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Dear Mr Bethwaite

NEW ZEALAND SUBMISSION TO THE BETHWAITE REVIEW

Thank you for the opportunity to comment on the Review to Streamline Food Regulation.

New Zealand and Australia share a unique relationship underpinned by the *Australia New Zealand Closer Economic Relations Trade Agreement* (CER). The Agreement is supported by a number of other bilateral Treaties including the *Trans Tasman Mutual Recognition Arrangement* (TTMRA) and the *Agreement Between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System* (the Treaty). This relationship has established a highly integrated economic environment which is supported by respective regulatory systems. The relationship continues to evolve with both countries now working to the goal of a 'Single Economic Market' (SEM).

We note that the current Review is to take account of the outcomes of previous reviews including the one which took place in 2006 regarding the Treaty.

Consistent Legislation

We note that this Review is largely concerned with food regulation in Australia. The consistency of legislation across Australia is, however, of considerable interest to New Zealand in that it would be of benefit to both New Zealand exporters to Australia and those industries that run a trans-Tasman operation.

Consistency is also important to New Zealand as New Zealand and Australia share the same legislation for food labeling and composition; namely the *Australia New Zealand Food Standards Code*. This harmonisation is reflected in the scope of the Treaty and is subject to the oversight of a Ministerial Council (the Australia and New Zealand Food Regulation Ministerial Council - ANZFRMC) comprising, as members, the relevant ministers from the Australian and New Zealand Governments and from State and Territory Governments. In all other areas, as set out in the provision of Article 3(3) of the Treaty, New Zealand and Australia work towards aligning standards and systems as closely as possible.

New Zealand is also impacted by the *Food Standards Australia New Zealand Act 1991* that established Food Standards Australia New Zealand (FSANZ). If recommendations of the Review point toward amending this legislation, the provisions of Article 4(4) of the Treaty require Australia to "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 any such legislative amendments.

As noted above, Article 3(3) of the Treaty recognises that New Zealand regulates primary production (80 percent of New Zealand's primary produce is exported), maximum residue limits (MRLs) (as relevant to the environment and as a measure of agricultural practice), and food hygiene matters domestically. While it is desirable to retain separate regulatory systems for these areas, it is acknowledged that alignment should occur to the maximum extent possible in order to achieve consistent outcomes that support the joint food system.

To assist meeting this objective, New Zealand participates in the standard development process for Australia-only standards such as primary production and processing standards and MRLs.

The close working relationship has also seen the alignment of the regulation of agricultural and veterinary chemicals through registration data requirements and manufacturing processes, the sharing of assessments and reciprocal recognition of regulatory decisions, and the establishment of information sharing systems.

Following the 2003 Council of Australian Governments (COAG) Review of TTMRA, it was recommended that the Australian Imported Food Control Act (for foods on the risk list) be removed from the TTMRA Permanent Exemption Schedule. The Australian Quarantine and Inspection Service, FSANZ and the New Zealand Food Safety Authority (NZFSA), established a project to address the issues identified as needing to be resolved: alignment of the risk lists and an effective process to deal with third country trade issues. This work provides yet another example of the use of alignment in areas where standards are not harmonised. Recently, agreement was reached to recognise the equivalence of the systems and controls operating in each country to manage food safety and suitability issues in relation to dairy products. Work is now underway to establish equivalence for seafood. The goal is to remove products on the risk list in relation to trans-Tasman trade and thereby obviate the need for the Imported Food Control Act listing as an exemption under TTMRA.

The NZFSA is responsible for all national food-related legislation in New Zealand. New Zealand does not, as a result, have the same issues of consistency between primary production, including agricultural and veterinary chemicals, and food legislation as exists in Australia between Australian jurisdictions.

As provided for under Part VI of TTMRA, New Zealand also participates in the Primary Industries Ministerial Council and Standing Committee activities with a view to maximising cooperation and ensuring consistency.

Consistent Implementation

Article 5 of the Treaty requires that Australia and New Zealand adopt or incorporate joint standards, without amendment, into our respective law. The only exemption to this provision is where New Zealand might opt to vary from a standard.

The ANZFRMC is supported by a Food Regulation Standing Committee (FRSC) and an Implementation Sub-Committee (ISC). ISC is the body charged with achieving consistent implementation of standards across jurisdictions. ISC has developed a long term strategy and a rolling three year programme of work aimed at achieving this goal. New Zealand has senior official representation on FRSC, currently chairs ISC and is fully engaged in the ISC Consistent Implementation Work Plan.

New Zealand's objectives as an active participant in ISC are to:

- a) contribute to, and learn from, the development of mechanisms that promote consistent implementation of standards, as well as the development of standards per se; and
- b) develop and maintain confidence in the Australian regulatory system for the purposes of mutual recognition.

Under the Treaty arrangements, New Zealand is also responsible for the implementation and enforcement of the Food Standards Code as well as all other food legislation in New Zealand. Nonetheless, the increasing integration of food manufacturing and distribution between the two economies demands an environment of commercial certainty and a singular approach to the application of standards. Consistency of standards and their implementation also contributes to the participation of third countries in the Trans-Tasman market by reducing non-tariff barriers other than those legitimately established by a country relative to their sovereign ability to establish acceptable levels of consumer protection in terms of public health and safety.

As New Zealand is a sovereign nation, compliance and enforcement will always be managed separately to the joint system (sanctions and penalties are required to be set by the New Zealand Parliament). This does not preclude the sharing of information, including guidelines and processes, as well as particulars regarding food incidents as part of respective monitoring and surveillance activities. This shared information helps to assess the effectiveness of current standards and shape future standard development

New Zealand considers ISC to be generally effective in fulfilling its role. It is however faced with a very challenging and growing programme of work, which requires a high level commitment and resource from jurisdictions to ensure delivery. Such commitment and provision of resources has not, at times, been evident from all jurisdictions. This seems to be a particular difficulty for some of the smaller jurisdictions, who appear to rely heavily on one or two individuals to contribute across the wide range of ISC activities.

ISC has recently established a project fund to be used to support delivery of its work programme, and this will go some way to ameliorating the resource issue. However, it is critical to ISC's success in achieving consistent implementation that jurisdictions commit to high level participation at ISC and allocate adequate resources to the delivery of ISC's programme of work.

Improved Governance

We note that the review acknowledges that issues regarding the timeliness of standard development are being addressed through the FSANZ Act amendments. We therefore do not cover this matter in our submission.

Ensuring policy development and standard-setting is responsive and appropriate is a high priority. This is best achieved by working to the principles as set out in Annex A of the Treaty and in the COAG Principles and Protocols for the Development of Food Regulation Policy Guidelines. These are aimed at achieving the minimum effective regulation necessary to meet public health and safety, consumer information and trade facilitation objectives. While these objectives are all valid, there are times when they will be competing or conflicting. At these times a cost-benefit analysis is vital to ensure that the regulatory impacts are adequately considered.

While the system is of a joint nature there are areas where, for reasons of public health, environment, third country trade or cultural factors, standards may differ if one country needs standards that the other does not. In these circumstances, New Zealand is looking particularly for responsiveness in the system to deliver on New Zealand's national interest.

The involvement of stakeholders is crucial to ensuring policy development is appropriate. It should be noted however, that care is required to ensure that in achieving transparency, consultation fatigue does not set in. Feedback from stakeholders suggests that tighter criteria may be needed in deciding when consultation is required. There is a danger that important information or opportunities to participate in relevant discussions may be missed due to the volume of material that stakeholders are receiving. Accessibility may also be improved by providing concise summary documents that allow stakeholders to assess the value of engagement.

We note that voting arrangements in the Ministerial Council have been raised. While New Zealand is disadvantaged by the current voting arrangements, as noted above, we reserve the right under Annex D of the Treaty to vary from a standard if we judge the standard to be inappropriate on the grounds of exceptional health, safety, third country trade, environmental or cultural factors. The close working relationship has meant that the Annex D provisions have only been used once: with regard to the Country of Origin Labelling Standard.

Conclusion

In summary, it is important to recognise the special relationship between Australia and New Zealand in the food sector particularly, the relationship's underpinning by international Treaty and the implications of recommendations that may impact on New Zealand. With this close relationship in mind, we appreciate your continuing efforts to keep New Zealand informed of the progress of this Review.

Yours sincerely

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MINISTER FOR FOOD SAFETY