BILATERAL

MEMORANDUM OF UNDERSTANDING BETWEEN THE PHILIPPINES AND THE UNITED STATES REGARDING THE IMPLEMENTATION OF MINIMUM ACCESS COMMITMENTS BY THE PHILIPPINES

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The Philippines and the United States of America ("the Parties") have concluded bilateral negotiations and have reached a mutually-acceptable resolution respecting matters which have been the subject of consultations pursuant to World Trade Organization (WTO) notifications WT/DS74/1 and WT/DS102/1 regarding administration by the Government of the Philippines of the tariff rate quotas affecting fresh/chilled/frozen pork (HS 0203) and fresh/chilled/frozen poultry (HS 0207) (hereinafter "the specified agricultural products")- The Philippines and the United States agree as follows:

ARTICLE I
PURPOSE AND OBJECTIVES

In entering into this Agreement the United States and the Philippines commit to achieve the following objectives:

To further reinforce strict adherence with World Trade Organization commitments negotiated during the Uruguay Round, including the provisions of the Agreement on Import Licensing Procedures;

To further ensure that the Philippine licensing mechanism for agriculture imports is in conformity with the Agreement on Import Licensing Procedures and does not have trade-restrictive or -distorting effects on imports additional to those caused by the implementation of the minimum access commitments and tariff rates established in the Philippines' Uruguay Round Schedule of Concessions; and

To modify Administrative Order No. 8 Series of 1997 (and its predecessor Administrative Order No. 9 Series of 1996) and to further promote transparency, fair trade and full access to Minimum Access Volume (MAV) quotas.

ARTICLE II
ADMINISTRATIVE ORDER NO. 8

Administrative Order No. 8 Series of 1997 ("the Administrative Order" or "AO 8") was issued by the Philippines on September 2, 1997, amending the rules and regulations for the implementation of the agricultural minimum access volumes (MAVs) contained in Department of Agriculture Administrative Order No. 9 series of 1996. The Government of the Philippines shall implement a modified Administrative Order No. 8, consistent with the terms of the provisions below, by no later than March 5, 1998.

ARTICLE III
MODIFICATIONS TO ADMINISTRATIVE ORDER NO. 8

The Philippines and the United States agree to the modifications to Administrative Order No. 8 described below. Administrative Order No. 8 as issued on September 2, 1997 (including the erratum of September 24, 1997), and as modified consistent with this Agreement, shall govern and control the implementation of the MAV Mechanism and MAV Plus Mechanism with respect to the specified agricultural products. As so modified, with respect to the specified agricultural products, the Administrative Order shall apply to all licenses, Minimum Access Volume

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Import Certificates (MAVICs), and provisional MAVICs issued or pools allocated on or after January 1, 1998. In addition, all specified agricultural products entered under MAVIC, provisional MAVIC, or otherwise from and including January 1, 1998, through the effective date of the Administrative Order No. 8, as modified consistent with this Agreement, shall be subject to all of the provisions thereof and shall be deemed entered during the TRQ year commencing February 1, 1998, and ending on January 31, 1999. The Philippines shall notify the United States when undertaking ¦ (' procedures to modify further Administrative Order No. 8 beyond those modifications provided for in this Agreement.

The Tariff-Rate Quota Year and MAVIC duration

1. Section I.B.(15) of AO 8 shall be amended to provide that the tariff-rate quota (TRQ) year shall be a 12-month period commencing on February 1 and ending on January 31 of the following year. All other provisions of the Administrative Order shall be amended to conform with this definition of the TRQ year; in particular, the date for voluntary surrender of quota allocation shall be by the last working day in May, the Mid-Year Pool (MYP) allocations shall be made available not later than July 1, and the date for reckoning quota utilization rates for determining the subsequent TRQ Year's Beginning Year Pool (BYP) shall be December 15.

2. Section I.K.(15) of AO 8 shall be amended to provide that the validity of the MAVICs shall be lengthened from 2 to 3 months from the date of issuance, provided that no MA VIC issued w within a TRQ year shall be valid beyond the end of February of the following TRQ year. All other provisions of AO 8 shall be conformed to reflect a 3 month duration for the MAVICs.

Application Requirements and MAVICs Issuance

3. Section I.D.(2)(c) of AO 8 shall be amended to provide that applicants may submit copies of their income tax returns or the appropriate Bureau of Internal Revenue (BIR) form for exempt organizations for the latest fiscal year instead of the BIR tax clearance certificates. The submission of Import and Entry Revenue Declarations (IERDs) will no longer be required, except for MAV entrants, as further described in paragraph 11 of this Agreement.

4. Section I.F.(2) of AO 8 shall be amended to provide that regular licensees in a TRQ year who do not apply for regular allocations in the succeeding year shall not receive a regular allocation, shall be removed from the TRQ system, and their prior license allocations shall be added to the BYP. If any such licensee re-applies in a subsequent year, he/she shall be treated as a MAV entrant.

5. Section I.D.(2)(c) of AO S shall be amended to provide that in establishing import performance to qualify for import licenses, a MAV entrant importing specified agricultural products, determined at the four digit HS code level, must have imported at least nine metric tons of the specified agricultural product within the four digit HS code, which amount is one-half the Economic Size Lot for such product.

6. Section I.K.(8) of AO 8 shall be amended to provide that the pro-forma invoice shall be replaced with the airway bill as the basis for issuing MAVICs in the case of shipments by air freight.

7. Administrative Order No. 8 shall be amended to provide that any existing licensee can act as a MAV Import Consolidator provided that he/she is accredited by the MAV Secretariat.

Surrender, Recall, and Cancellation of MAV Licenses

8. Section I.H.(2) of the Administrative Order shall be amended by increasing the effective utilization threshold below which penalties are applied from 50 percent to 80 percent computed over the 12- month quota year. To allow the Government of the Philippines sufficient time to factor utilization rates into its determination of

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eligibility for participation in the Beginning Year Pool for each succeeding year, the utilization rate as of December 15 of each quota year shall be dispositive and an actual utilization rate of less than 70 percent (80 percent multiplied by 10.5 months/12 months) for any licensee shall result in the application of the forfeiture penalty provided for in Section I.H.(2) to that licensee.

9. The three-phase penalty procedure (50%-75%-100%) provided for in Section I.H.(2) of AO 8 shall be progressively applied with each occurrence of under-utilization, which need not be in consecutive years to activate each successive stage of the penalty.

10. Pursuant to Annex V of AO 8 (as corrected by the erratum dated September 24, 1997), any allocation from the Mid-Year Pool shall be added to the net allocation which is the denominator, and any utilization of the MYP licenses shall be included in the numerator, of the formula for utilization rates set forth in Section I.H.(2). There shall be no distinction between MYP licenses and other licenses for purposes of the computation of overall utilization used to determine the applicability of the forfeiture provision in Section I.H.(2) of AO 8.

11. Section I.F.(6)(b) of AO 8 shall be amended to provide that MAVICs, instead of DERDs, may be used as the basis for computing utilization rates for purposes of Section I.H. (2) of AO 8. However, MAV entrants may be required to submit IERDs to establish eligibility for import licenses.

12. Only licensees who meet the utilization threshold set forth in Section I.H. (2) of AO 8 as modified consistent with this agreement and MAV entrants shall have access to the Systematic Distribution Procedure (SDP) for the Beginning Year Pool (BYP). All other licensees (those who do not meet the utilization threshold) shall have access to the BYP only through the first-come, first-served procedures set forth in Section I.F.(8) of AO 8.

13. Administrative Order No. 8 shall be amended to eliminate the second-priority distribution in the MAV Plus Mechanism. AO 8 shall be further amended to provide that any quota balance remaining after the first priority distribution in the MAV Plus Mechanism shall be allocated on a first-come, first-served basis. It is noted that Section I.G.(3) of AO 8 provides for only one priority distribution in the MYP and any balance from said distribution shall be allocated on a first-come, first-served basis. It is also noted that Sections I.G.(4) and II.C.(4)(c) of AO 8 allow licensees who surrender all or part of their quotas by the last working day of May in any TRQ year to have access to the first-come, first-served allocation provided for in the MYP and the MAV Plus Mechanism only after the quota requirements of the priority licensees have been satisfied. However, AO 8 shall be amended to provide that MAVICs for allocation from the first-come, first -served distribution shall not be issued to any licensee who has not fully utilized all of his/her unsurrendered quota.

14. Allocations from the first-come, first-served distribution shall be conditioned on the submission of bills of lading for sea shipments and airway bills for air shipments.

15. Licensees who surrender all or part of their quota allocations on or before the last working day in May in any TRQ year, shall be ineligible for participation in the Beginning Year Pool for the subsequent TRQ year, other than as part of the first-come, first-served allocation.

16. Wherever necessary to be consistent with this Agreement, the provisions of AO 8 shall be further amended to conform to the modifications provided for above in paragraphs 1 through 15 of this Agreement.

ARTICLE IV
TRANSPARENCY, MONITORING AND ADDITIONAL CONSULTATIONS

17. The Philippines and the United States agree to monitor and review MAV TRQ utilization for the specified agricultural products. On a quarterly basis (based on the applicable TRQ year), the Philippines shall make

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available to the United States information respecting the volumes corresponding to the MAVICs issued for each of the specified agricultural products. Information regarding actual import arrivals of the specified agricultural products, including the annual volume of such imports, shall also be made available to the United States each year.

18. The Philippines and the United States agree, upon the request of either Party, to conduct additional bilateral consultations to consider the operation of the tariff rate quotas covered by this Agreement and the implementation of Administrative Order No. 8, as modified, consistent with this Agreement. Such consultations, unless otherwise mutually agreed, shall occur no later than 30 calendar days after the receipt of a Party's request in writing.

ARTICLE V
DEFINITIONS

19. The definitions set forth in Section I.B. of the Administrative Order shall apply uniformly to the same terms when used in this Agreement except for the definitions of MAV entrant, MAV Year, and Mid-Year Pool (MYP), which shall be modified to conform with the provisions of this Agreement.

ARTICLE VI
WORLD TRADE ORGANIZATION NOTIFICATIONS

20. The Philippines shall notify the WTO Committee on Agriculture and other relevant committees of the modifications to its tariff-rate quota system by revising notification G/AG/N/PHL/3 of September 19, 1996, concerning the administration of its tariff-rate quotas (Table MA: 1).

21. The United States shall notify the WTO Dispute Settlement Body that bilateral negotiations have resulted in a resolution of the matters which have been the subject of consultations pursuant to WTO notifications WT/DS74/1 and WT/DS102/1.

ARTICLE VII
AMENDMENTS

22. The Philippines and the United States may amend this Agreement only by mutual agreement in writing.

ARTICLE VIII
RESERVATION OF RIGHTS

23. This Agreement is without prejudice to the rights of the United States and the Philippines under any WTO Agreements and does not affect the obligations of the United States or of the Philippines other than as specifically set forth herein. In the event of a dispute respecting this Agreement or a dispute relating to market access for the specified agricultural products, both Parties agree to consult and to seek an expeditious resolution.

ARTICLE IX
ENTRY INTO FORCE

24. This Agreement shall enter into force on the date of signature.

IN WITNESS WHEREOF the undersigned, being duly authorized for this purpose by their respective governments, have signed this Agreement.

DONE in duplicate, with both copies being equally valid, at Washington, this 20th day of February 1998.

(Sgd.)
FOR THE GOVERNMENT OF THE PHILIPPINES

(Sgd.)
FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA

Entry into Force: February 20, 1998

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