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FGC
NEW ZEALAND FOOD & GROCERY COUNCIL

31 May 2012

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Dear Sir/Madam

Attached are the comments that the New Zealand Food & Grocery Council wishes to present on the Consultation Paper *Strengthening economic relations between Australia and New Zealand: joint study issues paper*, April 2012.

Yours sincerely

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NEW ZEALAND FOOD & GROCERY COUNCIL

New Zealand Productivity Commission

Australian Government Productivity Commission

Strengthening economic relations between Australia and New Zealand: joint study issues paper

31 May 2012

The New Zealand Food & Grocery Council (the "NZFGC") welcomes the opportunity to make a submission on the Joint Study Issues Paper *Strengthening economic relations between Australia and New Zealand* (the Issues Paper).

The NZFGC represents the major manufacturers and suppliers of food, beverage and grocery products in New Zealand. A number of these manufacturers and suppliers are major importers and exporters in New Zealand.

NZFGC understands that the Productivity Commissions will be analysing potential areas of further economic reform where benefits are likely to be most significant. This analysis is to be particularly focused on furthering economic integration in order to improve economic outcomes and produce net benefits.

Overarching Comment

This submission from the NZFGC focuses on Chapter 5 of the Issues Paper, *Possible areas for further integration* and specifically the section on *Trade in Goods,* which lists 'food regulation' as a possible area of further integration. While the NZFGC strongly supports the joint food standards setting system, the NZFGC does not support expanding its scope.

The areas in food regulation specifically identified in the Issues Paper that might be possible areas for further integration are enforcement of regulation, food hygiene standards and 'some other areas' that are unspecified.[1] The NZFGC considers that New Zealand would not benefit if such integration was to proceed.

There have been a disproportionate number of reviews of the joint food standards setting system over the past decade or so (external, independent and treaty reviews) and each one has touched on or explored the issue of scope of the current *Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System* (the Food Treaty). Each time, the reviews arrive at the same conclusion – the two countries continue to reap benefits from the harmonisation of food labelling and

[1] p 27 *Strengthening economic relations between Australia and New Zealand: a joint study issues paper*(Australian Productivity Commission and New Zealand Productivity Commission, April 2012)

composition (the main objective having been the removal of unnecessary barriers to trade) and that other areas are matters for close co-operation, comparability or mutual recognition.

Specific Comments

Context

Food manufacture in New Zealand

Food is core to New Zealand's economic and social wellbeing. The Ministry of Economic Development's work around the Food Information Project conducted by Coriolis suggests that New Zealand has a strong and growing trade surplus in food and beverage[2]. However, there are areas for improvement:

> "While New Zealand's exports of food and beverage (F&B) are significant, these account for just 2.5% of global trade in food. The country has considerable untapped capacity to export more. New Zealand is a country the size of Italy or the United Kingdom, but with the population of Singapore. However Italy feeds a domestic population of 60m people and exports twice as much F&B as New Zealand."[3]

The point is that New Zealand can do more but it is not just about production. Manufacturing in New Zealand is the value-add area where technology and innovation can advance value and returns. Food and related regulation can be either facilitative of this process or restrictive. Regulatory impact analysis is intended to tangibly demonstrate the impact of proposed regulation, and FGC therefore strongly supports continued and robust regulatory impact assessment to accompany proposed regulatory changes. The alignment of impact assessment processes between Australia and New Zealand is therefore welcome.

Recommendation 1

Continued strengthening of the regulatory impact assessment process within and across New Zealand and Australia will ensure beneficial future regulatory decision making and sound regulatory reform.

Changes in regulatory burden around areas such as infrastructure, transport and resource consenting aimed at reducing regulatory burden are invaluable to business. To the extent that these impact on manufacture and trans-Tasman trade, or that one or other country/jurisdiction has more beneficial regulatory frameworks in such related areas, there should be a sharing of the best regulatory environment. This is not intended to promote harmonisation of all aspects but only of the 'best' regulatory measures.

Recommendation 2

Regulatory frameworks that foster the growth of the food and beverage sector and therefore the economy should be sought out and implemented.

Agreement between the Government of Australia and the Government of New Zealand Concerning a Joint Food Standards System (the Food Treaty)

The Australia New Zealand food standards system has been in operation over the past 17 years. During this time the vast majority of food standards relating to labelling and composition have been harmonised. The Food Treaty aims to:

- reduce unnecessary barriers to trade
- adopt a joint system for the development and promulgation of food standards
- provide for the timely development, adoption and review of food standards appropriate to both Treaty Parties, and

[2] p10 *Food & Beverage Information Project 2011, Industry Snapshot: Final Report February 2012; v1.00*

[3] p13 Ibid

- facilitate the sharing of information between the Treaty Parties on matters relating to food.

Successive reviews of the Food Treaty have shown that the system is well supported by stakeholders and that small refinements over time have enhanced operation. Food Treaty reviews have been conducted regularly: in 1999, an effectiveness review resulted in amendments to the Food Treaty in 2002, a review in 2006 resulted in Food Treaty amendments in 2010. External reviews of trans-Tasman food trade have been conducted by Blair, Bethwaite, the Australian Productivity Commission, and Blewett, to name a few. The most recent, the Blewett review[4], contained 61 recommendations but just three would have reduced costs to industry.

As the Food Treaty has matured and the majority of food standards within the scope of the Food Treaty have been harmonised, the question regarding scope has been subject to analysis and investigation but has remained unchanged. The main reasons have been that benefits in other related areas are far less obvious, at times illusory, and always more difficult to define and implement for extraction. Any gains available have been shown to be deliverable through other means such as co-operation, comparability or mutual recognition.

Recommendation 3

The scope of the Food Treaty should not be expanded to incorporate hygiene, enforcement or other elements on the basis that none of several recent reviews has identified tangible benefits for New Zealand in doing so.

Integration difficulties and alternatives for further food regulation

The key difficulties with further integration of food regulation are primarily:

- the lack of national harmonisation within Australia of many aspects of food regulation (e.g. primary production, some food hygiene)
- all implementation, compliance and enforcement residing with the States and Territories (the Australian Commonwealth Government, though Food Standards Australia New Zealand, has a coordination role)
- the significance of third-country trade for New Zealand, the need for timely responses to third-country trade requests and the ability to accommodate change and innovation quickly where necessary.

Australian national harmonisation: Harmonisation of food regulation within Australia has primarily been through each State and Territory putting in place and implementing the Australian Model Food Act that was developed in the late 1990s. This has been a lengthy process and has only been achieved, for example, by Western Australia in the past few years (over a decade after agreement on the content of the Model Food Act). This has not extended to primary production regulation other than primary production standards as developed by Food Standards Australia New Zealand. New Zealand will have a state-of-the-art food regulatory system with the passage of the Food Bill. Any alternative involving joining with Australia would be regressive.

There are Australia-only food hygiene standards (Chapter 3) and primary production standards (Chapter 4) in the Australia New Zealand Food Standards Code (the Code), but these are no more than New Zealand already operates and in some cases are not as efficient as those operating in New Zealand because of the length of time New Zealand has had requirements in place and the refinements that have been possible over time. In any

[4] *Labelling Logic: Review of Food Labelling Law and Policy (2011).* Commonwealth of Australia, 2011

case, efforts have been extensive to ensure alignment of these standards as far as possible in light of trans-Tasman trade.

Compliance and enforcement: Compliance and enforcement in food regulation is undertaken at the State and Territory level in Australia. In contrast, such activity is undertaken directly by central government in New Zealand as well as coordinated (where local government or public health units are involved) at the national level in New Zealand. There would be no advantage for New Zealand to join a widely distributed and devolved Australian enforcement and compliance system.

The most recent review of food regulation, *Labelling Logic: Review of Food Labelling Law and Policy (2011)* conducted by a panel chaired by the Hon Neal Blewett, contained an extensive chapter on Compliance and Enforcement (chapter 8, pp 129-142). The recommendations continue to be worked through by trans-Tasman jurisdictional governments where the major impact would occur.

New Zealand joins with Australian jurisdictions on exploring implementation and enforcement issues through the Food Regulation Standing Committee's Implementation Sub-Committee. The Sub-Committee's terms of reference (available on the Food Regulation Secretariat website hosted by the Australian Department of Health and Ageing at: http://www.health.gov.au/internet/main/publishing.nsf/Content/CDA339ACBEE60CF8CA25709600193198/$File/ISC%20ToR.pdf) are specifically targeted at harmonisation and consistency. New Zealand also participates in the coordination of compliance research, food recall information sharing and joint enforcement and compliance training sessions. These deliver mutual benefits without the need for further regulatory integration.

Third-country trade: New Zealand's economic well-being is heavily reliant on trade in food and beverage. A substantial proportion of all the food produced in New Zealand is exported. New Zealand is highly attuned to meeting the needs of export markets and has a highly refined food safety system to underpin export and related negotiations. Where requested and justified on safety grounds by third-country markets, New Zealand is able to make changes rapidly and efficiently. The ability to be 'master of our destiny' in this very significant area is paramount, transcending potentially marginal benefits that might be delivered through further food regulation integration.

It is also worth noting that Australia operates a dual system of domestic food regulation and export regulation – domestic regulation being the responsibility of States and Territories and export food regulation being the responsibility of the Australian Commonwealth Government. New Zealand's system is more integrated, with the domestic food system providing the platform for food and beverage export, supplemented with export-only requirements only where necessary and justified. Integration between domestic and export law in Australia should precede any further integration of trans-Tasman food regulation more broadly.

Differing Standards

During the many reviews of Australian and New Zealand food regulation, two issues relating to New Zealand are consistently raised. These concern the differing standards for country-of-origin labelling (CoOL) and for food-type dietary supplements. It is also the case that when New Zealand and Australia signed the Food Treaty each had an existing set of food standards. While most of these standards have been harmonised into the joint food standards system, there are a few standards that remain separate or different. For Australia, these included mandatory fortification of bread with thiamine, and margarine with vitamin D. For New Zealand this has included food-type dietary supplements.

New Zealand opted out of the CoOL standard before it was mandated for Australia only. It is the only standard New Zealand has opted out of in the 17-year operation of the joint food

standards system. Australian manufacturers are concerned that their New Zealand counterparts have a competitive advantage in not having to meet the costs of CoOL. They are also concerned that they cannot trade food-type dietary supplements in Australia but, under the Trans-Tasman Mutual Recognition Arrangement (TTMRA), New Zealand manufacturers can. Both CoOL and food-type dietary supplements are irritants for Australian manufacturers.

New Zealand has taken steps to align voluntarily on CoOL arrangements, thus avoiding the overheads of mandatory regulations. New Zealand also moved to clearly separate dietary supplements (complementary medicines) from food-type dietary supplements (supplementary foods – generally foods fortified more highly than currently permitted in the Australia New Zealand Food Standards Code). Accommodating more highly fortified foods is an area of the Food Standards Code that relies on either Australian manufacturers to make application to FSANZ to amend the Code to permit manufacturers in both countries to manufacture such products, or for FSANZ to undertake an alignment programme through raising a proposal for this purpose.

A third area is occasionally raised concerning the setting of maximum residue levels (MRLs) for agricultural compounds and veterinary medicines. New Zealand and Australia have aligned as far as is possible in this area: there has been an alignment of processes as far as possible; a sharing of information in risk assessments of products; and mutual recognition of each country's MRLs by the other.

The key differences are in the dietary exposure data (different for each country) and in the differences between the agricultural and climatic environments of each. Australia has a significant tropical agriculture industry and a heavy reliance on wheat and cotton production. As a result, the range of intensity of products to deliver good agricultural practice in these areas is very different. New Zealand also benefits from the application of a default MRL. This means that traces of residues not approved for some products do not result in condemning safe products to destruction. Australia has no default MRL.

Recommendation 4

Differing food and related standards between New Zealand and Australia exist for a variety of very clear policy or environmental reasons. Such standards should not divert attention from the many very positive gains in harmonised food regulation achieved to date.

Education and understanding

The NZFGC considers that the complementary relationship between the Food Treaty and the TTMRA is not well understood by stakeholders (including some regulators). The goal of a Single Economic Market (SEM) is also not well understood. Advances could be made in this area in terms of trans-Tasman relationships.

Recommendation 5

The complementary nature of the Food Treaty and the Trans-Tasman Mutual Recognition Arrangement and the goal of a Single Economic Market (SEM) are not well understood by stakeholders. More education and information on these arrangements would be beneficial.

Parallel Importing

Parallel importing is a feature of both the New Zealand and Australian food and beverage markets. The NZFGC does not oppose parallel importing as a concept but is strongly opposed to the import of products that are non-compliant with the New Zealand law. In relation to food and beverage, non-compliance with the Australia New Zealand Food Standards Code concerning composition and labelling is of particular concern.

Parallel imports must meet the labelling, packaging and composition requirements of the Food Standards Code in order for New Zealand or Australian manufacturers not to be at a competitive disadvantage through costs of compliance. As well, without meeting such requirements, if there are issues that warrant a recall, tracking product for such a purpose can otherwise prove very difficult.

Recommendation 6

Compliance of parallel imports with New Zealand (and Australian) laws is vital. Enforcement is critical for safety reasons and for maintaining a level playing field for manufacturers.

Questions for submitters

Many of the questions are much broader than the NZFGC's area of interest. Nonetheless, the following responds to a range of the questions posed:

Q5. From your perspective, has the CER agenda contributed to improved economic outcomes in Australia and New Zealand? If so, what have been the benefits and how substantial have the gains been?
A5. The many reviews of the trans-Tasman food system arrangements would suggest that they have contributed to improved economic outcomes for Australia and New Zealand. However, it is always difficult to separate and identify the specific factors that have delivered benefits. To the extent that there has been and continues to be increased food trade between the two countries, and there is much cross-ownership and food-related business conducted across both countries, the Food Treaty and its implementation has been beneficial.

Q6. What lessons for future efforts can be taken from the 30-year history of the CER agenda? What aspects of specific reforms have worked, and what aspects have not worked well? Why?
A6. In relation to the lessons from the food experience, there are a wide range of options for delivering similar or the same outcomes desired in a trans-Tasman context. Harmonised standards is one approach. However, generic to any option is the importance for the partners to define clearly the checks and balances necessary and appropriate to protect sovereignty.

Q7. Has the CER agenda to date focused on the highest priority areas?
A7. In relation to food regulation, the CER agenda focused on an area where significant benefit could accrue to both partners. In moving to address matters more generic to companies (law, tax etc) irrespective of their commercial interests, the CER agenda has continued to focus on priority areas.

Q9. Are there adequate processes in place for evaluating reforms that have been implemented? How could they be improved?
A9. The experience of the harmonised food regulation is that it has been over-evaluated. Each year or two has resulted in another group undertaking a review of some aspect. Improvements would be in limiting evaluations.

Q10. Is there scope to improve the implementation of existing reforms? What would the pay-offs be?
A10. Implementation of harmonised food standards is likely to remain a challenge where 10 jurisdictions are involved. While implementation is a matter for each jurisdiction, there is a

significant amount of information sharing, liaison, interaction, coordination and partnering on matters relating to implementation. A key group involved is the Implementation Sub-Committee of the Food regulation Standing Committee which advises members of the Legislative and Governance Forum on Food Regulation (formerly the Australia and New Zealand Ministerial Council on Food Regulation). There is always opportunity for new ideas and 'ways of doing business' to be considered within existing forums.

Q25. What are the most important policy-related barriers to trans-Tasman trade in goods? Are there valid reasons for these barriers remaining in place?
A25. The suggestion in Chapter 5 that food regulation be considered for further integration infers that there is a barrier to trans-Tasman in food resulting from enforcement and food hygiene. The more likely barrier is with enforcement and food hygiene practices across the eight jurisdictions in Australia.

The reasons for not pursuing integration of enforcement and food hygiene have been set out above in the body of this submission. A further example is that, in response to Australian industry concerns about consistency of enforcement across jurisdictions, the Australian Government funded the establishment of the 'Centralised Interpretive Service' (CIS) to provide interpretations of aspects of the Australia New Zealand Food Standards Code. The CIS appears not to have been used to the extent expected.

Q32. In which areas (if any) would the adoption of a single trans-Tasman regulator yield net benefits (through more efficient delivery of the regulatory function and/or lower costs for regulated businesses)?
A32. In food regulation, there is a single agency – Food Standards Australia New Zealand – that develops standards for both countries: labelling and composition standards for both countries, and hygiene, processing, primary production and maximum residue level standards for Australia only. Where a single regulator might be contemplated for other areas, there are many lessons to be drawn from the experience of the past 17 years.