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Executive Order 13116—Identification of Trade Expansion Priorities and Discriminatory Procurement Practices

March 31, 1999

By the authority vested in me as President by the Constitution and the laws of the United States of America, including title III of the Act of March 3, 1993, as amended (41 U.S.C. 10d), sections 141 and 301–310 of the Trade Act of 1974, as amended (the Act) (19 U.S.C. 2171, 2411–2420), title III of the Trade Agreements Act of 1979, as amended (19 U.S.C. 2511–2518), and section 301 of title 3, United States Code, and to ensure that the trade policies of the United States advance, to the greatest extent possible, the export of the products and services of the United States and that trade policy resources are used efficiently, it is hereby ordered as follows:

PART I: IDENTIFICATION OF TRADE EXPANSION PRIORITIES

Section 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report required by section 181(b) of the Act (19 U.S.C. 2241(b)) for 1999, 2000, and 2001, the United States Trade Representative (Trade Representative) shall review United States trade expansion priorities and identify priority foreign country practices, the elimination of which is likely to have the most significant potential to increase United States exports, either directly or through the establishment of a beneficial precedent. The Trade Representative shall submit to the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives, and shall publish in the *Federal Register*, a report on the priority foreign country practices identified.

(b) In identifying priority foreign country practices under paragraph (a) of this section, the Trade Representative shall take into account all relevant factors, including:

(1) the major barriers and trade distorting practices described in the National Trade Estimate Report;

(2) the trade agreements to which a foreign country is a party and its compliance with those agreements;

(3) the medium-term and long-term implications of foreign government procurement plans; and

(4) the international competitive position and export potential of United States products and services.

(c) The Trade Representative may include in the report, if appropriate, a description of the foreign country practices that may in the future warrant identification as priority foreign country practices. The Trade Representative also may include a statement about other foreign country practices that were not identified because they are already being addressed by provisions of United States trade law, existing bilateral trade agreements, or in trade negotiations with other countries and progress is being made toward their elimination.

Sec. 2. *Resolution.* Upon submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall, with respect to any priority foreign country practice identified therein, engage the country concerned for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with a trade agreement or the elimination of the practice as quickly as possible, or, if this is not feasible, by proving for compensatory trade benefits.

Sec. 3. *Initiation of Investigations.* Within 90 days of the submission of the report required by paragraph (a) of section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to all of the priority foreign country practices identified, unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

PART II: IDENTIFICATION OF DISCRIMINATORY GOVERNMENT PROCUREMENT PRACTICES

Section 1. *Identification and Annual Report.* (a) Within 30 days of the submission of the National Trade Estimate Report for

1999, 2000, and 2001, the Trade Representative shall submit to the Committees on Finance and on Governmental Affairs of the Senate and the Committees on Ways and Means and Government Reform and Oversight of the House of Representatives, and shall publish in the *Federal Register*, a report on the extent to which foreign countries discriminate against U.S. products or services in making government procurements.

(b) In the report, the Trade Representative shall identify countries that:

(1) are not in compliance with their obligations under the World Trade Organization Agreement on Government Procurement (the GPA), Chapter 10 of the North American Free Trade Agreement (NAFTA), or other agreements relating to government procurement (procurement agreements) to which that country and the United States are parties; or

(2) maintain, in government procurement, a significant and persistent pattern or practice of discrimination against U.S. products or services that results in identifiable harm to U.S. businesses and whose products or services are acquired in significant amounts by the United States Government.

Sec. 2. *Considerations in Making Identifications.* In making the identifications required by section 1 of this part, the Trade Representative shall: (a) consider the requirements of the GPA, NAFTA, or other procurement agreements, government procurement practices, and the effects of such practices on U.S. businesses as a basis for evaluating whether the procurement practices of foreign governments do not provide fair market opportunities for U.S. products or services;

(b) take into account, among other factors, whether and to what extent countries that are parties to the GPA, NAFTA, or other procurement agreements, and other countries described in section 1 of this part:

(1) use sole-sourcing or otherwise noncompetitive procedures for procurement that could have been conducted using competitive procedures;

(2) conduct what normally would have been one procurement as two or more procurements, to decrease the anticipated contract values below the value threshold of the GPA, NAFTA, or other procurement agreements, or to make the procurement less attractive to U.S. businesses;

(3) announce procurement opportunities with inadequate time intervals for U.S. businesses to submit bids; and

(4) use specifications in such a way as to limit the ability of U.S. suppliers to participate in procurements; and

(c) consider information included in the National Trade Estimate Report, and any other additional criteria deemed appropriate, including, to the extent such information is available, the failure to apply transparent and competitive procedures or maintain and enforce effective prohibitions on bribery and other corrupt practices in connection with government procurement.

Sec. 3. *Impact of Noncompliance and Denial of Comparable Treatment.* The Trade Representative shall take into account, in identifying countries in the annual report and in any action required by this part, the relative impact of any noncompliance with the GPA, NAFTA, or other procurement agreements, or of other discrimination on U.S. commerce, and the extent to which such noncompliance or discrimination has impeded the ability of U.S. suppliers to participate in procurements on terms comparable to those available to suppliers of the country in question when seeking to sell goods or services to the United States Government.

Sec. 4. *Resolution.* Upon submission of the report required by section 1 of this part, the Trade Representative shall engage any country identified therein for the purpose of seeking a satisfactory resolution, for example, by obtaining compliance with the GPA, NAFTA, or other procurement agreements or the elimination of the discriminatory procurement practices as quickly as possible, or, if this is not feasible, by providing for compensatory trade benefits.

Sec. 5. *Initiation of Investigations.* (a) Within 90 days of the submission of the report required by section 1 of this part, the Trade Representative shall initiate under section 302(b)(1) of the Act (19 U.S.C. 2412(b)(1)) investigations with respect to any practice that:

(1) was the basis for the identification of a country under section 1; and
(2) is not at that time the subject of any other investigation or action under title III, chapter 1, of the Act,

unless during the 90-day period the Trade Representative determines that a satisfactory resolution of the matter to be investigated has been achieved.

(b) For investigations initiated under paragraph (a) of this section (other than an investigation involving the GPA or NAFTA), the Trade Representative shall apply the time limits and procedures in section 304(a)(3) of the Act (19 U.S.C. 2414(a)(3)). The time limits in subsection 304(a)(3)(B) of the Act (19 U.S.C. 2414(a)(3)(B)) shall apply if the Trade Representative determines that:

(1) complex or complicated issues are involved in the investigation that require additional time;
(2) the foreign country involved in the investigation is making substantial progress in drafting or implementing legislative or administrative measures that will end the discriminatory procurement practice; or
(3) such foreign country is undertaking enforcement measures to end the discriminatory procurement practice.

PART III: DIRECTION

Section 1. *Presidential Direction.* The authorities delegated pursuant to this order shall be exercised subject to any subsequent direction by the President in a particular matter.

Sec. 2. *Consultations and Advice.* In developing the annual reports required by part I and part II of this order, the Trade Representative shall consult with executive agencies and seek information and advice from U.S. businesses in the United States and in the countries involved in the practices under consideration.

William J. Clinton

The White House,
March 31, 1999.

[Filed with the Office of the Federal Register, 8:45 a.m., April 2, 1999]

NOTE: This Executive order was released by the Office of the Press Secretary on April 1, and it was published in the *Federal Register* on April 5.

Memorandum on Drawdown of Articles and Services To Support International Relief Efforts Relating to the Kosovo Conflict

March 31, 1999

Presidential Determination No. 99–20

Memorandum for the Secretary of State, the Secretary of Defense

Subject: Drawdown of Articles and Services to Support International Relief Efforts Relating to the Kosovo Conflict

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended (the ''Act''), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and
(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of up to $25 million in commodities and services from the inventory and resources of the Department of Defense to support international relief efforts for Kosovar refugees.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the *Federal Register*.

William J. Clinton

NOTE: This item was released by the Office of the Press Secretary on April 1.

Telephone Remarks From Norfolk, Virginia, to United States Troops at Aviano Air Base in Italy

April 1, 1999

The President. Colonel Nichols, I know you're about to leave on a mission. I just called to tell you we're proud of you, and