NATIONAL ADMINISTRATIVE REGISTER · JULY 1, 1996

RULES AND REGULATIONS FOR THE IMPLEMENTATION OF THE AGRICULTURAL MINIMUM ACCESS VOLUMES (MAV)

DA ADMINISTRATIVE ORDER NO. 9, July 01, 1996

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IMPLEMENTING RULES AND REGULATIONS OF REPUBLIC ACT 8178

In accordance with Republic Act 8178 issued on March 28, 1996 directing, among others, the Cabinet Committee created by Memorandum Order No. 245 dated December 13, 1994 to submit, in consultation .with all concerned agricultural farmer/producer/processor/importer groups, to Congress within a period of sixty (60) days from the effectivity of (he said Act, an equitable and transparent mechanism for the implementation of the minimum access volumes (MAVs) having the least government intervention, addressing the requirements of each geographical region, and without entailing any cost to importers/users of these products to the detriment of local consumers and. other end-users, as well as creating the Competitiveness Enhancement Fund (CEF), the following guidelines are hereby promulgated.

SECTION 1. The MAV Mechanism -

A

General Principles

1. The implementation of the agricultural minimum access volumes or MAVs should conform with the general principles of transparency, equity, market-consistency, and GATT-consistency, and address the development requirements of the economy in general and the agriculture sector in particular.

2. a) Transparency -The implementing rules and regulations governing the agricultural MAVs should be stable and the information thereof should be conveniently available to a concerned parties.

b) Equity-The mechanism should be fair in that it addresses the requirements of all concerned parties in each geographical area and that, without sacrificing the objectives of promoting economic efficiency, it implementation would result in all concerned parties being at least as well off as before such implementation.

c. Market-consistency - The mechanism should entail the least government intervention and the resulting allocation of the MAVs should approximate to the closest extent possible the competitive import shares of importers in the absence of the tariff quota or MAV.

d. GATT-consistency - The implementation procedure should conform with the relevant commitments of the government under GATT 1994, particularly Section 1-8 of the country's schedule of Uruguay Round Final Act commitments, as well as the Agreement on import License Procedures.

e. Economic Development -The mechanism should address the economic development requirements of the country ease the adjustments of the industries affected by the lifting of the non-tariff import restrictions in agriculture, an contribute to stabilizing agricultrual prices at affordable levels.

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B

Definition of Terms

1. An agricultural product is any product that the government classifies under Chapters 1 to 24 of the Harmonize System of tariff nomenclature as used in the country's Tariff and Customs Code.

2. Minimum Access Volume (MAV) refers to the quantities of a given imported agricultural product that the government allows entry into, the Philippines at the lower in-quota tariff rate. There are two sets of MAVs. One set constitutes those which the government committed in the Uruguay Round treaty. The other set are those which the government introduced unilaterally as part of its trade policy. For purposes of this Order, the phrase tariff rate quota is used synonimously as minimum access volume.

3. An in-quota tariff rate refers to the lower rate of custom duty applied to an agricultural product as provided for in the country's tariff and customs code and applicable to MAV product. There are two sets of in-quota tariff rate: One set constitutes those which the government committed in the Uruguay Round Treaty. The other set are those which the government introduced unilaterally as part of its trade policy.

4. An out-quota tariff rate refers to the higher rate of custom duty applied to an agricultural product as provided for in the country's tariff and customs code.

5. A MAV product refers to an agricultural product that ha a MAV.

6. Representative period refers to the three year immediately preceding a given MAV year.

7. A MAV license is the official permit issued by the Chairperson of the MAV Management Committee (MMC) entitling the MAV licensee to import a given quantity of specific MAV product at the in-quota tariff rate in a given MAV year.

8. A MAV licensee refers to a firm, cooperative, non-governmental organization (NGO). agency, institution, or person who is granted rights to import MAV products.

9. A MAV entrant refers to a firm, agency, organization, or person who becomes a MAV licensee for the first time in any given MAV year.

10. A MAV year is from January 1 to December 31 of a given year.

11. A MAV Product Category is a group of specific MAV products, whose first four or more digits of their respective Harmonized System codes match and which the MAV Management Committee grouped as such for the purposes of allocating MAV licenses.

12. Harmonized System (HS) is a nomenclature of tradable goods, articles and items as used by the government in its Tariff and Customs Code.

13. The Agricultural Competitiveness Enhancement Fund (ACEF) is a fund created by Republic Act 8178. The fund is earmarked by Congress for irrigation, farm-to-market roads, post-harvest equipment and facilities, credit, research and development, other marketing infrastructure, provision of market information, retraining, extension services, and other forms of assistance and support to the agricultural sector in so far as these measures improve the competitiveness of the agriculture sector.

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C

MAV Management Committee, Secretariat, and Advisory Council

1. There is hereby created a MAV Management Committee (MMC) which should be composed of the following:

- Secretary of Agriculture Chairperson
- Secretary of Trade and Industry Member
- Secretary of Finance Member
- Secretary of Agrarian Reform Member
- Secretary of Science and Technology Member
- Director-General, NEDA Member

2. The MMC should oversee and regulate the implementation of the MAVs and dispose of the competitiveness enhancement fund following the provisions under RA 8178. It should set the rules and regulations pertinent to the administration of the tariff rate quota, the competitiveness enhancement fund, and other related matters.

3. A MAV Secretariat and a private-sector advisory body should assist the MMC. The MAV Secretariat carries out the day-to-day administration of the MAVs and is accountable to the MMC. The MAV Executive Director heads the MAV Secretariat.

4. The MAV Secretariat should be composed of employees of the Department of Agriculture assigned on a full-time basis to fullfill their respective functions in the said body.

5. Among its other functions, the MAV Secretariat would collect from the MAV applicants and licensees the appropriate MAV fees that the MMC determines and approves. In approving these, the MMC shall ensure that the fees are kept down to the levels strictly necessary for the efficient administration of the MAC mechanism and do not unduly raise local prices to the detriment of users or consumers of the MAV products.

6. The private sector advisory body is called the MAV Advisory Council (MAC). The MMC should organize the MAC which would be tasked with advising it on matters about the MAV implementation and the disposition of the Competitiveness Enhancement Fund.

7. a) The MAC should be comprised of seven members, six of whom should be from the national farmer organizations/ federations and other private entities, including at least one representing the users of MAV products. The seventh member of the MAC should be the Secretary of Agriculture or his duly appointed representative who must be a senior official of the Department of Agriculture. The MMC should appoint the private sector members who will serve voluntarily for a term of three years. It shall also define the terms of reference of the private sector advisory body.

b) The Chairperson of the MAC should be the Secretary of Agriculture or his duly appointed representative.

D

Registration and Eligibility of MAV Applicants

1. The MMC should publish notices asking for the submission of applications for MAV licenses in at least two national news dailies, in the last week of November of a given MAV year. The notice contains at least the following information: the list and respective quantities of MAV products to be allocated, the opening and closing

dates of the application, and the time period when the MAV licenses to be issued out are to be valid, and the address of the government office where the application forms can be obtained and submitted.

2. The application period should be the last month of the existing MAV year, i.e. from 1 to 31 December of the year. Applications received after the application period will not be processed for the incoming MAV year.

3. The application for MAV licenses should be open to all concerned firms, cooperatives, NGOs, agencies, institutions and persons who may have a legitimate reason to use or sell MAV products A MAV applicant should be entitled to one application per MAV product category.

4. In cases where the associations or federations apply for MAV licenses in behalf of their members, these applicants must submit to the MMC a certified list of their members. These organizations must also show that their respective competent authorities has so decided and has accordingly instructed their respective members not to apply for the MAV licenses that thier associations or federations are applying for. If, however, the members of said associations or federations apply for the same set of MAV licenses as their organizations, the MMC should reject the individual applications on the ground that these represent a duplication of MAV application.

Furthermore, a member of two or more associations or federations would be deemed to have forfeited the privilege of applying for a MAV license for a specific product if one association or federation to which he belongs applies for the same MAV license for and in his behalf, even if the other associations or federations to which he belongs do not so apply for the same MAV license.

5. The MAV applicants should fill out an application form for the MAV licenses (see attached Form No. 1[*]) These application forms should contain the necessary information required for the proper implementation of the MAVs. In addition to the information requested in MAV Form No. 1, supporting documents may be required by the MMC from the applicant to validate the information reflected in the application. Failure to properly fill out the application forms, submit supporting documents, and/or falsification of supporting documents submitted in the application, with intent to mislead the MMC, should be considered grounds for rejecting the current or subsequent applications of the MAV applicant for MAV licenses.

6. The MMC should process the applications for MAV licenses during the first month of the incoming MAV year, i.e. from 1 to 31 January of a given year.

7. As a general rule, only those applicants for MAV licenses who have demonstrated valid reason to use or sell a MAV product should be eligible to get MAV licenses for the agricultural product.

a.

Unless it fails to submit its application fo whatever reason, a MAV applicant that has been in the business for at least the representative period as an importer or a user of a MAV product or its substitute should be automatically eligible to get MAV licenses in the first year of the MAV implementation.

b)

The MMC should require that the MAV entrants must operate their respective businesses that use or supply MAV products for at least one year without the benefit of a MAV access before it considers their respective MAV applications.

8. The MMC should require that an existing MAV licensee reapplies for MAV licenses in any subsequent MAV year. It should approve the application, unless it has a valid reason to act other/vise. All existing MAV licensees should be provided, besides the notification, through the national news dailies, a written letter about the opening of the current MAVs no later than the last working day of November of any given MAV year.

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9. The decision of the MMC on the MAV applications would be final. Where the MMC rejects an application, it should inform the concerned applicant of the reason for rejecting the application. These reasons may include the fact that the applicant is not a user or supplier of the MAV product; had falsified the supporting documents in its application; had committed technical smuggling; or had consistenly failed to use its allocated MAV licenses for reasons unrelated to preferences of buyers or for any other reason that, in the judgement of the MMC, causes a waste of the MAV licenses.

E

MAV Licenses, Withdrawal Forms and Import Certificates

1. The MMC Chairperson should issue the MAV licenses. A MAV license should contain at least the following information the Harmonized System (HS) code identifying the MAV product category for which the MAV licensees can apply the MAV license; the quantity of the MAV product; the name of the MAV licensee, the MAV Account Number; and the validity period of the license. The attached MAV Form No. 1. illustrates the MAV license granted to a hypothetical MAV licensee.

2. The MAV licenses should be applicable to specific MAV products whose respective HS codes match or fall under the HS code that appears in the license.

3. In any MAV year, the total quantities of a MAV product in the MAV licenses should be equal to the authorized MAV: as reported in Section II Part A of this Administrative Order, including any possible incremental quantities that the MMC may authorize for a given MAV year following Part B of Section II below. The MAV licensees can import these quantities from any supplier of their choice, provided that the imported products obtained from the said supplier meet the applicable sanitary and phyto-sanitary regulations of the country.

4. The MAV Account Number should consist of a set of numbers identifying the MAV year that the account is valid (first two digits), the MAV licensee (next three digits), and the HS Code (the next eight digits). If the product category is at a level lower than the eight digit level, the mark "X should fill the residual digit positions. Hyphens should separate the year, code of the MAV licensee, and HS code;

5. The MAV license should be non-transferable. The license should open a MAV account in favor of the MAV licensee A licensee may have several MAV accounts.

6. a) Upon allocating the MAV licenses, the MMC should instruct the MAV Secretariat to provide MAV Withdraw; Forms (see attached MAV Form No. 02[*]) to the licensee at cost of printing. The MAV licensees should use these forms to secure from the MAV Secretariat the MAV lmport Certificates or MICs (see attached MAV Form No. 03[*]).

b. The MAV Secretariat should submit the following MA lists to the Chief of the Central Records Managemer Division (CRMD) of the Bureau of Customs:

> i) The MAV Master List showing all the MAV accounts opened for the MAV year, the names of the MAV licensees, the total quantity of MAV products that the respective MAV licenses can be applied, the HS code, the MAV account num-ber, and the validity period of the account;
>
> ii) List of MAV Import Consolidators accredited by the MMC; and
>
> iii) MAV for each agricultural product under a specific HS Code for a given MAV year.

7. a) Upon receiving a duly accomplished MAV Withdraw Form from the MAV licensee indicating the intent to withdraw from his/her/its MAV account a given quantity of MAV products to be imported, the amount of which

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should be duly validated with copies of his invoice and Bill of Lading, as well as upon verifying that the MAV licensee has positive MAV balance in his/her/its MAV account, the MAV Executive Director should issue a MAV Import Certificate (MAVIC) in favor of the licensee. The MAVIC should be, the quantities of the MAV product indicated in the MAV Withdrawal Form that is based on the net volume in the Bill of Lading, or the balance in the MAV account of the licensee, whichever is smaller, the specific description and HS Code of the product, the name of the MAV licensee, the MAV account number, and the validity period of the certificate
b. Upon issuing the MAVIC, the MAV Secretariat should update the MAV Account balance of the MAV licensee to record the withdrawal that the MAV licensee made.

8. The MAVICs should be issued in five copies: the white or the original copy; the green or the return copy; the pink or the BOC/TED copy; the blue or the MMC copy; and yellow or the MAV licensee's copy. The white or original copy should be an integral part of the import documents covering the MAV importation. The copies should be disposed of according to the regulations that follow:

- The MAV Secretariat should keep the blue copies of the MAViCs for the record of the MMC and give the yellow copies of the MICs to the MAV licensees for his/her/its record.

- The MAV Secretariat should deliver by messenger the white (original) copy, the green (return) copy, and the pink (BOC/TED) copy to the Chief of the Tax Exempt Division (TED) of the Bureau of Customs (BOC). The messenger's identity and signature must be officially established through an official memorandum from the MMC to the BOC.

- In the event of a MAVIC endorsement, the MAV licensee should endorse the MAV Import Consolidator of his choice at the back of ail copies of the MAVIC. Failure to do so at this point should compel the MAV import licensee to import the MAV product directly without the benefit of the services of a MAV Import Consolidator. Furthermore, the MAV licensee should make the necessary arrangements with the MAV Import Consolidator to import the MAV product in his/her/its behalf.

9. Only the MAV licensee whose name appears in the MAVICs can import the MAV products, unless the MAV volume had been properly endorsed to an accredited MAV Import Consolidator. In the event the MAV licensee is an organization representing a group of firms and/or persons, the licensee, and not its members, should be the entity legally assigned to bring the quantities of the MAV product into the country.

10. The MAViCs should be valid for two months from the date of issue or for a period up to the end of the current MAV year that the MAV Secretariat issue the import certificates, whichever is shorter.

11. Upon use of the MAVIC, i.e., application of the lower in-quota tariff rate, the Bureau of Customs official should stamp the word "used" on the white, green, and pink copies of the MAVIC. Keeping the used white and pink copies for its records, the BOC should then remit the green copy to the MMC as provided for in Section I, Part G below. This voids the MAVIC which thus cannot be used to avail of inquota tariff rates in any subsequent importation of the MAV licensee. Failure to void a used MAVIC and/or reusing a MAVIC should constitute a violation of the country's tariff and customs code and RA 8178.

F

Allocation Procedures

1. The MMC should group the MAV applicants who qualify for MAV licenses, hereinafter called qualified MAV applicants, based on the MAV product categories that they have applied for, i.e., by either a tariff heading level (4 digit HS level) or at a more specific tariff category level (e.g., six-digit or eight-digit HS levels)

The following paragraphs under Section I, Part F outline the specific procedure for allocating the MAV licenses of a given MAV product category.

2. The MMC should further classify the qualified MAV ap-plicants that belong to a given MAV product category based on the following classes of use of the MAV product: household, processing, and commercial food service (e.g., restaurants, hotels, fast-foods chains, etc.) To associate these use classes with the importers, the following rules should be applied:

- For MAV product categories whose respective quotas are equivalent to the level of current import access, all actual importers in the representative period, irrespective of whether they are producers, processors, commercial food service providers, or traders, should be considered eligible for allocations.

- For MAV products which the government had a binding non-tariff import restriction and/or whose tariff quota is more than the current import levels, the qualified MAV applicants should be grouped as producers, processors, commercial good service providers, and traders.

- i) Producers are persons, firms or entities that locally produce a MAV product to be sold eventually for public consumption.

ii) Processors are persons, firms or entities that process the imported MAV product.

iii) Commercial food service providers are persons, firms, or entities that process the imported MAV product or its substitute for sale to the public as prepared food.

iv) Traders are persons, firms or entities that import the MAV products for small and medium-size processors or commercial food service providers, which are unable to bring into the country their imported product requirement at efficient levels.

3. In the initial year of the MAV implementation, the MMC should allocate the MAV licenses to qualified MAV applicants based on their respective market shares.

- For MAV products which importers have been importing regularly since at least the representative period and on which imports the government, through its regular statistical collection agencies, has data, the market share should be the import share. The import share is the share of the MAV licensee in the total quantity of the imported MAV product measured in metric tons of all the qualified MAV applicants that belong to a given MAV product category during the representative period. The total quantity is computed based on the respective highest imported quantities of the applicants during the representative period.

- For MAV products that have been irregularly or scarcely imported during the representative period, the market share should be the local output share. For this purpose, the following rules should apply:

i. The total volume of the product that is sold locally should first be apportioned on the basis of use: household, processor, and commercial food service. This establishes the shares of each of the four categories of use herein identified.

ii. Having done the first step above, the respective allocations of each use category should be apportioned further using the local output share. This is the share of the qualified MAV applicant in the total quantity of the locally produced output that all qualified MAV licensees, falling under the use category, sold during the representative period in the domestic market. Where the data on sales are difficult to attain, the MMC may utlize appropriate proxy variables to approximate sales.

iii. The MMC should set aside an appropriate percentage of the MAV quantity for traders defined in paragraph 2c (iv) above. This provision is for the benefit of small and medium-size processors or commercial food

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service providers, which are unable to bring into the country their imported product requirement at efficient levels, and/or may have failed to apply for MAV licenses due to their small size. The traders who get this allocation must primarily cater to the needs of the small and medium scale users. Failure to do so may be a ground for rejecting the application for renewal of its MAV license.

4. In subsequent MAV years, the following rules shall apply:

- For existing MAV licensees, their respective allocation of MAV licenses in the current MAV year should be equal to the respective MAV licenses issued them in the preceding MAV year and their respective share on one-half of the incremental MAV licenses authorized for the current MAV year. The share of the MAV licensee in the total licenses issued to all MAV licensees in the preceding MAV year should be used for this purpose.

- The MMC should apportion to MAV entrants the second half of the regular incremental MAV volume. The shares to be used should be the import shares of the MAV entrants that are to operate without the benefit of the MAV for one year as provided for in paragraph 6b, Part D of this Section.

- In subsequent MAV years, the MAV entrants of the immediately preceding MAV year should become regular or existing MAV licensees. As such, the procedure outlined under paragraph 4(a) above should apply.

5. Where the resulting MAV share of a MAV licensee is less than the economic order quantity, the licensee may endorse the MIC to an accredited MAV import consolidator. The MMC should regularly inform the Chief of the CRMD of the Bureau of Customs about the list of accredited MAV import consolidators. This provision for import consolidation is to give options for small-and medium-scale users who are at the same time MAV licensees.

6. The MMC should accredit MAV import consolidators. Private or publicly-owned corporations may apply for accreditation with the MMC.

7. a) Where an existing MAV licensee is dormant and/or fails to utilize the allocated licenses, the MMC should ask the said licensee to explain in writing the reason for the non utilization of the licenses. The explanation should be submitted before the MMC announces the allocation of the MAVs for the incoming MAV year.

b. Where there is reason to believe that the said licensee will no longer be a user of the MAV licenses, the MMC should cancel the MAV licenses allocated to the said licensee and should apportion the same, following the procedure for incremental MAVs, to other existing licensees in the same group that the dormant licensee belongs to. Otherwise, the licenses should remain allocated to the dormant MAV licensee.

8. In any MAV year, MAV licensees who decide not to use the MAV licenses allocated to them may voluntarily surrender the unused licenses to the MMC through the MAV Secretariat. The MAV Secretariat should then close the MAV account of the licensees concerned and put the unused licenses to its pool of unused or cancelled licenses. When the need arises, the MMC should allocate the pool of licenses to existing licensees following the procedure outlined for incremental MAV licenses.

9. The allocation procedures outlined in this document are subject to a mandatory review one to two years from the effectivity of the Administrative Order. The intent of the review is to improve these procedures and make them more responsive to the needs of the parties concerned and the agriculture sector.

G

Monitoring and Evaluation

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1. The Bureau of Customs should accomplish the monthly MAV report form (MAV Report Form No. 01) and submit it to the MMC through the MAV Secretariat along with the perforated MAVICs and bills of lading for MAV products. This report should reconcile the quantities of MAV products that importers brought in and the used MAV licenses. The BOC should submit to the MMC this report no later than a week from the start of a given month.

2. The Bureau of Customs should accomplish the consolidated semestral MAV report form (MAV Report Form No. 02). The purpose of this report is to monitor the out-quota importations of MAV products. The BOC should submit this report to the MMC no later than two weeks from the start of January or July of a given MAV year.

3. The MMC should periodically review the existing procedures of MAV implementation and identify its problems, with the view of immediately solving these problems in a manner consistent with the general principles of the implementation of the MAVs.

H

Transitory and Other Provisions

1. Catching up provision - In the interest of meeting the country's international commitment without any further delay, the MMC should allocate the MAV licenses from July 1 to December 31, 1995 and from January 1 to December 31, 1996 no later than July 31, 1996. It should allocate only the licenses corresponding to the quantities of MAV products which the country has yet to import at no more than the in-quota tariff rates to meet its international treaty obligations or to implement a trade policy in the case of unilateral MAVs. These licenses should be valid for imports which arrive in the country no later than December 31,1996.

2. The allocation should follow a fast-track procedure as follows: The application period should be from July 1 to July 15,1996. The MMC should issue the licenses by August 1, 1996.

3. A unilateral MAV is one in which the Philippines does not have any MAV commitment in any international trade treaty, or one that is more than its international MAV commitment. As a rule, the government should limit the implementation of the MAVs to those that the country had committed in international trade treaties. The exception to this rule shall be governed by these conditions.

- For imported products that the government had liberalized before the effectivity of RA 8178 and EO 313 modifies their respective tariff rates to higher out-quota tariff rates, the government should provide a unilateral MAV equal to the latest current import access volume and with a reasonable growth per annum of such MAVs.

- For restricted products whose QRs RA 8178 tarrified and that the Philippines does not have any MAV commitment under any international trade treaty, the government may provide a unilateral MAV if both producers and users of the concerned product mutually agree to a specified volume and in-quota tariff rate.

- For restricted products whose QRs RA 8178 tarrifed and that the Philippines has a binding MAV commitment under an international trade treaty but the quantities are less than 'the current import access, the government should unilaterally expands the MAV up to the current import access.

4. The margins of preferences under the ASEAN Preferen tial Trade Agreement (APTA) are applicable to the in-quota or out-quota most Favored Nation (MFN) tariff rates.

5. Transitory provision - Imported products covered by the catching up provision in this Administrative Order (AO) and/ or whose import entries are filed between the effectivity of this Order and the time in which the MAV licenses had been issued to implement the catching up provisions should be eligible for provisional MAV Import

Certificates (MAVIC) under the following conditions listed under the following paragraphs 5a through 5f.

- Upon the effectivity of this Order, an importer may apply for a provisional MAVIC in a letter addressed to the Chairman oftheMMC. With this application, the importer must submit a copy of the bill of lading and/or of the pro-forma invoice for the imported agricultural products covered by the catching up provision, and a duty notarized bank certification that a MAV trust account had been opened by the importer in '(he designated bank. Upon verifying the authenticity of these documents, the MAV Executive Directors should issue a provisional MAVIC in favor of the importer and equal to the volume indicated in the bill of lading.

- The amount of the trust fund should be at least equal to the difference between the revenues accruing to the Bureau of Customs on ttv3 basis of the out-quota tariff rate and those based on the in-quota tariff rate of the affected imported agricultural product. The beneficiary of the trust fund should be either the Bureau of Customs or the importer. The trustee should be the Secretary of Agriculture in his capacity as Chairman of the MMC. As trustee, the Secretary of the Agriculture should decide whether the MAV trust fund account goes to the Bureau of Customs or the importer. However, if the amount of the trust fund is found to be insufficient by the Bureau of Customs during the processing of the import entry, the deficiency should be deposited with the Bureau of Customs which shall issue an official receipt therefor and keep the same in trust until the Secretary of Agriculture shall have decided to whom the MAV trust fund account should go.

- Upon receiving the regular MAVIC to replace the provisional MAVIC, the BOC Commissioner or his authorized representative should relinquish his claim on the MAV trust fund in a letter addressed to the Secretary of Agriculture.

- Upon receiving and verifying the authenticity of this letter from the BOC Commissioner, the Secretary of Agriculture should write an official letter to the designated Bank identifying the importer as the beneficiary of the MAV trust fund account. Copies of the letter should be provided to the Bureau of Customs and the importer.

- In the event the importer fails to get a MAV license under the catching up provision, the Secretary of Agriculture should write an official letter to the designated Bank identifying the Bureau of Customs as the beneficiary of the MAV trust fund account. Copies of the letter should be provided to the Bureau of Customs and the importer.

- For the purposes indicated in paragraph 5d and 5e above, the Secretary of Agriculture should write the designated Bank of his decision no longer than two weeks after the MAV licenses to implement the catching up provision have been released.

SECTION 2. Minimum Access Volumes for Agricultural Products -

A

Base Quantities

1. The minimum access volumes listed under Annex 1[*] of this document are those quantities of agricultural products as identified by their respective HS codes that the government is authorizing to be imported subject to their corresponding lower in-quota tariff rates. These rates are found in the Tariff and Customs Code as amended of the Philippines.

2. Where the Tariff and Customs Code provides an in-quota tariff rate for a given tariff line but Annex 1 of this document does not provide any MAV quantities for the particular tariff line, the Bureau of Customs should collect the duties based on out-quota tariff rates.

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B

MAV Plus Mechanism

1. To address the problems of possible commodity shortages or abnormal price increases of agricultural products whose quantitative restrictions RA 8178 had lifted, hereafter called commodities, the MMC may propose that the President increase the MAVs on agricultural products following the provision in RA 8178.

2. Commodity shortages are defined and made evident by the local wholesale prices of commodities that exceed the CIF prices of their respective competing imports in local currency plus the average of the applicable out-quota and in-quota tariff rates. The MMC should conduct foreacasts of commodity prices to prevent abrupt disruptions of commodity supplies.

3. When increasing the MAVs of commodities is necessary, the President should seek the approval of Congress through the Senate President and Speaker of the House of Representatives. In the event that Congress fails to act on the proposal within fifteen days after the receipt of the proposal by the Senate President and the Speaker of the House of Representatives, the proposal is deemed approved.

4. Upon approval of the proposal to increase the MAVs of commodities by the appropriate authorities, the MMC should issue additional import licenses to existing MAV licensees proportionately and increase their respective MAV accounts. These additional licenses should be valid upon the arrival of the MAV products in the MAV year that the MMC issues these permits The use of these additional licenses should follow (he procedure outlined in Section 1 of the Administrative Order.

SECTION 3. Commodity Specific Guidelines for Importing MAV Products -

A

Rice

1. In accordance with Presidential Decree No. 4 providing the National Food Authority the sole responsibility to im-port rice and with the country's Section 1-B commitment under the Uruguay Round Final Act which assigns the NFA the sole responsibility to import rice, the MAV for rice shall be imported solely by the NFA.

B

Optional Guidelines for Corn

1. In recognition of the existing practice of allocating the corn quota before the implementation of RA 8178 through the NFA, the MMC should accredit the NFA as a MAV Import Consolidator for corn. As such, the NFA may import the corn MAVs with certificates that the MAV licensees have duly endorsed to the NFA following the provisions under paragraphs 3c and 3d, Part F, Section I.

2. To continue the practice of allocating the quota, which is widely accepted by existing users and producers of corn, it is part of government policy to implement the mechanism in a way as to make the existing importers as well off as before the implementation of RA 8178. Accordingly, the MMC may consider retaining the present practice that has transpired in allocating the corn quota up to the extent that this practice is consistent with the overall implementation mechanism outlined in Section 1.

3 All existing corn importers would still have to follow all the general rules and regulations as provided for in Section 1 of this Order. As practiced, the MMC should allocate the corn MAV licenses to the legitimate corn users who are duly registered with the Bureau of Animal Industry (BAI), Quezon City. Accreditation of corn

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users should be an important criterion for approving the application for MAVs.

4. if corn importers, particularly those small and medium-scale, may find it economical to purchase the services of the NFA to import their respective MAV quotas for corn in their behalf, they should be guided by the rules and regulations contained under this Section, Part B, as well as by any additional conditions which can be directly obtained from the NFA.

5. Furthermore, if the situation as described in paragraph 4 prevails, the following rules and regulations should be applied. The listing of these rules and regulations should not be interpreted as limiting the corn importers to purchase import consolidation services only from the NFA.

- The MAV licensee shall endorse the MAVIC in favor of the NFA. In addition, a notarized authorization to transact business with the NFA should be executed only by employees/officers or Board of Directors of companies, associations or cooperatives.

- Corn users must indicate in their letter of intent their preferred disport, either at ATI-Mariveles, Bataan or Manila/other disports.

- c. Priority as to vessel assignment should be based on the order of submission of complete requirements by the applicants.

- Corresponding service fees should be charged depending on the discharge port. Corn MAV licensees should have from thirty {30} weather working days up to a maximum of fifty (50) calendar days to withdraw the corn beyond which a storage fee per day shall be charged against the buyer if withdrawal exceeds the given period.

- The fee for Manila/other ports shall be ex-vessel. The price for ATI-Mariveles shall be ex-ATI. The handling of stocks from the mother vessel shall be for DA/NFA's expense. Trucking, bagging and barging charges shall be shouldered by the buyers,

- The NFA can also offer integrated services at the Manila port at an indicative rates, as follows:

Mode of Withdrawal

Rate per MT

Rate per kilo

Ex-vessel P150.00 P0.15

Ex-bagging terminal P795.00 P0.795

Ex-warehouse P995.00 P0.995

Above rates are subject to change. The NFA will issue appropriate notices to effect any changes to these rates.

- Only one integrated cargo handler should be allowed per vessel. Should the buyers comprising one vessel opt to hire NFA services in the unloading of stocks, the NFA should then undertake the unloading of the whole vessel. The selection of the cargo handler should be based on majority's decision based on volume.

- Should the corn users hire a common cargo handler, they could pool their resources together, however, they should undertake the following;

i. Designate an authorized representative to officially act or transact business in their be-half.

ii. Furnish the NFA a copy of the Contract en-tered into between the corn users and the inte-grated Services Contractor.

iii. Submit to the NFA a Special Power of Attor-ney authorizing the Integrated Services Con-tractor to act in their behalf.

iv. Secure approval of the NFA Metro Manila Office in case there are changes in the unloading point/silo.

- Stocks discharged at ATI, Mariveles should pass through dust separators where corn screenings are collected. Buyers should be issued their allocation which will comprise of clean corn and corn screenings as pro-rated among buyers assigned per vessel.

- Weight monitoring/reconciliation of all stocks should be undertaken at different withdrawal points.

- Withdrawal scheme at Manila port should be as follows:

i. Ex-vessel/clamshell withdrawal:

For all ex-vessel withdrawals, the discharging rate should be based on the "contract of sup-ply" with supplier. A corresponding demurrage penalty based on the actual contract of supply with foreign supplier should be imposed if barges are not positioned alongside vessel as scheduled and the discharge rate not attained or if the barges are not towed wiihin two hours after completion of the loading. For ex-vessel withdrawals, actual quantity should be based on the final outturn at buyers silo of NFA-des-ignated truck scales subject to the calibration test of scales and based on the certificate of weight and quality to be issued by an independent international surveyor.

ii. Ex-bagging withdrawal:

For all ex-bagging withdrawals, MAV Licenses should withdraw the yellow corn as scheduled otherwise, penalties should also be charged. Failure to withdraw contracted volume on time should mean forfeiture of their slot; hence, withdrawal should instead be undertaken ex-warehouse with corresponding additional incidental costs.

iii. Ex-warehouse withdrawal:

For all ex-warehouse withdrawals, MAV licensees should withdraw the contracted volume of yellow corn at NFA-designated warehouses within seven (7) days, from 8:00 am - 5:00 p.m. Monday to Saturday. A corresponding penalty of P0.50/bag/day should be charged in case the MAV licensees fail to withdraw the contracted volume within the stipulated period.

- Payment scheme should be undertaken as follows:

i. Payment should either be in Cash or in Manager's or Cashier's Check in favor of NFA at its Metro Manila Office, Finance Department at United Nations Ave., Manila, for the following:
1. Performance Security equivalent to P1.00 per kilo of the allocated volume.

2. Remaining balance between total cost plus incidental expenses less advance payments made if NFA integrated rates were availed.

3. Remaining balance between total cost less advance payments made if the buyer hired common integrated services contractor.

ii. Performance Security payment should be made within three days upon the endorsement of the MAVIC. Payment of remaining balance should be made within 48 hours after receipt of the Notice of Payment from the

DA through the NFA. Failure to pay within the stipulated period would allow the seller to resell the equivalent volume of the allocated corn. Incidental expenses incurred by NFA should be charged to buyer.

iii. Payment should be for the whole volume of imported yellow corn allocated.

SECTION 4. The Competitiveness Enhancement Fund and Disposition Thereof-

1. Source of Fund - The Competitiveness Enhancement Fund (CEF) is created with the revenues from in-quota import duties collected from the importation of the minimum access volumes, including rice if this had not been waived for food security purposes. The fund is deposited with the National Treasury and is earmarked by Congress for irrigation, farm-to-market roads, post-harvest equipment and facilities, credit, research and development, other marketing infrastructure, provision of market information, retraining, extension services, and other forms of assistance and support to the agricultural sector in so far as these measures are consistent with Annex 2 of the Agreement on Agriculture in the Uruguay Round Final Act and help in improving the competitiveness of the agriculture sector. The ACEF shall have a life of nine (9) years, after which all remaining balances shall revert to the General Fund.

2. General Principles - The allocation and use of the CEF should be guided by the following principles:

- The proponents of the projects/programs funded with the CEF should come from the private sector, including agricultural and agribusiness groups representing the producers, whose QRs RA 8178 had lifted and the products of which are covered by the MAV mechanism.

- The programs/projects funded by the CEFshould be economically sound, financially viable, and sustainable, as well as improve the competitiveness of the affected production sectors.

- The programs/projects funded by the CEF must be interest group-neutral or have benefits which can be shared by all and not only by select firms or groups within a sector.

- The expenditure for the project/programs funded with the CEF is an addition to the regular annual GAA budget of the Department of Agriculture. These CEF expenditures should be submitted for approval by Congress and the approval process should be integral to that for the DAs annual GAA budget.

- These projects/programs funded with the CEF should be those consistent with Annex 2 of the Agreement on Agriculture in the Uruguay Round Final Act.

- The total expenditures on alt the programs/projects benefitting a given set of producers (corn farmers, porks producers, etc.) and that are approved by Congress, should not exceed the resources in the CEF.

3. Submission of Proposals - Private sector agricultural/ agribusiness groups must present project proposals including assessment of economic benefits and financial viability no later than January 31 of the year for possible inclusion into the GAA of the Department of Agriculture for the incoming fiscal year. Consultations on the proposals should be conducted by the MMC over the next sixty (60) days after this date in preparation for budget submission.

4. Approval Criteria - The MMC should approve the projects/ programs based on the abovementioned general principles. Additional merit may be granted for a project/program's approval based on the following criteria:

- Complementarity or supportiveness to regulary funded activities of the Department of Agriculture.

- Cost-sharing in terms of counterpart financing or infusion of capital resources by private sector groups into the project/program.

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- Cost-sharing in terms of counterpart financing or infusion of capital resources by local government units into the project/program.

5. Budget Submission - In accordance with Republic Act 8178 the approved proposals should be included as part of the Department of Agriculture's General Appropriations Act (GAA) budget but based on the additionality principle or considered over and above activities regularly and normally funded by the DA's GAA budget.

6. Project Implementation - The lead agency in implement-ing the projects/programs funded by the CEF will be the Department of Agriculture.

SECTION 5. Effectivity - This Order shall take effect immediately after publication in two newspapers of general circulation and after Congress shall have been officially notified about the contents thereof.

Adopted: 1 July 1996

(SGD) SALVADOR H. ESCUDERO III
Secretary of Agriculture

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[*] Text available at Office of the National Administrative Register, U.P. Law Complex, Diliman, Quezon City.

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