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AUSTRALIA – NEW ZEALAND CLOSER
ECONOMIC RELATIONS—TRADE AGREEMENT
(ANZCERT): 1984–85

TEAL AND MEAL ALLOCATION PROCEDURES

AUSTRALIA - NEW ZEALAND CLOSER ECONOMIC RELATIONS—TRADE AGREEMENT (ANZCERT)

JANUARY 1984

(A) GUIDE TO ANZCERT IMPORT LICENCE TENDERING: TENDERED EXCLUSIVE AUSTRALIAN LICENCES (TEALS) FOR THE 1984/85 IMPORT LICENSING PERIOD

In terms of Article 5 of ANZCERT, import licences are tendered in order for New Zealand to meet its access commitments under the Agreement.

Details of the amounts to be tendered for the 1984/85 import licensing period will be advertised in the *New Zealand Gazette* towards the end of February/early March 1984.

It should be noted that the tendering provisions detailed below only apply to ANZCERT tendering:

INTRODUCTION

1. ANZCERT tendering is authorised in terms of the Import Control Regulations 1973, Amendment No. 3, and is administered by the Department of Trade and Industry under delegated authority from the Minister of Trade and Industry. Within the department a Registrar, Import Licence Tendering, appointed by the Secretary of Trade and Industry is in charge of the specific functions of the scheme.

2. As part of each Call for Tender the department will publish the total value of licences for each product category. Each product category is assigned a separate tender number. Goods covered by each tender number can be identified in greater detail by referring to the relevant tariff items in the New Zealand Customs Tariff.

3. The Calls for Tenders will be advertised in the *Gazette*, copies of which will be available from all Government Bookshops. Tenderers who have registered will receive by mail a copy of the *Gazette* containing the call for tenders plus all necessary forms and information.

4. Unregistered Tenderers will need to obtain a copy of the *Gazette* from Government Bookshops for fuller details of items offered for tender.

5. Results of all tenders will be published in the *Gazette* which is available at Government Bookshops.

6. Except as may be stipulated in this guide, licences granted under tendering will be subject to the usual procedures, and terms and conditions, laid down pursuant to the Import Control Regulations 1973, and nothing in these guidelines shall limit any provision of those regulations.

7. The goods imported will be subject to the appropriate rate of duty and sales tax where applicable. The assessment of sales tax payable on goods imported under tender licences will include the amount of the tender bid.

8. Licences obtained under Import Licence Tendering will not count towards history for the general import licensing system and will not be taken into account in the administration of any policies under the general system.

CALLS FOR TENDER

9. Calls for Tenders will specify the item code, the tariff item, a brief description of the goods involved, the total value of licences to be tendered under each tender number, the maximum number of licence units that can be tendered for and the value of each licence unit.

It is the responsibility of the tenderer to ensure that the goods to be imported against a given tender number are correctly classified in a tariff item that is included in the relevant tender number. Tenderers are advised that some item codes contain tariff items that include goods which are exempt import licence or licence on demand when of Australian origin. It should be noted that the TEALS are not available for such goods because licences are not required for exempt goods, and where goods are subject to licence on demand, import licences are issued on application to the Collector of Customs.

10. *Prospective tenderers should note that ANZCERT tendering is for goods of Australian origin only, i.e., products which meet the criteria for Australian origin as contained in the Customs Regulations 1968, as amended. The New Zealand/Australia Rules of Origin are detailed in Article 3 of the ANZCERT Agreement.*

11. Tenderers may bid for all or part of the total EALs available per item code, and in multiples of the \$2,000 unit size.

12. Bids of zero and above are to be permitted in all item codes.

13. In item codes where tender bids do not exceed the amount of EALs available, tenderers will be allocated the full amount of licence sought and no premium will be required to be paid.

14. In cases where some tenderers have bid for more than the maximum number of bids stipulated for the item code (as is permissible under 11), and total tender bids in an item code therefore exceed the amount of EALs available, the allocation will be made first to firms in order of tender bids up to the maximum number

of units permitted per tenderer per item code, and any remaining EALs will be allocated on the basis of the tender bids (higher bidders satisfied before lower bidders).

15. Unallocated EALs to be available free of charge and on request from a specified date.

16. To maintain continuity tenderers are permitted to receive 50 percent of their 1984/85 EALs in 1985/86, on payment of the same 1984/85 percentage premium (i.e. one half of the premium bid).

17. Manufacturers (see (B) Manufacturers' Exclusive Australian Licences below) will be able to apply for a share of the Manufacturers' Exclusive Australian Licences (MEALs). The balance of MEALs not taken up by manufacturers will be added to the tender pool for each item code.

18. A manufacturer, including its subsidiaries or associates, which receives part of the manufacturers' allocation of Exclusive Australian Licence in a particular item code, will not be entitled to bid in those item codes under the tendering scheme:

A company will be ineligible to tender in an item code if another company holding MEALs in the same item code has more than a 25 percent shareholding connection with the first company, either directly or indirectly. Companies which do not observe this principle will face the risk of having their tendered EALs revoked. It should be noted that details of both manufacturers' and tendered EALs will be published.

19. Manufacturers, including their subsidiaries or associates, have the option of foregoing a share of the manufacturers' allocation in return for the right to tender in which case the group of companies may bid as under normal tendering.

20. A tender period of 6 weeks from notification in the *New Zealand Gazette* will generally apply.

21. Licences will be issued valid for the period 1 July 1984 to 30 June 1985. Only in exceptional circumstances will they be extended beyond that period. ANZCERT tender licences cannot be transferred from one item code to another. ANZCERT tender licences can only be assigned to third parties on receipt of written consent from the department.

22. TEALS will continue to be issued as licence type 9 and licences will be issued by the Department of Trade and Industry, Wellington, as at present.

WHO CAN BID

23. Tenders may be submitted by any enterprise domiciled in New Zealand which has actively traded in goods or services.

For the purposes of the scheme, "enterprise" does not include:

- any social, recreational, or sporting club, any charitable or religious institution, or any person not principally engaged in carrying on a business for financial rewards; or
- any person who in the opinion of the Secretary of Trade and Industry has not actively traded in goods or services; or
- any person who has been granted a licence under these provisions but who, not having lawfully assigned his licence or not having received an extension of the end date for licence usage, fails to import goods under that licence to the value of 75 percent of that licence within the validity period of the licence providing there are no sound commercial reasons for its non-usage; or
- any person who has submitted a tender under these provisions but who in the opinion of the Secretary of Trade and Industry:

- has failed to fulfil any undertaking given to the Secretary relating to the taking up of any licence under the scheme; or

- has made any false or misleading statement in relation to any tender submitted or any licence granted under tendering.

Tenderers must be conversant with the various statutes and regulations which apply to tendering and to importing, such as safety standards, duties, sales tax, etc.

-Those tenderers whose payment for previous bids are overdue or will be at the opening date of the next Round, will have to attach a bank-cleared cheque for the amount overdue. Failure to do so will invalidate the bids.

TENDERING FORMAT

24. Pink bid forms are available for tendering under ANZCERT. These forms are designed to allow bids to be made through the Bureaufax Service of the GPO where desired.

25. Forms are available from Collectors of Customs and the Department of Trade and Industry. Registered tenderers will receive a copy of the *New Zealand Gazette* containing the Call for Tenders, a supply of bid forms and notes as appropriate. A separate form is required for each tender number.

PLEASE DO NOT USE PHOTOCOPIES OF THE FORM

All details must be typed.

It is no longer necessary to post each bid separately.

No duplicates are required.

Bids submitted on behalf of tenderers must be by fully authorised agents.

DEADLINES AND PROCEDURES

26. Tenders must be received by 5 p.m. on the due date by the Registrar, Import Licence Tendering, Department of Trade and Industry, P.O. Box 3146, Wellington. Tenders must be mailed to the above address or delivered by hand to the First Floor Reception, Bowen State Building, Wellington. Envelopes must be clearly marked ANZCERT Import Licence Tender on the bottom right hand corner. Hand deliveries may be made between 8.30 a.m. and 5 p.m., Monday to Friday, except public holidays. In the event of a tie for licence units, the lowest winning bids will be selected by the computer programme on a random basis. Tenderers may withdraw or amend their tenders if they notify the Registrar of Tenders in writing prior to the opening of tenders.

ADVICE AND PUBLICATION

27. Following the closing of tenders, bids will be publicly opened in the department in Wellington in the presence of a Justice of the Peace. The bids are not opened in tender number order and for this reason and the volume of bids received, these are no longer read out. Tenderers will be individually notified by letter and Invoice. Computer printouts of all results are sent to the regional offices of the department. The name and location of all tenderers, successful, unsuccessful and invalid, and the amount bid in each case, will be published in the *Gazette* as soon as possible after the opening of tenders.

PAYMENT OF THE SUCCESSFUL BID

28. An enterprise which has been successful in obtaining a licence may not withdraw its bid. The enterprise in submitting a tender has in effect entered into a contract with the department and must fulfil its obligation to pay the sum tendered. The amount bid by an enterprise will be payable to the Department of Trade and Industry, Wellington, from the date of the invoice notifying success. The bid must be paid before the licence can be issued from Head Office, Trade and Industry and no later than 6 months after the date of the invoice. Payment should be made to the Finance Officer, Department of Trade and Industry, Private Bag, Wellington. Payment by bank cheque ensures prompt attention. Payment by other means normally entails a delay of 15 working days for payments to be cleared through the financial channels.

STATUTORY OBLIGATIONS

29. The issue of an import licence under the tendering scheme will in no way affect the obligation of the tenderer to comply with other relevant statutes and regulations. See the Import Licensing Schedule.

(B) GUIDELINES FOR MANUFACTURERS APPLYING FOR A SHARE OF THE MANUFACTURERS' EXCLUSIVE AUSTRALIAN LICENCES (MEALS) FOR THE 1984/85 IMPORT LICENSING PERIOD

1. 1983/84 MEAL holders had the opportunity to take up a prorated 12-month 100 percent entitlement inflation-adjusted for the 1984/85 import licensing period. Any entitlements not taken up in individual codes, plus the 10 or 15 percent increase in each item code (in terms of the ANZCERT access formulae detailed in Article 5 of ANZCERT) will be advertised in the *New Zealand Gazette* towards the end of February/early March 1984.

NOTE: An application period of 4 weeks from the date of publication in the *New Zealand Gazette* will apply.

2. At that time manufacturers in applying for a share of the new MEALS in 1984/85 will be required to provide the following information:

- Only producers of goods within a specific item code are eligible for licences under that item code.
- Item Code under which licence is sought. (Separate submissions should be made for each item code).
- Brief description of products to be imported.
- Amount of licence sought. The maximum entitlement per manufacturer is 25 percent of total EALs in an item code, i.e., 50 percent of the MEALS, and the minimum entitlement is \$5,000.
- Value of production for the domestic market of goods within the item code in the company's last financial year valued at ex-factory prices, excluding freight. Production for export must be excluded. It is very important that the value of production figure should not be overstated. If it is subsequently found to be overstated the company will face the risk that its licence could be revoked.

- Details of plans/proposals the company may have to establish a rationalisation/complementation relationship with an Australian company.

- NOTES:
- (i) In cases where the actual manufacture of goods is carried out by one company on behalf of another, the eligibility for manufacturers' licences will generally be considered to lie with the principal who is responsible for initiating production and for marketing the goods.
 - (ii) In cases where guideline (c) applies (see ANZCERT MEAL rules below) the figure for total domestic production of goods in the item code to be used by the department in making decisions on allocation is the total production by those companies which apply for a share of manufacturers' EALs.
 - (iii) The names and value of licences issued to each company, item code by item code, will be published.

- State if you are a new applicant, i.e., state whether or not you currently hold MEALS for the 1983/84 licensing period. The allocation of MEALS to manufacturers who do not hold MEALS in 1983/84, will be considered within the constraints of the additional licence available under MEALS for 1984/85.

3. The following rules apply to MEAL applications:

(a) Licence will be issued against undertakings from a manufacturer:

(i) to use any MEAL fully (the manufacturer must use the licence himself);

(ii) to use it in a way consistent with the principles of CER, viz: rationalising existing production by substituting Australian imports for higher cost domestic lines or by complementing existing licences.

(b) Applicants should be able to demonstrate that they have arranged a source of supply in Australia. Such details will not be sought before licences are issued. In the event that applicants do not arrange a source of supply on a reasonable commercial basis and this appears likely to prevent utilisation of the total access provided through the manufacturers' EALs, the two countries will consult with a view to resolving the problem.

(c) If more licence is sought than is available in an item code, the available licence will be allocated according to shares of total domestic production and the strength of the undertakings manufacturers have given.

If a manufacturer finds during the year that he cannot use a licence he will be permitted to surrender the licence for reallocation without penalty within the first half year, i.e., by 31 December 1984.

(d) Any licence entitlement not used by a manufacturer in any year will be transferred permanently to the tendering pool.

(e) Portions of manufacturers' licences which have not been used at the end of the licence period will be carried over to the following period and added to the tendering pool for that period.

(f) As a general rule, no single manufacturer, including its subsidiaries and associates, will be entitled to receive more than 25 percent of EALs in an item code from the manufacturers' allocation.

(g) No single manufacturer, including its subsidiaries or associates, which receives part of the manufacturers' allocation, will be entitled to tender. In exceptional circumstances, applications for departure from this rule will be considered, but will be subject to consultation with Australia.

(h) In cases where there is a small number of producers applying for a share of the manufacturers' EALs in an item code a manufacturers' proportion may be increased beyond the 25 percent limit but this will be approved only in cases where manufacturers have an outstanding case on rationalisation/complementation grounds and subject to consultation with Australia.

(i) Applications for a share of MEALS in the 1985/86 import licensing period will be reviewed in the light of performance according to (a) (i) and (ii). Licences for the third year and subsequent years will be adjusted for inflation.

(j) In general the minimum size of licences will be \$5,000.

(k) There may be cases where the share a manufacturer receives does not allow rationalisation/complementation to proceed as quickly as desired. Provision has been made for additional licences (Rationalisation/MEALS) to be made available in such cases under guidelines designed to ensure satisfactory rationalisation occurs and to prevent the recipient gaining an undue commercial advantage over competitors. The guidelines are set out in the Import Licensing Policy Schedule. Copies of the guidelines plus the applicants' guide are available on request from General Industries (2), Department of Trade and Industry, Wellington.

4. The following broad guidelines in relation to import performance and usage under MEALs should be noted:

- (a) Unused 1983/84 MEAL allocations picked up on the computer in July/August 1984 would be made available under the 1984/85 TEALs procedures about August/September 1984. In partially taken-up item codes unused MEALs would be added to the REALs pool and allocated on request. For item codes fully taken up the MEALs would be put up in an additional tender round. These unused MEALs would be transferred permanently to the tender pool for 1985/86.
- (b) In order to qualify for MEALs in 1985/86 New Zealand manufacturers would need to establish that they were using MEALs in accordance with the MEAL guidelines, i.e., rationalising/complementing domestic production, etc. on similar basis as for R/MEALs. (See 3 (k) above.)
- (c) MEAL issues for 1985/86 would be based on performance in 1983/84 except where manufacturers had handed back MEALs for 1983/84 by 31 January 1984. Manufacturers' 1985/86 MEAL allocations would therefore also be based on the full allocation received for 1984/85 bearing in mind that they would need to show they were operating in accordance with the MEAL guidelines.
- (d) Where MEALs were not handed back in 1983/84 and individual firms had used less than 75 percent of their MEALs, manufacturers could be asked to justify receipt of MEALs in 1985/86 against the general 75 percent non-usage criteria. This would, however, need to take account of rationalisation/complementation plans underway and estimated usage of 1984/85 MEALs in terms of the MEAL guidelines.

5. For any queries, applicants should contact John Diamond or Rob Taylor, General Industries (2), Department of Trade and Industry, Wellington.