

# Presidential Documents

## Title 3—

## Executive Order 12889 of December 27, 1993

### The President

### Implementation of the North American Free Trade Agreement

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the North American Free Trade Agreement Implementation Act (Public Law 103-182, 107 Stat. 2057) (the NAFTA Implementation Act) and section 302 of title 3, United States Code, and in order to implement the North American Free Trade Agreement (NAFTA), it is hereby ordered:

**Section 1.** *Establishment of United States Section of the NAFTA Secretariat.* Pursuant to section 105(a) of the NAFTA Implementation Act, a United States section of the NAFTA Secretariat shall be established within the Department of Commerce and shall carry out the functions set out in that section.

**Sec. 2.** *Acceptance by the President of Panel and Committee Decisions.* Pursuant to subparagraph 516A(g)(7)(B) of the Tariff Act of 1930, as amended, 19 U.S.C. 1516a(g)(7)(B), in the event that the provisions of that subparagraph take effect, I accept, as a whole, all decisions of binational panels and extraordinary challenge committees.

**Sec. 3.** *Implementation of Safeguard Provisions for Textile and Apparel Goods.* Pursuant to section 201 of the NAFTA Implementation Act, the Committee for the Implementation of Textile Agreements (the Committee) shall take such action as necessary to implement the bilateral safeguard provisions (tariff actions) set out in section 4 of Annex 300-B of the NAFTA. The United States Customs Service shall take such actions to carry out those safeguard provisions as directed by the Secretary of the Treasury, upon the advice and recommendation of the Chairman of the Committee.

**Sec. 4.** *Publication of Proposed Rules regarding Technical Regulations and Sanitary and Phytosanitary Measures.* (a) In accordance with Articles 718 and 909 of the NAFTA, each agency subject to the provisions of the Administrative Procedure Act, as amended (5 U.S.C. 551 *et seq.*), shall, in applying section 553 of title 5, United States Code, with respect to any proposed Federal technical regulation or any Federal sanitary or phytosanitary measure of general application, other than a regulation issued pursuant to section 104(a) of the NAFTA Implementation Act, publish or serve notice of such regulation or measure not less than 75 days before the comment due date, except:

(1) in the case of a technical regulation relating to perishable goods, in which case the agency shall, to the greatest extent practicable, publish or serve notice at least 30 days prior to adoption of such regulation;

(2) in the case of a technical regulation, where the United States considers it necessary to address an urgent problem relating to safety or to protection of human, animal or plant life or health, the environment or consumers; or

(3) in the case of a sanitary or phytosanitary measure, where the United States considers it necessary to address an urgent problem relating to sanitary or phytosanitary protection.

(b) For purposes of this section, the term "sanitary or phytosanitary measure" shall be defined in accordance with section 463 of the Trade Agreements

Act of 1979, and "technical regulation" shall be defined in accordance with section 473 of the Trade Agreements Act of 1979.

(c) This section supersedes section 1 of Executive Order No. 12662 of December 31, 1988.

**Sec. 5. Government Procurement Procedures.** (a) Waiver.

(1) With respect to eligible products (as defined in section 381(c) of the NAFTA Implementation Act) of Canada and Mexico, and suppliers of such products, the application of any law, regulation, procedure, or practice regarding Federal Government procurement that would, if applied to such products or suppliers, result in treatment less favorable than the most favorable treatment accorded:

(A) to United States products and services and suppliers of such products and services; or

(B) to eligible products of either Mexico or Canada, shall be waived.

(2) This waiver shall be applied by all executive agencies listed in Annexes 1 and 2 of this Executive order in consultation with, and when deemed necessary at the direction of, the United States Trade Representative (Trade Representative).

(b) The Secretary of Defense, or his designee, in consultation with the Trade Representative, shall be responsible for determinations under Article 1018(1), pursuant to Annex 1001.1b-1(A)(4), of the NAFTA. The Secretary of Defense, or his designee, and the Trade Representative shall establish procedures for this purpose.

(c) The executive agencies listed in Annex 2 are directed to procure eligible products in compliance with the procedural provisions of Chapter 10 of the NAFTA.

(d) The Trade Representative shall be responsible for calculating and adjusting the threshold as required by Article 1001(1)(c) of the NAFTA.

(e) This order shall apply only to solicitations issued on or after the date of entry into force of the NAFTA for the United States.

(f) Although regulatory implementation of this order must await revisions to the Federal Acquisitions Regulation (FAR), it is expected that agencies listed in Annexes 1 and 2 of this order will take all appropriate actions in the interim to implement those aspects of the order that are not dependent upon regulatory revision.

(g) Pursuant to section 25 of the Office of Federal Procurement Policy Act, as amended (41 U.S.C. 421(a)), the Federal Acquisition Regulatory Council shall ensure that the policies established herein are incorporated in the FAR within 30 days from the date this order is issued.

**Sec. 6. Government Use of Patented Technology.** (a) Each agency shall, within 30 days from the date this order is issued, modify or adopt procedures to ensure compliance with Article 1709(10) of the NAFTA regarding notice when patented technology is used by or for the Federal Government without a license from the owner, except that the requirement of Article 1709(10)(b) regarding reasonable efforts to obtain advance authorization from the patent owner:

(1) is hereby waived for an invention used or manufactured by or for the Federal Government, except that the patent owner must be notified whenever the agency or its contractor, without making a patent search, knows or has demonstrable reasonable grounds to know that an invention described in and covered by a valid United States patent is or will be used or manufactured without a license; and

(2) is waived whenever a national emergency or other circumstances of extreme urgency exists, except that the patent owner must be notified as soon as it is reasonably practicable to do so.

(b) Agencies shall treat the term "remuneration" as used in Articles 1709(10)(h) and (j) and 1715 of the NAFTA as equivalent to "reasonable

and entire compensation” as used in section 1498 of title 28, United States Code.

(c) In addition to the general provisions of section 7 of this order regarding enforceable rights, nothing in this order is intended to suggest that the giving of notice to a patent owner under Article 1709(10) of the NAFTA constitutes an admission that the Federal Government has infringed a valid privately-owned patent.

**Sec. 7. *Judicial Review.*** This order does not create any right or benefit, substantive or procedural, enforceable at law by a party against the United States, its agencies, its officers, or any person.

**Sec. 8. *Effective Date.*** This order shall take effect upon the date of entry into force of the NAFTA for the United States.

A handwritten signature in black ink, reading "William J. Clinton". The signature is written in a cursive style with a large, prominent "W" and "C".

THE WHITE HOUSE,  
December 27, 1993.

**Annex 1**

Department of Agriculture  
Department of Commerce  
Department of Defense  
Department of Education  
Department of Energy  
Department of Health and Human Services  
Department of Housing and Urban Development  
Department of the Interior  
Department of Justice  
Department of Labor  
Department of State  
Department of Transportation  
Department of the Treasury  
United States Agency for International Development  
General Services Administration  
National Aeronautics and Space Administration  
Department of Veterans Affairs  
Environmental Protection Agency  
United States Information Agency  
National Science Foundation  
Panama Canal Commission  
Executive Office of the President  
Farm Credit Administration  
National Credit Union Administration  
Merit Systems Protection Board  
ACTION Agency  
United States Arms Control and Disarmament Agency  
Office of Thrift Supervision  
Federal Housing Finance Board  
National Labor Relations Board  
National Mediation Board  
Railroad Retirement Board  
American Battle Monuments Commission  
Federal Communications Commission  
Federal Trade Commission  
Interstate Commerce Commission  
Securities and Exchange Commission  
Office of Personnel Management  
United States International Trade Commission  
Export-Import Bank of the United States  
Federal Mediation and Conciliation Service  
Selective Service System

Smithsonian Institution  
Federal Deposit Insurance Corporation  
Consumer Product Safety Commission  
Equal Employment Opportunity Commission  
Federal Maritime Commission  
National Transportation Safety Board  
Nuclear Regulatory Commission  
Overseas Private Investment Corporation  
Administrative Conference of the United States  
Board for International Broadcasting  
Commission on Civil Rights  
Commodity Futures Trading Commission  
Peace Corps  
National Archives and Records Administration

**Annex 2**

The Power Marketing Administrations of the Department of Energy  
Tennessee Valley Authority  
St. Lawrence Seaway Development Corporation