

Publication of Harmonized Tariff Schedule note set out under section 1202 of this title.

SHORT TITLE

Pub. L. 103-182, §1(a), Dec. 8, 1993, 107 Stat. 2057, provided that: "This Act [see Tables for classification] may be cited as the 'North American Free Trade Agreement Implementation Act'."

SUBCHAPTER I—APPROVAL OF, AND GENERAL PROVISIONS RELATING TO, NORTH AMERICAN FREE TRADE AGREEMENT

§ 3311. Approval and entry into force of North American Free Trade Agreement

(a) Approval of Agreement and statement of administrative action

Pursuant to section 2903 of this title and section 2191 of this title, the Congress approves—

(1) the North American Free Trade Agreement entered into on December 17, 1992, with the Governments of Canada and Mexico and submitted to the Congress on November 4, 1993; and

(2) the statement of administrative action proposed to implement the Agreement that was submitted to the Congress on November 4, 1993.

(b) Conditions for entry into force of Agreement

The President is authorized to exchange notes with the Government of Canada or Mexico providing for the entry into force, on or after January 1, 1994, of the Agreement for the United States with respect to such country at such time as—

(1) the President—

(A) determines that such country has implemented the statutory changes necessary to bring that country into compliance with its obligations under the Agreement and has made provision to implement the Uniform Regulations provided for under article 511 of the Agreement regarding the interpretation, application, and administration of the rules of origin, and

(B) transmits a report to the House of Representatives and the Senate setting forth the determination under subparagraph (A) and including, in the case of Mexico, a description of the specific measures taken by that country to—

(i) bring its laws into conformity with the requirements of the Schedule of Mexico in Annex 1904.15 of the Agreement, and

(ii) otherwise ensure the effective implementation of the binational panel review process under chapter 19 of the Agreement regarding final antidumping and countervailing duty determinations; and

(2) the Government of such country exchanges notes with the United States providing for the entry into force of the North American Agreement on Environmental Cooperation and the North American Agreement on Labor Cooperation for that country and the United States.

(Pub. L. 103-182, title I, §101, Dec. 8, 1993, 107 Stat. 2061.)

EFFECTIVE DATE; TERMINATION OF NAFTA STATUS

Pub. L. 103-182, title I, §109, Dec. 8, 1993, 107 Stat. 2067, provided that:

“(a) EFFECTIVE DATES.—

“(1) IN GENERAL.—This title [enacting this subchapter and amending provisions set out as a note under section 2112 of this title] (other than the amendment made by section 107 [amending provisions set out as a note under section 2112 of this title]) takes effect on the date of the enactment of this Act [Dec. 8, 1993].

“(2) SECTION 107 AMENDMENT.—The amendment made by section 107 takes effect on the date the Agreement enters into force between the United States and Canada [Jan. 1, 1994].

“(b) TERMINATION OF NAFTA STATUS.—During any period in which a country ceases to be a NAFTA country, sections 101 through 106 [enacting this section and sections 3312 to 3316 of this title] shall cease to have effect with respect to such country.”

NORTH AMERICAN FREE TRADE AGREEMENT: ENTRY INTO FORCE

A Presidential Memorandum on the Implementation of the North American Free Trade Agreement, dated Dec. 27, 1993, directing the Secretary of State to exchange notes with the Government of Canada and the Government of Mexico to provide for the entry into force of the Agreement on Jan. 1, 1994, is set out in 29 Weekly Compilation of Presidential Documents 2641, Jan. 3, 1994.

EX. ORD. NO. 12889. IMPLEMENTATION OF NORTH AMERICAN FREE TRADE AGREEMENT

Ex. Ord. No. 12889, Dec. 27, 1993, 58 F.R. 69681, provided:

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) [see Short Title note set out under section 3301 of this title] 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 [19 U.S.C. 3315(a)], 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 [19 U.S.C. 3331], 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 [19 U.S.C. 3314(a)], 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 [19 U.S.C. 2575b], and “technical regulation” shall be defined in accordance with section 473 of the Trade Agreements Act of 1979 [19 U.S.C. 2576b].

(c) This section supersedes section 1 of Executive Order No. 12662 of December 31, 1988 [19 U.S.C. 2112 note].

SEC. 5. *Government Procurement Procedures.* (a) Waiver. (1) With respect to eligible products (as defined in section 381(c) of the NAFTA Implementation Act [amending section 2518(4)(A) of this title]) 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 ([former] 41 U.S.C. 421(a) [now 41 U.S.C. 1302, 1303], 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.

WILLIAM J. CLINTON.

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

[For abolition of United States Information Agency (other than Broadcasting Board of Governors and International Broadcasting Bureau), transfer of functions, and treatment of references thereto, see sections 6531, 6532, and 6551 of Title 22, Foreign Relations and Intercourse.]

[For abolition, transfer of functions, and treatment of references to United States Arms Control and Disarmament Agency, see section 6511 et seq. of Title 22, Foreign Relations and Intercourse.]

§ 3312. Relationship of Agreement to United States and State law

(a) Relationship of Agreement to United States law

(1) United States law to prevail in conflict

No provision of the Agreement, nor the application of any such provision to any person or circumstance, which is inconsistent with any law of the United States shall have effect.

(2) Construction

Nothing in this Act shall be construed—

(A) to amend or modify any law of the United States, including any law regarding—

- (i) the protection of human, animal, or plant life or health,
- (ii) the protection of the environment, or
- (iii) motor carrier or worker safety; or

(B) to limit any authority conferred under any law of the United States, including section 2411 of this title;

unless specifically provided for in this Act.

(b) Relationship of Agreement to State law

(1) Federal-State consultation

(A) In general

On December 8, 1993, the President shall, through the intergovernmental policy advisory committees on trade established under section 2114c(2)(A) of this title, consult with the States for the purpose of achieving conformity of State laws and practices with the Agreement.

(B) Federal-State consultation process

The Trade Representative shall establish within the Office of the United States Trade Representative a Federal-State consultation process for addressing issues relating to the Agreement that directly relate to, or will potentially have a direct impact on, the States. The Federal-State consultation process shall include procedures under which—

- (i) the Trade Representative will assist the States in identifying those State laws that may not conform with the Agreement

but may be maintained under the Agreement by reason of being in effect before the Agreement entered into force;

(ii) the States will be informed on a continuing basis of matters under the Agreement that directly relate to, or will potentially have a direct impact on, the States;

(iii) the States will be provided opportunity to submit, on a continuing basis, to the Trade Representative information and advice with respect to matters referred to in clause (ii);

(iv) the Trade Representative will take into account the information and advice received from the States under clause (iii) when formulating United States positions regarding matters referred to in clause (ii); and

(v) the States will be involved (including involvement through the inclusion of appropriate representatives of the States) to the greatest extent practicable at each stage of the development of United States positions regarding matters referred to in clause (ii) that will be addressed by committees, subcommittees, or working groups established under the Agreement or through dispute settlement processes provided for under the Agreement.

The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Federal-State consultation process established by this paragraph.

(2) Legal challenge

No State law, or the application thereof, may be declared invalid as to any person or circumstance on the ground that the provision or application is inconsistent with the Agreement, except in an action brought by the United States for the purpose of declaring such law or application invalid.

(3) “State law” defined

For purposes of this subsection, the term “State law” includes—

(A) any law of a political subdivision of a State; and

(B) any State law regulating or taxing the business of insurance.

(c) Effect of Agreement with respect to private remedies

No person other than the United States—

(1) shall have any cause of action or defense under—

(A) the Agreement or by virtue of Congressional approval thereof, or

(B) the North American Agreement on Environmental Cooperation or the North American Agreement on Labor Cooperation; or

(2) may challenge, in any action brought under any provision of law, any action or inaction by any department, agency, or other instrumentality of the United States, any State, or any political subdivision of a State on the ground that such action or inaction is inconsistent with the Agreement, the North American Agreement on Environmental Cooperation, or the North American Agreement on Labor Cooperation.