

DEPARTMENT OF FOREIGN AFFAIRS AND TRADE  
CANBERRA

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

(Canberra, 3 March 2010)

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.

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.

(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.”

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.

**MARK BUTLER**

Parliamentary Secretary for Health

Australia

3 March 2010