

PHILIPPINES - MEASURES AFFECTING PORK AND POULTRY

Notification of Mutually-Agreed Solution

The following communication, dated 12 March 1998, from the Philippines and the United States, is circulated pursuant to Article 3.6 of the DSU.

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The Governments of the Philippines (GOP) and the United States of America (USG) wish to notify the Dispute Settlement Body ("DSB") that they have reached a mutually satisfactory solution regarding the matters raised by the United States in Philippines - Measures Affecting Pork and Poultry (WT/DS74/1 and WT/DS102/1) respecting the administration of the GOP tariff-rate quotas relating to fresh/chilled/frozen pork (HS 0203) and fresh/chilled/frozen poultry (HS 0207).

We confirm that the GOP has modified the rules and regulations governing the administrations of its TRQs as contained in Administrative Order No. 8, series of 1997. The modifications are set forth in Administrative Order No. 1, series of 1998 issued on 18 February 1998. The principal features of the amendments to Administrative Order No. 8 are as follows:

1. Absent a relatively high level of quota utilization in any given year individual licensees will suffer penalties on quotas allocations in the succeeding year. Under the amended Administrative Order No. 8, a licensee shall forfeit a portion of its quota allocation in the ensuing quota year when quota utilization in the current year falls below 80 per cent when computed over the 12-month TRQ year. This represents an increase from the 50 per cent threshold level contained in the original Administrative Order No. 8.

2. The penalty for failure to fulfil the requisite utilization level remains the same as under the original Administrative Order No. 8, with 50 per cent of the unused and unsurrendered quotas being recalled from the next TRQ year's allocation on the first instance of failure to meet the utilization threshold; a 75 per cent reduction of the unused and unsurrendered allocation in the second instance; and a 100 per cent reduction of that amount in the third instance. However, whereas under the previous procedures, such penalties were applied only when they were consecutive years of under-utilization, the requirement for consecutive instances of under-utilization has been eliminated.

3. The Administrative Order also has been amended to provide that only those licensees who fulfil the above-referenced 80 per cent utilization level shall have access to the Systematic Distribution Procedure (preferred distribution) of the Beginning Year Pool together with MAV entrants. All other licensees shall have access to the Beginning Year Pool only through the first-come, first-served procedures. In addition, MAVICs from the first-come, first served distribution shall not be issued to any licensee who has not utilized and thereby exhausted all of his/her unsurrendered quota.

4. The 12 month quota period has been modified to commence on 1 February each year and the validity period of the MAVIC has been lengthened to three months. These changes were made to facilitate full utilization of the quota allocations.

5. The GOP also has made several technical changes to Administrative Order No. 8 to simplify licensing procedures and administration of the TRQs. For example, applicants will be permitted to submit copies of their income tax returns or the appropriate Bureau of Internal Revenue (BIR) form for exempt organizations instead of BIR tax clearance certificates. Similarly, a pro-forma invoice shall be replaced with the airway bill or bill of lading for issuing MAVICs.

6. The USG and GOP also have agreed to periodically review the utilization of the GOP's pork and poultry TRQs.

The amendments to Administrative Order No. 8 incorporated in Administrative Order No. 1 became effective on 6 March 1998 and apply to all licensees, Minimum Access Volume Import Certificates (MAVICs), and provisional MAVICs issued, or pools allocated, on or after 1 January 1998.

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