regulation of therapeutic goods and the food/therapeutics interface are now being addressed by the Therapeutic Goods Administration in developing proposals for the establishment of a Joint Trans Tasman Therapeutic Goods Agency. Concerns about consultation processes have been addressed in ANZFA's September 2001 Community Involvement Policy and Protocol and in ongoing work to develop a consultative mechanism for the development of Ministerial Policy Guidelines in the new food regulatory system.

31. Other recommendations of the Agreement Review which have been incorporated into the amendments to the Agreement related to the need for consultation between Australia and New Zealand regarding relevant legislation, the recognition of codes of practice and guidelines to food standards as part of the Joint Food Standards System, and changes to the transition arrangements for the joint Australia New Zealand Food Standards Code which is to become the sole food standards code in both countries.

Regulation Impact Statement

32. A Regulation Impact Statement for the Agreement amendments is attached. A Regulation Impact Statement for the COAG food regulatory reforms was also included in the Explanatory Memorandum for the Australia New Zealand Food Authority Amendment Bill 2001.

Future treaty action: amendments, protocols, annexes or other legally binding instruments

33. Either Member State may request consultations with the other Member State regarding amendments to the Agreement (Article 10). Amendments are to be made by Exchange of Letters.

34. In a memorandum of understanding between Australian and New Zealand Health Ministers, it has been agreed to commence negotiations to further clarify the Scope (Article 3) of the amended Agreement once the proposed amendments have entered into force.

35. Annex E provides that Member States will adopt Volume II of the Australian Food Standards Code as the sole Australia New Zealand Food Standards Code, by means of an Exchange of Letters, at a date yet to be decided.

Withdrawal or denunciation

36. Article 12 of the Agreement provides that either Member State may at any time give notice in writing through diplomatic channels to the other Member State of its decision to terminate the Agreement. Termination would take effect twelve months after receipt of such notice. Article 12 remains unchanged by the proposed Amendments.

Contact details

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