

**AGREEMENT BETWEEN THE GOVERNMENT OF AUSTRALIA  
AND THE GOVERNMENT OF NEW ZEALAND ESTABLISHING  
A SYSTEM FOR THE DEVELOPMENT OF JOINT FOOD  
STANDARDS**

Australia and New Zealand (hereinafter called "the Member States"):

Conscious of their 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;

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;

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 a framework for the harmonisation of food standards and the elaboration of a joint Australia New Zealand Food Standards Code;

Acknowledging the existence and operation of 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:

Article 1

### Definitions

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

- (a) the term “Advisory Committee” means the Australia New Zealand Food Authority Advisory Committee established by legislation in accordance with Annex B of this Agreement;
- (b) the term "Authority" means the Australia New Zealand Food Authority established by legislation in accordance with Annex B of this Agreement;
- (c) the term "Council" means the Australia New Zealand Food Standards Council referred to in Annex B of this Agreement;
- (d) the term “Australia New Zealand Food Standards Code” means the joint food standards code to be established pursuant to this Agreement;
- (e) the term “Australia New Zealand Food Standards System” means the joint system for determining food standards established pursuant to this Agreement;
- (f) 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; and
- (g) the term “1991 Agreement” means 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.

### 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 and adoption of food standards appropriate for both Member States; 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 with respect 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 of the Australia New Zealand Food Standards Code which will contain standards 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 Australia 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 programmes 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

##### Establishment of 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 for the Establishment of Australia New Zealand Food Standards” 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.

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

(4) The Member States agree that the obligation of New Zealand to implement food standards is subject to the principles and procedures attached as Annex C of this Agreement.

Transitional provisions

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

Article 5

Adoption of Food Standards

(1) Subject to Annexes C and D of this Agreement, each Member State shall take such legislative or other steps as are necessary to adopt or incorporate, by reference and without amendments, as food standards in force under the law of that Member State, the food standards that are from time to time:

- (a) prepared and recommended by the Authority to the Council; and
- (b) adopted with or without amendment by the Council; and
- (c) published in the Commonwealth of Australia Gazette and the New Zealand Gazette;

such food standards to take effect on the same date in both Member States as specified in the Commonwealth of Australia Gazette and the New Zealand Gazette.

(2) Subject to Annex C 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 Annex C 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 1991 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 (2) of this Article.

(2) By the end of February of any year in which this Agreement remains in force, the New Zealand Minister of Health and the Chairperson of the Authority shall consult and agree in writing to the elaboration of 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.

## Article 7

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

Member States acknowledge their intention that the provisions of the proposed Trans-Tasman Mutual Recognition Arrangement should 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 paragraph (2) of Annex C 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.
- (2) In participating in the review, Australia, in recognition of the operation of the 1991 Agreement, shall ensure the effective input and representation of the views of the parties to the 1991 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.

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, One thousand nine hundred and ninety-five.

HON ANDREW THEOPHANOUS  
For the Government of Australia.

HON KATHERINE O'REGAN  
For the Government of New Zealand.

**ANNEX A****PRINCIPLES FOR THE ESTABLISHMENT OF AUSTRALIA NEW ZEALAND  
FOOD STANDARDS**

- (1) Food standards shall be developed under the Australia New Zealand Food Standards System in accordance with the following principles:
- (a) protection of public health and safety, including:
    - (i) provision of adequate information relating to food to enable consumers to make informed choices and to prevent fraud and deception; and
  - (b) facilitation of access to markets, including:
    - (i) promotion of fair trading;
    - (ii) promotion of trade and commerce; and
    - (iii) promotion of consistency between the domestic food standards of the Member States and international food standards.
- (2) In addition, food standards developed under the Australia New Zealand Food Standards System shall be:
- (a) consistent with the obligations of both Member States under the Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994;
  - (b) 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; and
  - (c) in accordance with the following principles and practices:
    - (i) based on the best available scientific data, including systematic application of public health risk analysis and risk management principles to the development of food standards;
    - (ii) of a generic nature where possible; and
    - (iii) 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.

**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 Australia New Zealand Food Standards System will include, in particular, the development of the Australia New Zealand Food Standards Code.
- (3) Consultation arrangements will permit equal participation in the Australia New Zealand Food Standards System by Australian and New Zealand industry and other interested parties.
- (4) 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.

**II Definitions and Membership of Bodies**

- (1)
  - (a) The Council referred to in the 1991 Agreement and known as the National Food Standards Council shall become the Australia New Zealand Food Standards Council.
  - (b) A Minister appointed by the Government of New Zealand shall be a member of the Australia New Zealand Food Standards Council with a single vote.
- (2)
  - (a) The National Food Authority established under the *National Food Authority Act 1991* shall become the Australia New Zealand Food Authority.
  - (b) Members of the Australia New Zealand Food Authority shall be appointed by the Australian Minister after consultation with the Council.
  - (c) Two members of the Australia New Zealand Food Authority shall be appointed by the Australian Minister on the nomination of the New Zealand

member of the Australia New Zealand Food Standards Council and shall have expertise in one or more of the following areas:

- (i) public health;
  - (ii) food science;
  - (iii) human nutrition;
  - (iv) food production or retailing;
  - (v) public administration;
  - (vi) consumer rights.
- (3) (a) The National Food Authority Advisory Committee established under the *National Food Authority Act 1991* shall become the Australia New Zealand Food Authority Advisory Committee.
- (b) New Zealand members of the Australia New Zealand Food Authority Advisory Committee shall be appointed under arrangements agreed with the New Zealand Minister of Health.

### **III Operations of the Authority**

In addition to its existing operations in Australia the Authority shall establish an office in New Zealand and undertake activities in New Zealand to permit full participation by New Zealand industry, government and community in the processes of development and adoption 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****PRINCIPLES AND PROCEDURES TO BE FOLLOWED WHERE DIFFERENT CONDITIONS IN AUSTRALIA OR NEW ZEALAND INDICATE VARIATIONS TO STANDARDS ARE REQUIRED.**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 prepare recommendations relating to each Member State for consideration by the Council.

New Zealand Variation

(2) Where a food standard is adopted by a majority of the Council and the New Zealand member of the Council considers that the food standard would be inappropriate for New Zealand on the grounds of exceptional health, safety, third country trade, environmental, or cultural factors, the representative of New Zealand on the Council may inform the Chair of the Council that New Zealand needs to vary from the agreed food standard. A New Zealand variation shall not create a barrier to trade unless exceptional health, safety and environmental concerns exist.

(3) 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.

(4) In the event of the New Zealand member informing the Council that New Zealand intends to vary from a food standard adopted by the majority of the Council, then the food standard adopted by the majority of the Council will be regarded as applicable only in Australia, and 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.

### Temporary Food Standards

(5) Where any member of 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 Council member may adopt, under its food laws, a new food standard or amend a food standard, provided that:

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

(6) An application to the Authority pursuant to paragraph (5) of this Annex shall be expedited by the Authority so that any recommendation to the Council arising from the Authority's consideration of the application shall be made within six months of the application.

**ANNEX D****TRANSITIONAL PROVISIONS**

Until the Australia New Zealand Food Standards Code referred to in paragraph (4) of this Annex comes into effect the following provisions will apply to facilitate trade between the Member States.

- (1) Where the New Zealand member of the Council 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) The current review of the Australian Food Standards Code shall review standards in accordance with the principles in Annex A of this Agreement. The review shall give priority to identifying and harmonising those standards which are impeding trade between the Member States. Standards that are reviewed shall be recommended for adoption by the Council and, where appropriate, recommended to the New Zealand member of the Council for adoption as a New Zealand Food Standard.
- (3) On the date that this Agreement enters into force:
  - (a) 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.
  - (b) food produced in and or imported from New Zealand which complies with New Zealand Food Standards and Standard A12 (Metals and Contaminants in Food) of the Australian Food Standards Code as the latter relates to maximum permitted concentrations of cadmium in food, can be sold in Australia. Existing arrangements relating to matters falling outside the scope of the Australia New Zealand Food Standards System shall continue to apply. However, in the event that the proposed Trans-Tasman Mutual Recognition Arrangement takes effect, the provisions of that Arrangement will prevail over this sub-paragraph.
- (4) On a date to be mutually determined between the Member States, the Australian Food Standards 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.

(5) Submissions for variations to food standards that are under consideration in New Zealand at the time of the entry into force of this Agreement shall be dealt with by the Authority, subject to agreement being reached on any necessary modifications to the funding and performance arrangements determined in accordance with Article 6 of this Agreement.