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Office of the Chief Executive

Mr Tony Hinton
Commissioner
Productivity Commission
PO Box 80
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Dear Mr Hinton

Thank you for the opportunity to comment on the recently released draft report *Evaluation of Mutual Recognition Schemes*.

> The preliminary finding 7.13 notes that the *Imported Food Control Act 1992* is no longer needed for blocking risky food imports from New Zealand. The Act could be removed from the list of Trans-Tasman Mutual Recognition Arrangement (TTMRA) permanent exemptions provided that there is reciprocal treatment of Australian food imported into New Zealand and the existing and projected third country issues are recognised and dealt with effectively.

FSANZ supports this preliminary finding, subject to a further qualification that:

> "Australia and New Zealand agree on a single list of high-risk food imports and a process to ensure that the single list is maintained over time, including the handling of food safety emergencies."

FSANZ considers the further qualification is essential to protect public health and safety in Australia. The current permanent exemption of the *Import Control Act* protects the Australian food supply from high-risk food imports from all countries. This includes food imports from New Zealand, either manufactured in New Zealand or routed through the country. While New Zealand maintains a different list of high-risk foods, Australia would be exposed to the possibility of high-risk foods entering the food supply if the permanent exemption was removed. However authorities in Australia and New Zealand have begun a process to agree on a single list of high-risk foods, and a subsequent process to maintain the single list over time. The authorities expect that a single list of high-risk foods will be finalised during 2004, as part of a wider harmonisation review of the imported food controls to achieve a common border around Australia and New Zealand.

Australia and New Zealand protect the safety of the food supply in both counties under a harmonised system of food regulations, the *Australia New Zealand Food Standards Code*. The commitment of Australia and New Zealand to the joint food Code is expressed in the *Agreement between the Government of Australia and the Government of New Zealand concerning a joint food standards system*, commonly known as 'the Food Treaty'. The Food Treaty defines the scope for the joint food standards system and specifically excludes food

hygiene matters and maximum residue limits of chemicals in foods, where New Zealand already has equivalent legislation in place. In these cases, standards under the joint code are designated as "Australia". Overall, the joint Code applies to most food items for sale in Australia and New Zealand and to the majority of food items traded between the countries.

The Food Treaty also provides for New Zealand to opt out of a new or amended food standard, on the basis of exceptional health, safety, third country trade, environmental or cultural factors. In such circumstances the standard would apply only in Australia and would be designated an "Australia" standard. In New Zealand the opt out provision is regarded as a last resort provision and has not been used to date. However the opt out provision does pose a significant potential risk to the Australian food supply, when it is enacted by the New Zealand Government and consequently New Zealand industry export products to Australia under the TTMRA that are not compliant with the "Australia" standard.

FSANZ fully supports the Food Treaty and respects the sovereignty of the parties to the Treaty, and understands that there may be circumstances in the future where New Zealand, for example, will opt out of a new or amended food standard. The issue is that where all Australian Governments adopt a new or amended food standard, they are deciding to manage a risk to the food supply in a certain way. Where the New Zealand Government does not agree with this judgement for other reasons and opts out, food exported from New Zealand into Australia under the TTMRA will not comply with this management approach and could pose a significant threat to the safety of the Australian food supply.

FSANZ believes that in these cases the sovereignty of Australia should be recognised equally with that of New Zealand, and the "Australia" standard should apply to all food on sale in Australia, including imports from New Zealand.

FSANZ proposes a process for ensuring the protection of the Australian food supply. This would apply in those rare cases where the New Zealand Government opts out of a new or amended food standard under the joint Code and where imports into Australia are not compliant with the "Australia" standard and thereby pose a significant threat to the safety of the Australian food supply.

The process requires the Australia and New Zealand Food Regulation Ministerial Council (the Ministerial Council) to have the power under TTMRA legislation to recommend to all Heads of Governments that a food which is not compliant with an "Australia" standard be permanently exempted from the TTMRA.

FSANZ proposes the following process.

1. The FSANZ Board decides to manage a risk to the food supply through a new or amended food standard.
2. The Ministerial Council considers the decision of the FSANZ Board. Ministers from Australian Governments support the new or amended standard, but the Minister from New Zealand announces that the New Zealand Government will opt out.
3. Ministers from Australian Governments declare that this standard is important to manage a significant risk to the food supply.
4. The Ministerial Council then votes on a proposal to recommend to Heads of Governments that the food that would be non-compliant with the standard be subject

to a permanent exemption under the TTMRA. If at least two-thirds of Ministers agree, the Ministerial Council will have resolved to make the recommendation.

5. The Ministerial Council's recommendation is considered by the Heads of Governments. For the recommendation to succeed it needs unanimous agreement, including from New Zealand. The process of considering the matter by Heads of Governments provides an opportunity for the Australian Governments, through suasion, to obtain the support of the New Zealand Government.
6. A decision of the Heads of Governments to establish a permanent exemption for a category of food that was non-compliant with an "Australia" food standard, would be enacted by a single regulation made by the Governor-General under the Australian Government's TTMRA Act.

This process would be consistent with the Food Treaty, it would be used sparingly, and its existence would encourage continuing harmonisation of food standards in Australia and New Zealand, supporting the economic integration of the two countries which is the fundamental purpose of mutual recognition.

Yours sincerely

Graham Peachey
Chief Executive Officer
3 September 2003