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**[DA ADMINISTRATIVE ORDER NO. 8, SERIES OF
1997, September 02, 1997]**

**ADMINISTRATIVE ORDER AMENDING 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**

WHEREAS, Congress has enacted Republic Act (RA) No. 8178 to implement, among others, the Philippines' Minimum Access Volume (MAV) commitments under the Agriculture Agreement, which form an integral part of the GATT Uruguay Round Final Act;

WHEREAS, Department of Agriculture (DA) Administrative Order No. 9 (AO 9) series of 1996, was issued in July 1996 to lay down the rules and regulations governing the implementation of the country's MAV commitments;

WHEREAS, in compliance with Paragraph 7 of Section I of Book II of the Administrative Code of 1987, which mandates that the right of the people and their organizations to effective and reasonable participation in economic decision-making, among others, shall not be abridged, the DA conducted a series of consultations with the sectors affected by the MAV to review AO 9 and endeavor to make this issuance more responsive to the needs of its constituents and the country's economic development goals;

WHEREAS, the said review of AO 9 and its implementation has indicated that certain provisions of AO 9 could be improved to enhance the implementation of the MAV mechanism;

NOW, THEREFORE, these rules and regulations are issued to amend AO 9 which shall read as follows:

SECTION I

The MAV Mechanism

A. General Principles

1. The implementation of the MAV mechanism shall conform with the following principles:

a. Transparency

These rules and regulations should be implemented in a predictable manner. Information thereon should be accessible to all parties concerned.

b. Equity

The mechanism should be fair in that it addresses the requirements of each geographical area. Without sacrificing the objective of promoting economic efficiency, the mechanism's implementation should allow all parties concerned to maintain, and enhance to the extent possible, their economic and social well-being.

c. Market-consistency

The mechanism should entail the least government intervention; and the resulting allocations of the MAVs over time should approximate, to the extent possible, the competitive import shares of importers.

d. Responsiveness to Economic Development

The mechanism should address the economic development requirements of the country, facilitate the adjustment of industries to higher levels of competitiveness, and contribute to stabilizing agricultural prices.

B. Definition of Terms

1. *Agricultural Competitiveness Enhancement Fund (ACEF)* — the fund created by Republic Act No. 8178 out of the proceeds of the MAV importations to help the agricultural sector become viable, efficient, and globally competitive.

2. *Agricultural product* — any product classified under Chapters I to 24 of the Harmonized System of tariff nomenclature in the Tariff and Customs Code of the Philippine (TCCP), as amended.

3. *Beginning-Year Pool (BYP)* — the sum of the incremental MAV for a particular MAV allotment year, the recalled and cancelled allocations of the prior MAV year effected under pertinent provisions of this Order, as well as any MAVs not availed of in the prior MAV year.

4. *Commercial food service provider* — a person, firm, cooperative, or any other legal entity, such as a hotel or a restaurant, that processes an agricultural product into prepared food.

5. *Economic size lot* — a minimum quantity of an MAV product which would be financially viable to import, as reflected in Annex II of this Order.

6. *Harmonized System (HS) Code* — a nomenclature which is used in the TCCP, as amended, to classify products for the purpose of levying tariffs.

7. *Incremental MAV* — the difference between the MAV in any particular MAV allotment year and that in the prior MAV year for a particular MAV product.

8. *In-quota tariff rate* — the lower rate of customs duty reflected in the TCCP, as amended, that is applicable to an agricultural product which is imported under the MAV mechanism.

9. *MAV allotment year* — in relation to a particular MAV product, any particular MAV year after the first year of implementation which is the subject of the subsequent

year allocation procedure described in Section I.F of this Order.

10. *MAV entrant* — a person, firm, cooperative, or any other legal entity which is granted an MAV license for the first time in any given MAV allotment year.

11. *MAV Import Certificate (MAVIC)* — a form issued by the MAV Secretariat authorizing the release by the Bureau of Customs (BOC) of a portion or all of an MAV license at any one time within an MAV allotment year.

12. *MAV license* — the allocation issued by the MAV Management Committee (MMC) which entitles the licensee to import a specified quantity of an MAV product at the in-quota tariff rate within a given MAV allotment year.

13. *MAV licensee* — a person, firm, cooperative, or any other legal entity which is issued an MAV license and is, therefore, granted a right to import an MAV product.

14. *MAV product* — an agricultural product classified under any of the four-digit TCCP HS Code headings covered by the MAV mechanism.

15. *MAV year* — the annual MAV implementation cycle which starts on January 1 and ends on December 31 of a given year.

16. *Mid-Year Pool (MYP)* — the total volume of allocations temporarily surrendered by MAV licensees to the MAV Secretariat on or before the last working day of April of the MAV allotment year.

17. *Minimum Access Volume (MAV)* — the quantity of an agricultural product that may be imported in an MAV allotment year at the in-quota tariff rate provided for in the TCCP, as amended. For the purposes of this Order, the phrase “minimum access volume” is used synonymously with the phrase “tariff rate quota”. The schedule of MAVs for specific agricultural products is provided in Annex I* of this Order.

18. *Out-quota tariff rate* — the higher rate of customs duty reflected in the TCCP, as amended, that is levied on the quantities of an imported agricultural product in excess of the MAV for that particular product.

19. *Prior MAV year* — the MAV year preceding a particular MAV allotment year.

20. *Processor* — a person, firm, cooperative, or any other legal entity that adds to the value of an agricultural product.

21. *Producer* — a person, firm, cooperative, or any other legal entity that grows, raises or produces an agricultural product.

22. *Regular allocation* — the volume allocated to an MAV licensee which the licensee retains from the previous MAV allotment years allocation.

23. *Representative period* - the three (3) years immediately preceding the initial year of implementation of the MAV mechanism for a particular product

24. *Trader* — a person, firm, cooperative, or any other legal entity that buys and sells an agricultural product.

25. *Volume request* — the quantity of a specific MAV product which an applicant wishes to import.

C. MAV Mechanism Organizational Structure

1. MAV Management Committee (MMC)

a. Composition

The MAV Management Committee (MMC) shall be composed of the Secretary of Agriculture as Chairperson, and the Secretaries of Agrarian Reform, Finance, Science and Technology, and Trade and Industry, and the Director-General of the National Economic and Development Authority, as members.

The Chairperson and members of the MMC may designate their respective alternates, who shall be officials of their respective Departments with the rank of at least an Assistant Secretary or equivalent, and who shall have full authorization to vote and act on their behalf; provided, that all MMC resolutions shall be signed by the principals themselves.

b. Functions

The MMC shall perform the following functions:

- i. implement this Order by ensuring that the MAV mechanism is administered in a manner consistent with the principles laid down in Section I.A(1) of this Order;
- ii. formulate guidelines to enhance the implementation of this Order;
- iii. issue MAV licenses, which shall be signed by the Chairperson in its behalf;
- iv. recall and/or cancel MAV licenses, where warranted;
- v. cause the conduct of an annual audit of the implementation of the MAV mechanism; and
- vi. submit annual reports to the President on the status of the implementation of the MAV mechanism.

c. Meetings

The MMC shall meet at least twice a year to discuss the allocation of MAVS, and other related matters. Additional meetings may be convened when deemed necessary.

2. MAV Advisory Council (MAC)

a. Composition

The MAV Advisory Council (MAC) shall be composed of thirteen (13) members from

the private sector who shall be appointed by the MMC for a term of one (1) year. The MAC shall be chaired by a DA official with the rank of at least an Assistant Secretary or equivalent and shall be composed of the following:

- i. one (1) representative from the cattle, goat, beef, and goat meat producing sector;
- ii. one (1) representative from the hog and pork producing sector;
- iii. one (1) representative from the poultry and poultry meat producing sector;
- iv. one (1) representative from the grains producing sector;
- v. one (1) representative from the sugar producing sector;
- vi. one (1) representative from the sector producing other MAV products;
- vii. one (1) representative from the meat processing sector;
- viii. one (1) representative from the non-meat processing sector;
- ix. one (1) representative from the trading and commercial food service sectors;
- x. one (1) representative from the consumers' sector;
- xi. one (1) representative of the agriculture and fishery councils (AFCs) in Luzon;
- xii. one (1) representative of the AFCs in the Visayas; and
- xiii. one (1) representative of the AFCs in Mindanao.

A Vice-Chairperson from the private sector shall be elected by the MAC from among its members. The Vice-Chairperson shall act in behalf of the Chairperson in the latter's absence.

b. Functions

The MAC shall:

- i. advise the MMC on all matters relating to the allocation of the MAVs; and
- ii. review the results of the annual audit of the implementation of the MAV mechanism.

3. MAV Secretariat

a. Composition

An MAV Secretariat shall assist the MMC in the implementation of the MAV mechanism. The MAV Secretariat shall be headed by an Executive Director, who shall be designated by the MMC Chairperson from among the officials of the DA and its attached agencies, bureaus and corporations, and who shall have the rank of at least a

Division Chief or equivalent. The Executive Director shall serve on a full-time basis.

The MAV Secretariat shall be composed of the MAV Secretariat Central Office Unit and MAV Secretariat Regional Units.

i. The staff members of the MAV Secretariat Central Office Unit shall be designated by the MMC Chairperson from among the personnel of the DA and/or its attached agencies, bureaus, and corporations. They shall serve on a full-time basis.

ii. The Executive Director shall determine in which of the DA Regional Field Units it is necessary to install MAV Secretariat Regional Units. The MAV Secretariat Regional Unit shall be composed of personnel from among the staff of the DA Regional Field Unit concerned, and/or any of the DA's attached agencies, bureaus or corporations. These personnel, who shall be designated by the DA Regional Director concerned, with the concurrence of the Executive Director and the head of the attached agency, bureau or corporation concerned, shall serve in an ex-officio capacity.

b. Functions

i. The MAV Secretariat Central Office Unit shall carry out the day-to-day administration of the MAV mechanism. Specifically, it shall, among others:

aa. accept, verify, and process MAV applications;

bb. recommend to the MMC the MAVs that should be allocated to each qualified MAV applicant, based on pertinent provisions of this Order;

cc. issue MAV Import Certificates (MAVICs);

dd. monitor MAV utilization, surrenders, and other indicators;

ee. provide Secretariat support to the MAC and the MMC;

ff. assist personnel of the MAV Secretariat Regional Units on matters related to the implementation of the MAV mechanism;

gg. work with other government agencies, particularly the BOC and the Tariff Commission, to ensure the effective implementation of the MAV mechanism;

hh. conduct information campaigns on the MAV mechanism, specifically its rules and regulations, and other related matters and

ii. undertake other activities which are necessary to enhance the implementation and monitoring of the MAV mechanism.

ii. The MAV Secretariat Regional Units shall:

aa. accept and verify applications for MAV licenses in their respective jurisdictions;

bb. endorse the verified applications for MAV licenses to the Central Office Unit for further processing;

- cc. conduct regional public information campaigns on the MAV mechanism; and
- dd. undertake other regional activities as may be necessary to enhance the implementation and monitoring of the MAV mechanism.

D. Eligibility of MAV Applicants and Application Procedures

1. Eligibility Requirements in the First Year of Implementation of the MAV Mechanism

a. An MAV applicant which has been in the business as an importer of a regularly or significantly-imported MAV product during the representative period shall be eligible for MAV licenses for Type A products, as defined in Section I.E(1)a of this Order.

b. An MAV applicant which has been a user or a seller of an irregularly- or scarcely-imported MAV product during the representative period shall be eligible for MAV licenses for Type B products, as defined in Section I.E(1)b of this Order.

2. Subsequent Year Eligibility Requirements

a. For products whose MAVs are fully subscribed, only persons, firms, cooperatives, or any other legal entities which have operated a business involving the MAV product concerned as of the start of the prior MAV year and which have imported the MAV product concerned in the ordinary course of such business during the said period shall be eligible for allocations from the Beginning-Year Pool (BYP) and the Mid-Year Pool (MYP) for the MAV product concerned as provided for in Sections I.F(5) and I.G(3) of this Order.

Full subscription of an MAV, for this purpose, shall be defined as the condition under which the volume available for allocation in either the BYP or the MYP for a particular MAV product in a particular MAV allotment year is less than the sum of all the volume requests made by licensees qualified to apply for the BYP or the MYP, as the case may be, and MAV entrants, as reflected in their respective applications.

b. For products whose MAVs are under subscribed, persons, firms, cooperatives, or any other legal entities which have not been in business involving the MAV product concerned as of the start of the prior MAV year and/or have not imported the same product during the same period shall be eligible for allocations from the BYP and the MYP for the MAV product concerned through the first-come-first-served allocation scheme, as provided for in Sections I.F(5), I.F(8), and I.G(3) of this Order, provided that the requirements for the MAV product concerned of eligible licensees and MAV entrants have been met.

Under subscription of an MAV, for this purpose, shall be defined as the condition under which the volume available for allocation in either the Beginning-Year Pool or the Mid-Year Pool for a particular MAV product in a particular year is more than the sum of all the volume requests made by licensees qualified to apply for the Beginning-Year Pool or the Mid-Year Pool, as the case may be, and MAV entrants, as reflected in their respective applications.

c. As proof of its track record, a person, firm, cooperative, or any other legal entity which has operated a business involving a MAV product as of the start of the prior

MAV year and has imported the same product in the ordinary course of such business during the same period shall submit the following documents as attachments to its application as a MAV entrant:

- i. a Department of Trade and Industry (DTI), Securities and Exchange Commission (SEC), or Cooperative Development Authority (CDA) certificate of registration, whichever is applicable;
- ii. a duly-notarized sworn statement to the effect that it had imported the MAV product concerned within the prior MAV year;
- iii. the original and a copy of the Import Entry and Revenue Declaration/s (IERD/s) pertinent to the importation/s made of the MAV product within the prior MAV year;
- iv. the pertinent Bureau of Internal Revenue (BIR) certification documenting income tax and/or VAT payments and for the latest year of its operation;
- v. the most recent business permit issued by the Office of the Mayor; and
- vi. where appropriate, the most recent accreditation certificates from pertinent DA agencies.

d. A person, firm, cooperative, or any other legal entity which has not operated a business involving the MAV product concerned as of the start of the prior MAV year and/or has not imported the same product during the same period but which applies for access to the BYP or the MYP for the MAV product, through the first-come-first-served allocation scheme provided for in Sections I.F(5), I.F(8) and I.G(3) of this Order, shall submit the following documents together with its application/s and Bill/s of Lading and/or Invoice/s as provided for in Section I.F(8)b of this Order:

- i. a DTI, SEC, or CDA certificate of registration, whichever is applicable;
- ii. the most recent business permit issued by the Office of the Mayor; and
- iii. where appropriate, the most recent accreditation certificate from pertinent DA agencies.

e. For applicants from areas outside the National Capital Region, all documents submitted in support of applications shall be verified by the MAV Secretariat Regional Unit in whose jurisdiction said applicants fall. These documents must bear a stamp which attests to the verification done by the Regional Unit concerned and is signed by the staff concerned.

3. Application Requirements and Procedures

a. All licensees shall make separate applications for their respective regular allocations, access to the BYP, and access to the MYP. All other entities desirous of access to either the BYP or the MYP under the procedures described in Section I.F shall also make separate applications.

b. The application period for regular allocations and access to the BYP of an

MAV allotment year shall start on the first working day of October and close at 5:00 p.m. on the last working day of October of the prior MAV year. The application period for access to the MYP shall be the second week of May and closes at 5:00 p.m. on the last working day of May of the MAV allotment year. Applications submitted after the close of these application periods shall not be accepted.

c. MAV applicants shall fill out an application form containing the following information:

- i. name of the applicant,
- ii. line of business,
- iii. agricultural products engaged in,
- iv. business address,
- v. telephone and fax numbers,
- vi. MAV product/s applied for, vii. HS code/s corresponding to the MAV product/s applied for, and
- viii. requested MAV/s for the incoming year.

The application shall be filed in duplicate, the original of which shall be retained by the MAV Secretariat.

d. In cases where a federation, association, or any such group applies for an MAV license in behalf of some or all of its members for the first time, it shall submit all of the documents which those members ought to have submitted had each of them filed separate applications and the following documents together with its application form:

- i. a notarized list of members on whose behalf the application is filed, certified by the head of the organization;
- ii. a special power of attorney from each member authorizing the organization to apply for an MAV allocation in its behalf, and
- iii. a certified copy of the resolution of the Board of Directors of such organization authorizing it to act in behalf of such members.

e. In cases where a federation, association, or any such group applies for an MAV license in behalf of some or all of its members for the second and subsequent times, it shall submit the following documents, in addition to those listed in Section I.D(3)d of this Order, together with its application form:

- i. a certified listing of the volumes allocated to individual members in the prior MAV year;
- ii. a certified listing of the volumes actually imported by individual members in the prior MAV year; and

iii. the original and a copy of the IERD/s pertinent to the importation/s made of the MAV product by each such member within the prior MAV.

f. If a member of a federation, association, or any such group holding a license for the prior MAV year applies for a license for the same MAV product which its organization has applied for in its behalf, its application shall be considered separate from that of the organization. Its name shall be, for the purpose of processing the application of the organization concerned, stricken out of the membership list of the organization. Consequently, any allocation that would be given to the federation, association, or any such group shall correspondingly be decreased, the degree of diminution being equal to the volume allocated to the individual member.

g. Where a legal entity is a member of two or more federations, associations or any such groups applying for licenses for the same MAV product, then that legal entity shall be considered in the application of only one organization. Its shall be the responsibility of the legal entity to ensure that it is represented only in one applying organization. In the event that a legal entity appears in the application of more than one organization, the MAV Secretariat shall decide under which organization the legal entity's application will be considered. The MAV Secretariat shall immediately notify all concerned parties of such fact.

h. Members which have resigned from a federation, association, or any such group which had been allocated an MAV license in their behalf in the MAV allotment year can apply for their individual allocations only within the pertinent application period of the succeeding MAV allotment year, provided they can show written proof of their share in the MAV allocation given in the MAV allotment year to the organization representing them. The head of the organization representing these members shall attest to the veracity of the aforementioned receipt or written proof.

i. In the event that a federation, association, or any such group decides that all its members shall apply for individual MAV licenses, it shall submit to the MAV Secretariat within the application period of the MAV allotment year concerned a Board Resolution stating its intention to do so. Members of such organizations shall then be subject to the eligibility and application requirements and procedures stated under Section I.D(2) and I.D(3).

4. The MAV Secretariat shall not accept any application that does not provide all of the required information and documentation.

5. The MAV Secretariat shall process all applications for regular licenses and access to the BYP for an MAV allotment year during the period from the first working day of November to the first working day after December 7 of the prior MAV year. On the first working day after December 15 of the prior MAV year, the MAV Secretariat shall publish in two newspapers of national circulation a tentative list of licensees and the volumes allocated to each. Applicants shall have one week within which to seek redress with the MAV Secretariat regarding their respective allocations. At the end of this week, the MAV Secretariat shall make its recommendations to the MMC on the regular allocations and the allocations from the Systematic Distribution Scheme (SDP) of the BYP. Regular licenses covering regular allocations and allocations from the SDP of the BYP shall be issued not later than the first working day of the second week of the MAV allotment year concerned.

6. Applications for the MYP shall be processed from the first working day after June 1 to the first working day after June 15. Special licenses covering allocations from the SDP of the MYP shall be issued not later than the first working day of July of the particular MAV allotment year.

7. Where the MAV Secretariat rejects an application for a regular allocation and for access to the BYP, it shall inform the concerned applicant of the reasons for rejecting the application not later than the first working day after November 21 of the prior MAV year. Where the MAV Secretariat rejects an application for access to the MYP, it shall inform the concerned applicant of the reasons for rejecting the application not later than the first working day after June 7 of the MAV allotment year. The reasons for rejecting applications may include any of the grounds mentioned in Section I.H(6) of this Order.

8. The decision of the MMC on the MAV allocations shall be final.

E. Allocation Procedures Applicable for the Initial MAV Allotment Year

1. MAV products shall be classified into two types: Type A and Type B.

a. Type A products shall be those which have been imported regularly and in substantial volumes during the representative period. These are frozen meat of bovine animals, maize, rice, and cane or beet sugar and chemically pure sucrose.

b. Type B products shall be those which have been irregularly or scarcely imported during the representative period. These are the other products listed in Annex I of this Order but not in mentioned in the preceding paragraph.

2. MAVs shall be allocated in the following manner:

a. For a Type A product, the total MAV shall be allocated to qualified MAV applicants by multiplying the total MAV with the applicants' respective import shares. An applicant's import share shall be determined through the procedures specified in Annex III.*

b. For a Type B product, the total MAV shall be allocated to qualified MAV applicants by multiplying the total MAV with the applicants' respective local output shares. An applicant's local output share shall be determined through the procedures specified in Annex IV.*

F. Subsequent Year Allocation Procedures for an MAV Product

1. For any particular MAV allotment year subsequent to the initial year of the implementation of the MAV mechanism, the MAV Secretariat shall no longer classify applicants into producers, processors, traders or commercial food service providers. Instead, it shall classify applicants as: (a) old licensees, (b) MAV entrants, or (c) applicants for the first-come-first-served, distribution of the BYP and the MYP.

2. All regular licensees shall retain their MAV allocations for a product in the prior MAV year, except the volumes which they got from the MYP and the MAV Plus mechanism as well as those cancelled and/or recalled in accordance with Section I.H of this Order. In the case where a license is subject to recall, a regular licensee's allocation

shall be subject to diminution, based on the formula in Section I.H of this Order.

3. For members of federations, associations, or any such groups which have resigned from such organizations, or have decided to apply separately, the MAV Secretariat shall consider the allocation received by these members in the prior MAV year and deduct the volumes which they got from the MYP and the MAV Plus mechanism as well as those cancelled or recalled in accordance with Section I.H. of this Order. The resulting volumes shall be the regular allocations of these members for the MAV allotment year.

4. Federations, associations, or any such groups whose members have applied separately shall have their regular allocations reduced by the amount equivalent to the regular allocations of these members.

5. The MAV Secretariat shall put together a BYP which is the sum of the MAV, the allocations recalled and cancelled under pertinent provisions of this Order, as well as any MAVs not availed of in the prior MAV year. The BYP shall be allocated, first through the conduct of the SDP and then, if necessary, through the served distribution procedure.

6. The SDP shall have a first-priority and a second-priority distribution, the procedures for which are described in Section I.I of this Order. The following shall be eligible to participate in the first-priority distribution under the SDP:

a. qualified MAV entrants; and/or

b. licensees which (i) have not surrendered whole or part of their respective licenses in the prior MAV year under the surrender procedure described in Section I.H of this Order, and (ii) have utilized at least eighty percent (80%) of their respective net allocations in the prior MAV year, as reckoned on the first working day of November of the prior MAV year. Net allocations shall be computed using the pertinent formula contained in Annex V* of this Order. Utilization of licenses shall be determined using the IERDs submitted either by the BOC or the licensee to the MAV Secretariat or, in the absence of IERDs, the MAVICs issued to the licensees.

The volumes allocated to a qualified licensee or to a MAV entrant shall either be the total volume indicated in the lots which are drawn in its favor or its volume request, whichever is lower. The volumes awarded to such entities shall form part of their regular allocations for the MAV allotment year.

7. In the event that a balance remains in the BYP after the first-priority distribution, the second-priority distribution shall be held to allocate such balance to licensees which (a) have not surrendered whole or part of their respective licenses in the prior MAV year under the surrender procedure described in Section I.H.(1) of this Order and (b) have utilized at least fifty percent (50%) but less than eighty percent (80%), of their respective net allocations in the prior MAV year, as reckoned on the first working day of November of the prior MAV year. Net allocations and utilization rates shall be computed using the formulas contained in Annex V of this Order. Utilization of licenses shall be determined using the IERDs submitted either by the BOC or the licensee to the MAY Secretariat or, in the absence of IERDs, the MAVICs issued to the licensees.

The volumes allocated to a licensee shall either be the total volume indicated in the lots which are drawn in its favor or its volume request, whichever is lower. The volumes awarded to such entities shall form part of their regular allocation in the MAV allotment year.

8. Any balance in the BYP after both the first-priority and second-priority distributions of the SDP had been conducted shall be allocated on a first-come-first-served basis to any interested applicant. Such volumes shall be available from the first working day of the second week of January to the last working day of November of the MAV allotment year.

The following procedure shall be followed in allocating this balance:

a. The MAV Secretariat shall notify the general public of the availability of, and the procedures that will be followed in allocating, the said balance.

b. All applicants shall submit to the MAV Secretariat Central Office Unit (COU) completely filled-up application forms described in Section I.D(3)c together with the documents described in Section I.D(2)d of this Order. These applicants shall also present to the MAV Secretariat the original form and a copy of Bills of Lading for forthcoming sea shipments or pro-forma Invoices for forthcoming air shipments. The MAV Secretariat shall then return to the applicant the original Bill of Lading or Invoice, and retain the copy.

c. The MAV Secretariat shall receive applications in the sequence in which these are submitted. Immediately upon receipt of these documents, it shall indicate, through a stamp on the two copies of the application form and the Bill of Lading and/or Invoice, the action it has taken, as well as the time and date such documents were received. The Executive Director or his authorized representative from among the staff member of the Central Office Unit shall sign the stamp on both copies of the documents. The applicant shall retain one set of said documents.

d. The MAV Secretariat shall maintain an Official Log of the First-Come-First-Served Distribution of the BYP. This log shall contain all the applicants, which shall be listed in the sequence in which they applied, the action taken regarding their respective applications, the date and time such actions were taken, the total volumes awarded in cases where applications were approved, and the balance remaining in the BYP as a result of the action taken on each application. This log, together with the application forms and supporting Bills of Lading and/or Invoices, shall be presented to an applicant for its review if it so desires.

e. Immediately after action has been taken on a particular application, the MAV Secretariat shall update the Official Log. The applicant whose application had just been acted upon shall then affix its signature attesting to the veracity of the latest entries made by the MAV Secretariat in the log.

f. As long as there are available volumes in the balance, the MAV Secretariat shall automatically issue provisional MAVICs, covering the volumes awarded to the applicant. The volume that will be awarded to qualified applicants shall either be that indicated in the Bill of Lading for sea shipments or the invoice for air shipments, or the total available volume in the balance, whichever is lower.

- g. Immediately upon issuance of the provisional MAVIC, the MAV Secretariat, through the Executive Director, shall inform the BOC in writing of such issuance
- h. To the extent possible, the MAV Secretariat shall inform the general public when seventy percent (70%) of the volume available in the balance has already been allocated to give notice that applicants may no longer be granted licenses.
- i. The regular and special MAV licenses covering the provisional MAVICs for the volumes awarded under the first-come-first-served allocation scheme of the BYP and the MYP, respectively, shall be issued to applicants not later than the first working day after November 15 of the MAV allotment year.
- j. A holder of an MAV license from the first-come-first-served allocation of the BYP shall automatically be considered as a regular licensee, and shall therefore retain its MAV allocation in the succeeding MAV allotment year, unless it has had its license recalled or cancelled as defined in Section I.H of this Order.

G. Mid-Year Allocation Procedures for an MAV Product

1. The MAV Secretariat shall put together the MYP which shall contain the volumes temporarily surrendered by MAV licensees to the MMC on or before the last working day of April of the particular MAV allotment year.

The MAV Secretariat shall reduce the allocation for the MAV allotment year of the license which voluntarily surrendered a portion or all of its license on or before the last working day of April. This reduction shall be equivalent to the volume surrendered.

2. As with the BYP, the MYP shall be allocated, first through the conduct of the SDP which is described in Section I.I of this Order, and then, if necessary, through the first-come-first-served distribution procedure.
3. The SDP shall be conducted to allocate the MYP to all licensees, including entrants for the MAV allotment year which (a) have not surrendered whole or part of their respective licenses under the surrender procedure described in Section I.H of this Order and (b) have utilized at least thirty percent (30%) of their respective net allocations for the pertinent MAV allotment year, as reckoned on the last working day of April. Net allocations shall be computed using the formula contained in Annex V of this Order. Utilization of licenses shall be determined using the IERDs submitted either by the BOC or the licensee to the MAV Secretariat or, in the absence of IERDs, the MAVICs issued to the licensees.

The volumes allocated to a qualified licensee shall either be the total volumes indicated in the lots which are drawn in its favor, or its volume request, whichever is lower. The volumes awarded to these licensees shall not form part of their regular allocation in the succeeding MAV allotment year.

4. Any balance remaining in the MYP after the SDP has been conducted shall be located on a first-come-first-served basis to any interested applicant in accordance with the provisions under Section I.F(8) of this Order. Such volumes shall be available from the first working day after the conduct of the first-priority distribution to the last working day of November of the MAV allotment year.

H. Surrender, Recall, and Cancellation of MAV Licenses

1. A licensee which decides not to use its license, in part or in whole, may voluntarily surrender such volumes to the MAV Secretariat on or before the last working day of April of the MAV allotment year. The licensee or its duly authorized representative must present its MAV license to validate the surrender. All volumes surrendered on or before the last working day of April shall automatically be accepted by the MMC.

2. All licensees utilizing less than fifty percent (50%) of their respective net allocations by the end of October of a prior MAV year shall be penalized by having part of such allocations recalled for purposes of determining allocations in the succeeding MAV allotment year. The MMC shall recall: (a) fifty percent (50%) of the unused among the unsurrendered volumes of a particular licensee, if such licensee utilizes less than fifty percent (50%) of its net allocations in a MAV allotment year; (b) seventy-five percent (75%) of the unused among the unsurrendered volumes of a particular licensee, if such licensee utilizes less than fifty percent (50%) of its net allocations for two (2) consecutive MAV allotment years; and (c) one hundred percent (100%) of the unused among the unsurrendered volumes of a particular licensee, if such licensee utilizes less than fifty percent (50%) of its net allocations for three (3) or more consecutive MAV allotment years.

3. For the purposes of determining the unused unsurrendered volume and the utilization rate the formulas in Annex V shall apply.

4. All licensees which surrender part or whole of their respective allocations shall be penalized. The MMC shall recall ten percent (10%) of the surrendered volumes of the licensees if such surrender is effected on or before the last working day of April. If such surrender is effected after the last working day of April, it shall be deemed that, for the purpose of applying the provisions on recall, no such surrender has been effected.

5. The volumes recalled because of non-use/under utilization and/or surrender of allocations shall be factored into the computation of the allocation a licensee retains in the succeeding MAV allotment year, as provided for in Section I.F(2) of this Order.

6. Following due process, the MMC may permanently cancel a MAV license on any of the following grounds:

- a. misrepresentation of any vital information requested from the applicant, such as those indicated in the MAV application form;
- b. submission of spurious or falsified documents;
- c. commission of technical smuggling;
- d. commission of any act of deceit by the applicant to obtain benefits from the MAV mechanism to which it is otherwise not entitled; or
- e. any act analogous to the foregoing.

The MMC shall immediately inform the BOC, through a letter, that it has cancelled a

license/s.

7. The preceding paragraph does not preclude the government from taking legal action against the party concerned.

I. Conduct of the SDP

1. The SDP shall be implemented in a transparent manner and as follows:
 - a. Qualified applicants can only participate in the SDP if they are present at the particular time and place set by the MAV Secretariat for the drawing of numbers as described in Section I.I(2)ci. An applicant may authorize an agent or a representative, through a power of attorney, to act in its behalf during the conduct of the SDP.
 - b. If the total volumes requested by all qualified applicants which are present in the first-priority distribution of the SDP are less than the volumes in the BYP/MYP, the MAV Secretariat shall grant the individual volume requests and the first-priority distribution of the SDP shall no longer be conducted. If the same condition exists in the second-priority distribution of the SDP, the same procedure shall apply.
 - c. If the total volumes requested by all qualified applicants present exceed the BYP/MYP, the following procedures shall apply:
 - i. Each qualified applicant shall draw a number from a transparent container in the presence of all other applicants.
 - ii. Applicants shall register their corresponding number assignments with the MAV Secretariat which, in turn, shall prominently display within the area the list of qualified applicants present and their respective number assignments in ascending order.
 - iii. All applicants shall place their respective numbers in another transparent container from which the Executive Director shall draw a number in the presence of all applicants.
 - iv. The applicant holding the number drawn by the Executive Director shall be awarded his/her volume request or one economic size lot, as defined in Annex II * of this Order, whichever is lower. The applicant holding the next higher number shall be awarded its volume request or one economic size lot whichever is lower. The awarding of volume requests or economic size lots to other applicants shall proceed in the same manner. In case the applicant holding the highest number is awarded a lot or its volume request, the round shall be repeated and the next awardee shall be the applicant holding the lowest number.

A round refers to a succession of awards that starts with that given to the applicant holding the number drawn by the Executive Director and ends with that given to the applicant holding the next lower number.

- v. Any applicant which has received all of its volume request shall be excluded

from the applicants eligible for the next round.

vi. The awarding of lots shall continue until there are no lots left in the BYP/MYP, or until all the volume requests of all the applicants are satisfied.

2. Immediately upon completion of each distribution of the SDP, the MAV Secretariat shall post the list of the total volumes awarded to each applicant in a prominent place in the venue. The Executive Director shall authenticate this list.

J. Notification

1. On the second and third Mondays of September of a given prior MAV year, and on the second Monday of May of the pertinent MAV allotment year, the MAV Secretariat shall call for the submission of applications for MAV BYP and MYP licenses, respectively for the MAV allotment year through a notice published in at least two (2) newspapers of national circulation. The notice shall include the following information:

- a. the opening and closing schedule of the application period;
- b. the list of MAV products and their respective quotas for the MAV allotment year;
- c. the in-quota tariff rates that will apply to the MAV importations in the MAV allotment year,
- d. the validity period of the MAV licenses to be issued out;
- e. the names and addresses of the national and regional offices where application forms may be obtained and submitted;
- f. the information and documentation required to be submitted together with the application forms; and
- g. the schedule and venue for the conduct of the allocation of the Beginning Year Pool is provided for in Section I.I of this Order.

2. The MAV Secretariat shall publish the list of tentative allocations to MAV applicants in two national dailies within one (1) week after the close of the processing period, which shall be the first working day after December 15 of the prior MAV year for the BYP and the first working day after June 15 of the pertinent MAV allotment year for the MYP. In the same notification, the MAV Secretariat shall provide the list of the grounds for ineligibility of applicants as provided for in Section I.H(6) of this Order. It shall enjoin any interested party with information on the possible ineligibility of any of the tentative awardees to provide such information to the MAV Secretariat.

3. The MAV Secretariat shall notify all unqualified applicants of the rejection by the MMC of their respective applications and the reasons thereof. Such notifications shall be made until two (2) weeks after the closing of the application period.

4. To the extent possible, the MAV Secretariat shall inform the general public when seventy percent (70%) of the volume available in the balance has already been

allocated, to give notice that applicants to the first-come, first-serve scheme may henceforth no longer be granted licenses.

5. Licensees whose licenses are recalled or cancelled shall be notified by the MAV Secretariat in writing of such recall or cancellation, and the reasons thereof.

K. MAV Licenses, MAV Withdrawal Forms and MAV Import Certificates

1. A license shall contain the following information:

- a. the HS code identifying the MAV product for which the MAV licensee can apply the MAV license,
- b. the quantity of the MAV product,
- c. the name of the licensee,
- d. the MAV Account Number
- e. the validity period of the license.

A portion of the MAV license shall contain a passage providing for the formal surrender of part or the whole of such license by the licensee or its duly authorized representative. Such a passage should include a space where the actual size of the surrendered volume is indicated.

2. The MMC shall issue two (2) kinds of licenses: a) the regular licenses which are renewed in the succeeding MAV allotment year net of recalled volumes, and b) the special licenses which are non-renewable.

3. An MAV license shall be applicable to a specific MAV product whose HS code in the TCCP matches that in the license.

4. The MAV license shall be non-transferable and entitles a licensee to an MAV account in its favor. A licensee, however, may have several MAV accounts should it be eligible for different MAV products; provided that one MAV account will correspond to only one MAV product.

5. The MAV Account Number shall consist of a set of numbers identifying the MAV allotment year for which the account is valid (first two digits), the MAV licensee (next four digits), and the HS Code (the next four digits). Hyphens should separate the year, the code of the MAV licensee, and the HS codes.

6. The MAV Secretariat shall submit the following to the Chief of the Central Records Management Division (CRMD) of the BOC by the second week of January of the MAV allotment year:

- a. The MAV Master List showing all the MAV accounts opened for the MAV allotment year; their respective MAV account numbers; the names of the MAV licensees; the total quantity of MAV products respectively allocated to MAV licensees; the HS codes of the MAV products allocated; and the validity period of the accounts; and

b. MAV for each MAV product for the pertinent MAV allotment year.

7. The MAV Secretariat shall amend the MAV Master List to reflect the surrenders and the creation of the MYP, and shall furnish the BOC this updated master list in the first week of July of the MAV allotment year and before the conduct of the first-come-first-served distribution of the MYP.

8. The MAV Secretariat shall provide MAV withdrawal forms to licensees which will be used to secure the MAVICs. These forms indicate the MAV licensee's intent to withdraw from its MAV account a specified quantity of MAV products to be imported, which amount should be duly validated with copies of the corresponding Bills of Lading for sea shipments or pro-forma Invoices for air shipments.

9. Upon receipt of a duly accomplished MAV withdrawal form, and upon its verification that the MAV licensee has a positive MAV balance in its MAV account, the MAV Secretariat shall issue a MAVIC in favor of the licensee. There are three kinds of MAVICs. (a) the regular MAVIC which is issued against the regular license and which is applied against the regular allocation and the first priority and second priority allocations from the BYP; and (b) the special MAVIC is issued against the special license which is applied against allocations from the first priority allocation MYP and the first priority and second priority allocation MAV Plus; and (c) the provisional MAVIC which is issued in advance of the regular and special licenses applying to allocations from the first-come-first served scheme of the BYP and MYP respectively.

10. The MAVIC shall bear the following information:

a. quantity of the MAV product indicated, in the MAV Withdrawal Form that is based on the net volume in the Bill of Lading for sea shipments or the pro-forma Invoices for air shipments, or the balance in the MAV account of the licensee, whichever is lower,

b. the specific description and HS code of the product,

c. the name of the MAV licensee,

d. the MAV account number,

e. the port of entry in the Philippines, and

f. the validity period of the MAVIC.

The back of the MAVIC shall contain a portion providing for the endorsement of the MAVIC by the holder to an MAV Import Consolidator which shall import in the former's behalf the volume indicated thereat.

11. Upon issuance of the MAVIC, the MAV Secretariat shall update the licensee's MAV account to reflect the withdrawal made through the said MAVIC.

12. The MAVICs shall be issued in five copies: the white or original copy, the green or return copy, the pink or BOC copy, the blue or MMC copy, and the yellow or MAV licensee copy.

The copies shall be disposed of as follows:

a. The white or original copy shall be an integral part of the import documents covering an MAV importation. The MAV Secretariat shall deliver by messenger the white and pink copies of the MAVIC to the Chief of the Tax Exempt Division (TED) of the BOC. The messenger's identity and signature must be a priori established through an official memorandum from the MAV Secretariat Executive Director to the BOC.

The green copy shall be delivered to the Tariff Collector at the port of entry of the MAV importation.

b. The MAV Secretariat shall keep the blue copy of the MAVIC for the MMC's record, and give the yellow copy to the holder of the MAVIC.

Upon the application of the in-quota tariff rate based on the MAV importation, the BOC official shall stamp the word "used," on the white, green, and pink copies of the MAVIC. Keeping the used white and pink copies for its own records, the BOC shall thereafter remit the green copy to the MMC, indicating on the copy how much revenue was collected from the imposition of the in-quota tariff rate on the importation of the MAV product concerned. This voids the MAVIC which thus cannot be used to avail of in-quota tariff rates in any other importations.

13. Only the MAVIC holder whose name appears in the certificate can import the MAV product in the volume stated therein, unless the MAVIC is endorsed to an MAV Import Consolidator. In the event the MAVIC holder is an organization representing its members, the organization, and not its members, shall be the entity legally authorized to bring the quantities of the MAV product into the country.

14. The licensee may endorse a regular MAVIC to an MAV import Consolidator and shall indicate such endorsement at the back of all copies of the MAVIC. The MAV Import Consolidator shall import in the former's behalf the volume indicated in the MAVIC.

15. MAVICs shall be valid for two months from the date of their issue, or until the end of the pertinent MAV allotment year, whichever period is shorter.

L. Monitoring and Evaluation

1. The BOC shall submit to the MAV Secretariat not later than the end of the second and fourth weeks of a given month the perforated and void MAVICs and copies of the corresponding IERDs submitted in support of the importation of the MAV products.

2. At the end of every month, the BOC shall provide the MAV Secretariat copies of all IERDs submitted in support of any importation of the MAV products at the out-quota tariff rates.

3. The MAV Secretariat shall then submit to the MMC a monthly report reconciling the quantities of the MAV products imported based on the IERDs provided by the BOC, and the MAV licenses and any MAVICs issued by the MMC and the MAV Secretariat, respectively. A summary of importations of the MAV products at the out-

quota rates shall be included in this report.

4. The MMC shall periodically review the implementation of the MAV mechanism with the view of immediately solving any problems in a manner consistent with the general principles articulated in Section I.A of this Order.

M. Other Matters Relating to the MAV

1. Where the Tariff and Customs Code of the Philippines, as amended, provides an in-quota tariff rate for a given tariff line but Annex I of this Order does not provide any MAV quantities for the particular tariff line, the BOC shall collect the duties based on the out-quota tariff rates.

2. The MAV for rice shall be exclusively imported by the National Food Authority (NFA) in accordance with Presidential Decree No. 4 which grants the NFA the sole authority to import rice, as well as Section 1-B of the Philippine commitments under the Uruguay Round Final Act which assigns to the NFA the sole responsibility to import rice.

3. A unilateral MAV is one which the Philippine government, as part of its trade policy, establishes independently based on the following considerations:

a. In the case of products that the government had liberalized before the effectivity of RA 8178 and the tariff rates of which were raised by EO 313, the government may provide a unilateral MAV equal to the current import access volume plus a reasonable growth per annum, provided both producers and users of the product concerned agree on the volume.

b. In the case of products whose quantitative restrictions were lifted by RA 8178 and for which the Philippines does not have any MAV commitment under the Uruguay Round Final Act, the government may provide a unilateral MAV, provided both producers and users of the product concerned agree on the volume.

c. In the case of products whose quantitative restrictions were lifted by RA 8178 and for which the Philippines has a MAV commitment under the Uruguay Round Final Act but the quantities are less than the current import access, the government may unilaterally expand the MAV up to the current import access level, provided both producers and users of the product concerned agree on the volume.

SECTION II

The MAV Plus Mechanism

A. Definition and Purpose

1. To address the problems of possible commodity shortages or abnormal price increases in the MAV products, the MMC may propose that the President increase the MAVs in accordance with the pertinent provision of RA 8178.

2. Commodity shortages are indicated by the excess of local wholesale prices of commodities over the CIF prices of their respective competing imports expressed in the local currency and adjusted for the applicable out-quota and in-quota tariff rates, and

the handling and transport costs from port to warehouse.

3. The MMC shall ask the DA to forecast the amount of the shortage, using objective, verifiable and transparent methodologies which are appropriate for the purpose.

B. Application for Access to the MAV Plus Mechanism

1. All applicants shall apply for access to volumes created under the MAV Plus mechanism. All licensees applying for access to the MAV Plus mechanism shall fill up the applications form described in Section I.D(3)c. All other applicants shall submit completely filled-up application forms described in Section I.D(3)c together with the documents described in Section I.D(2)d of this Order.

2. Where the MAV Secretariat rejects an application for access to the MAV Plus mechanism, it shall inform the concerned applicant of the reasons for rejecting the application not later than one week after the special licenses have been issued. The reasons for rejecting applications may include any of the grounds mentioned in Section I.H(6) of this Order.

C. Allocation Procedures

1. When increasing the MAV is necessary, the MMC shall recommend to the President that he seek the approval of Congress pursuant to Section 6 of RA 8178. In the event, Congress fails to act on the recommendation fifteen (15) days after receipt of the proposal, the same shall be deemed approved, pursuant to the provisions of RA 8178.

2. Upon approval of an increase in the MAVs, the MAV Secretariat shall publish a notice in two (2) newspapers of national circulation informing all qualified licensees of volumes available under the MAV Plus mechanism, as well as the schedule and procedures for availing of such volumes.

3. All licensees shall make separate applications for their respective access to the MAV Plus mechanism. All other entities desirous of access to it shall also make separate applications.

4. The available volumes under the MAV Plus mechanism shall be allocated in the same manner as the BYP and the MYP: first through the SDP and then, if necessary, through the first-come-first-served distribution scheme.

a. The same first-priority distribution under the SDP, as described in Section I.I of this Order shall be conducted to allocate the MAV Plus volume to licensees which (i) have not surrendered whole or part of their respective licenses in the pertinent MAV allotment year, and (ii) have utilized one hundred percent (100%) of their respective net allocations in the pertinent MAV allotment year as of the day the application period for access to such MAV Plus volume closes. Utilization of licenses shall be determined using the IERDs submitted either by the BOC or the licensee to the MAV Secretariat or, in the absence of IERDS, the MAVICs issued to the licensees.

The volumes allocated to such licensees or to MAV entrants shall either be the total volumes indicated in the lots which are drawn in their respective favors or their

respective volume requests, whichever is lower. The volumes awarded to these entities shall not form part of their regular allocations in the succeeding MAV allotment year.

b. In the event that a balance remains in the MAV Plus volume after the first-priority distribution, the second-priority distribution shall be held to allocate such balance to licensees which (i) have not surrendered whole or part of their respective licenses in the pertinent MAV allotment year, and (ii) have utilized at least fifty percent (50%), but less than one hundred percent (100%), of their respective net allocations in the pertinent MAV allotment year as of the day the application period for access to such MAV Plus volume closes. Utilization of licenses shall be determined using the IERDs submitted either by the BOC or the licensee to the MAV Secretariat or, in the absence of IERDS, the MAVICs issued to the licensees.

The volumes allocated to such licensees shall either be the total volumes indicated in the lots which are drawn in their respective favors or their respective volume requests, whichever is lower. The volumes awarded to these entities shall not form part of their respective allocation in the succeeding MAV allotment year.

c. Any balance in the MAV Plus volumes after both the first-priority and second-priority distributions under the SDP had been conducted shall be allocated on a first-come-first-served basis to any interested applicant. The first-come-first served distribution scheme is described in Section I.F(8) of this Order.

5. The MMC may choose to prescribe the specific periods when volumes under the MAV Plus mechanism shall enter the country.

SECTION III

Agricultural Competitiveness Enhancement Fund

A separate administrative order shall be issued for the purpose of implementing the provision of RA 8178 regarding the Agricultural Competitiveness Enhancement Fund.

SECTION IV

Effectivity and Transitory Provisions

A. This Order shall take effect fifteen (15) days from its publication in at least two newspapers of national circulation.

B. This Order is intended to apply to the management of the system for compliance with the relevant MAV commitments of the Philippines as of 1 January 1998 and thereafter. In relation thereto, any act required to be performed prior to 1 January 1998 shall be performed immediately upon the effectivity of this Order or thereafter, in accordance with the provisions hereof; provided, however, and considering the relatively short period between the effectivity of this Order and 1 January 1998, the MMC shall have the authority to adjust the respective dates and periods for the publication calling for applications, submission of applications, processing, and issuance of the corresponding licenses; provided, finally that such licenses for the MAV allotment year 1998 shall be issued not later than the last working day of 1998 January.

C. Licenses which have been issued or may be issued in relation to MAV allotment

1997 shall continue to be governed by the provisions of AO 9 which, for such shall continue to be in force and effect up to 31 December 1997, in transitional co-existence with this Order. Thereafter, AO 9 shall be deemed to be totally repealed and superseded by this Order; provided, however, that if there is any conflict between AO 9 and this Order during such period of transitional co-existence, the provisions of this Order shall prevail.

D. The provisions of Section I.E. and I.F. shall apply separately in respect of each MAV product. In respect of MAV products which have been subjected to a procedure under the provisions of AO 9 similar to that specified in Section I.E. hereof, MAV allotment year 1998 shall be deemed as an MAV allotment year. In respect of other MAV products, MAV allotment year 1998 shall be deemed as an MAV initial allotment year.

E. All licenses voluntarily surrendered in 1997 should be reallocated immediately under the procedures specified in Section I.G of this Order.

SECTION V

Repealing Clause

All provisions in AO 9 which are inconsistent with this Order are hereby repealed.

SECTION VI

Separability Clause

The provisions of this Order are hereby declared to be separable, and in the event one or more of such provisions are held unconstitutional, the validity of the other provisions shall not be affected thereby.

APPROVED.

Adopted: 02 Sept. 1997

(SGD.) SALVADOR H. ESCUDERO III
Secretary, Department of Agriculture

(SGD.) ERNESTO D. GARILAO
Secretary, Department of Agrarian Reform

(SGD.) ROBERTO F. DE OCAMPO
Secretary, Department of Finance

(SGD.) CESAR B. BAUTISTA
Secretary, Department of Trade and Industry

(SGD.) WILLIAM G. PADOLINA
Secretary, Department of Science and Technology

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Director-General, National Economic and Development Authority

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