

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE
CANBERRA

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

Canberra, 27 September 2001 - 25 October 2000

Not yet in force 2001 No. 27

Australian initiating note

Excellency

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

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

1. The title of the Agreement shall be replaced with the following:

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

2. The seventh and eighth paragraphs of the Preamble to the Agreement shall be replaced with the following:

“**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 2000 between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory of 3 November 2000 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;”

3. Sub-paragraphs (a), (b) and (c) of Article 1 of the Agreement shall be deleted, and existing sub-paragraphs (d) and (e) shall consequently be renumbered “(a)” and “(b)” respectively.

4. Sub-paragraphs (f) and (g) of Article 1 of the Agreement shall be replaced with the following:

“(c) the term “Council” means the Australia and New Zealand Food Regulation Ministerial Council established pursuant to the Food Regulation Agreement 2000;

(d) the term “Standing Committee” means the Food Regulation Standing Committee established pursuant to the Food Regulation Agreement 2000;

(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 2000” means the Food Regulation Agreement between the Commonwealth of Australia and the States and Northern Territory of Australia and the Australian Capital Territory of 3 November 2000;

- (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.”

5. Sub-paragraph (c) of Article 2 of the Agreement shall be replaced with the following:

“(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”

6. Paragraph (1) and the chapeau to paragraph (2) of Article 3 of the Agreement shall be replaced with the following:

“(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:”

7. The title to Article 4 of the Agreement shall be replaced with the following:

“The Australia New Zealand Food Standards System”

8. Paragraph (2) of Article 4 of the Agreement shall be replaced with the following:

“(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.”

9. New paragraphs (4), (5) and (6) shall be inserted in Article 4 of the Agreement as follows:

“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.”

10. Existing paragraphs (4) and (5) of Article 4 of the Agreement shall consequently be renumbered “(7)” and “(8)” respectively.

11. Present references to “Annex C” shall be replaced with “Annex D” throughout the text of the Agreement and present references to “Annex D” shall be replaced with “Annex E” throughout the text of the Agreement.

12. Paragraph (1) of Article 5 of the Agreement shall be replaced with the following:

“(1) Subject to Annexes D and E 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.”

13. Paragraph (4) of Article 5 of the Agreement shall be replaced with the following:

“(4) To the extent possible, Australia will implement its obligations under this Article in accordance with the provisions of the Food Regulation Agreement 2000.”

14. Present reference to “paragraph (2)” in Paragraph (1) of Article 6 of the Agreement shall be replaced with “paragraph (3)”:

15. Paragraph (2) of Article 6 of the Agreement shall be replaced with the following:

“(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.”

16. Article 7 of the Agreement shall be replaced with the following:

“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.”

17. Paragraph (2) of Article 8 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 paragraphs (2)-(5) of Annex D of this Agreement applies.”

18. A new second sentence shall be added to paragraph (1) of Article 9 of the Agreement as follows:

“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 2000.”

19. Paragraph (2) of Article 9 of the Agreement shall be replaced with the following:

“(2) In participating in the review, Australia, in recognition of the operation of the Food Regulation Agreement 2000, shall ensure the effective input and representation of the views of the parties to that Agreement.”

20. The title of Annex A of the Agreement shall be replaced with the following:

“PRINCIPLES UNDERPINNING THE AUSTRALIA NEW ZEALAND FOOD STANDARDS SYSTEM”

21. Sub-paragraphs (a) and (b) of paragraph (1) of Annex A of the Agreement shall be replaced with the following:

- “(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.”

22. Sub-paragraphs (a), (b) and (c) of paragraph (2) of Annex A of the Agreement shall be replaced with the following:

- “(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 in April 1995, and the New Zealand Code of Good Regulatory Practice.”

23. Parts I, II and III of Annex B of the Agreement shall be replaced with the following:

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 2000 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 2000, 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 2000 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 2000.
- (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.”

24. A new Annex C shall be inserted in the Agreement as follows:

“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 any lead Minister on 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; and/or
- (g) it places an unreasonable cost burden on industry or consumers.

(2) The Council shall request the Authority to review an approved food standard or an existing food standard if the New Zealand Minister notifies the Council of concerns that the standard:

- (a) would be inappropriate for New Zealand on the grounds of exceptional health, safety, third country trade, environmental or cultural factors, as set out in Annex D of this Agreement; or
- (b) 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.

(3) The Council shall request the Authority, subsequent to a review undertaken under paragraph (1) or (2) of this Annex, to review an approved food standard or an existing food standard that has been developed as a result of an urgent application or proposal and which is under the Council’s consideration, a second time if it is agreed, by a majority vote, that one or more of the criteria in paragraph (1) of this Annex still applies to the standard.

(4) Subsequent to a review undertaken in accordance with paragraph (3) of this Annex, the Council may decide, by a majority vote, to amend or reject the food standard. The Council shall publicly announce its reasons for rejecting the standard.”

25. Present Annex C shall be replaced with the following:

“ANNEX D

PRINCIPLES AND PROCEDURES TO BE FOLLOWED WHERE DIFFERENT CONDITIONS IN AUSTRALIA OR NEW ZEALAND INDICATE VARIATIONS TO STANDARDS ARE REQUIRED

I Identification of the need for Separate Standards

(1) Where the analysis or consultation undertaken by the Authority in the preparation of a food standard indicates that for exceptional health and safety or environmental reasons separate food standards will be required for New Zealand and Australia, the Authority shall approve food standards that relate to each Member State and notify those standards to the Council.

II New Zealand variation

(2) Where the New Zealand Minister considers that an approved food standard for which any reviews requested by the Council pursuant to Annex C have been completed would be inappropriate for New Zealand, the New Zealand Minister may inform the Council in a timely manner that New Zealand needs to vary from the food standard and shall also inform the Council of the relevant grounds for the variation.

(3) Where the New Zealand Minister considers that a food standard that has been developed as a result of an urgent application or urgent proposal is inappropriate for New Zealand, the New Zealand Minister may inform the Council, at any time before it has been notified of the standard, or during or immediately following the completion of the Council's consideration of the standard, that New Zealand needs to vary from the standard.

(4) A standard may be inappropriate for New Zealand on one or more of the following grounds: exceptional health, safety, third country trade, environmental, or cultural factors.

(5) A New Zealand variation shall not create a barrier to trade unless exceptional health, safety or environmental concerns exist.

(6) Any such notification of variance shall be accompanied by an explanatory note containing the reasons and justification for the variance. New Zealand may request the Authority to prepare a standard appropriate for New Zealand, subject to agreement being reached on any necessary modifications to the funding and performance arrangements determined in accordance with Article 6 of this Agreement.

(7) In the event of the New Zealand Minister informing the Council that New Zealand intends to vary from a food standard in accordance with paragraphs 2-5 of this Annex, then that food standard will be applicable only in Australia. New Zealand will not be required to take legislative steps to adopt or incorporate it as otherwise required under paragraph (1) of Article 5 of this Agreement. In such event the provisions of paragraph (2) of Article 8 of this Agreement shall apply. Where New Zealand has varied from a food standard under this Annex, without such variation being adopted by the Council, the reference to the food standard in the Australia New Zealand Food Standards Code shall include an annotation to indicate that such a variation has been made.

III Temporary food standards

(8) Where a Member State or Australian jurisdiction represented on the Council determines that an issue affecting public health and safety or environmental conditions requires a new food standard or amendment of a food standard adopted pursuant to paragraph (1) of Article 5 of this Agreement and that the circumstances affecting public health and safety or environmental conditions would not allow time for the steps pursuant to paragraph (1) of Article 5 of this Agreement to be taken, that Member State or Australian jurisdiction may adopt, under its food laws, a new food standard or amend a food standard, provided that:

- (a) the relevant lead Minister notifies the Council of the intention of that Member State or Australian jurisdiction to adopt the new or amended food standard;
- (b) the new or amended food standard applies for a period of no longer than twelve months from the date of its adoption;
- (c) the relevant lead Minister makes, on so determining, an immediate application to the Authority to adopt the new food standard or to amend the relevant food standard.

(9) An application to the Authority pursuant to paragraph (8) of this Annex shall be expedited by the Authority so that it shall notify the Council of any approved standard arising from the Authority's consideration of the application within six months of the application."

26. Present Annex D of the Agreement shall be replaced with the following:

“ANNEX E

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."

I have the honour to propose that, if the foregoing is acceptable to the Government of New Zealand, then this letter, and your Excellency's 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 this Exchange of Letters have been completed.

Accept, Excellency, the assurances of my highest consideration.

New Zealand letter in reply

Excellency

I have the honour to refer to your letter of [date], which reads as follows:

[The text of the Australian initiating letter is reproduced in full]

I have the honour to advise that the foregoing is acceptable to the Government of New Zealand and that, accordingly, your letter and this reply shall together constitute an Exchange of Letters amending the Agreement between the Government of New Zealand and the Government of Australia Establishing a System for the Development of Joint Food Standards, done at Wellington on 5 December 1995 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.

Accept, Excellency, the assurances of my highest consideration.