

government of China, and by the authority vested in me as President of the United States of America by the Taiwan Relations Act (Public Law 96-8, 22 U.S.C. 3301 *et seq.*) (“Act”), and section 301 of title 3, United States Code, in order to facilitate the maintenance of commercial, cultural, and other relations between the people of the United States and the people on Taiwan without official representation or diplomatic relations, it is hereby ordered as follows:

SECTION 1. Delegation and Reservation of Functions.

1-101. Exclusive of the functions otherwise delegated, or reserved to the President by this order, there are delegated to the Secretary of State (“Secretary”) all functions conferred upon the President by the Act, including the authority under section 7(a) of the Act [22 U.S.C. 3306(a)] to specify which laws of the United States relative to the provision of consular services may be administered by employees of the American Institute on Taiwan (“Institute”). In carrying out these functions, the Secretary may redelegate his authority, and shall consult with other departments and agencies as he deems appropriate.

1-102. There are delegated to the Director of the Office of Personnel Management the functions conferred upon the President by paragraphs (1) and (2) of section 11(a) of the Act [22 U.S.C. 3310(a)]. These functions shall be exercised in consultation with the Secretary.

1-103. There are reserved to the President the functions conferred upon the President by section 3 [22 U.S.C. 3302], the second sentence of section 9(b) [22 U.S.C. 3308(b)], and the determinations specified in section 10(a) of the Act [22 U.S.C. 3309(a)].

SEC. 2. Specification of Laws and Determinations.

2-201. Pursuant to section 9(b) of the Act [22 U.S.C. 3308(b)], and in furtherance of the purposes of the Act, the procurement of services may be effected by the Institute without regard to the following provisions of law and limitations of authority as they may be amended from time to time:

(a) Sections 1301(d) and 1341 of title 31, United States Code, and section 3732 of the Revised Statutes (41 U.S.C. 11) to the extent necessary to permit the indemnification of contractors against unusually hazardous risks, as defined in Institute contracts, consistent, to the extent practicable, with section 52.228-7 of the Federal Acquisition Regulations;

(b) Section 3324 of title 31, United States Code;

(c) Sections 3709, 3710, and 3735 of the Revised Statutes, as amended (41 U.S.C. 5, 8, and 13);

(d) Section 2 of title III of the Act of March 3, 1933 (41 U.S.C. 10a);

(e) Title III of the Federal Property and Administrative Services Act of 1949, as amended (41 U.S.C. 251-260);

(f) The Contract Disputes Act of 1978, as amended (41 U.S.C. 601-613);

(g) Chapter 137 of title 10, United States Code (10 U.S.C. 2301-2316);

(h) The Act of May 11, 1954 (the “Anti-Wunderlich Act”) (41 U.S.C. 321, 322); and

(i) Section (f) of 41 U.S.C. 423.

2-202. (a) With respect to cost-type contracts with the Institute under which no fee is charged or paid, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract and irrespective of rights that may have accrued under the contractor [contract] the amendments or modifications thereof.

(b) With respect to contracts heretofore or hereafter made under the Act, other than those described in subsection (a) of this section, amendments and modifications of such contracts may be made with or without consideration and may be utilized to accomplish the same things as any original contract could have accomplished, irrespective of the time or circumstances of the making, or the form of the contract amended or modified, or of the amending or modifying contract,

and irrespective of rights that may have accrued under the contract or the amendments or modifications thereof, if the Secretary determines in each case that such action is necessary to protect the foreign policy interests of the United States.

2-203. Pursuant to section 10(a) of the Act [22 U.S.C. 3309(a)], the Taipei Economic and Cultural Representative Office in the United States (“TECRO”), formerly the Coordination Council for North America Affairs (“CCNAA”), is determined to be the instrumentality established by the people on Taiwan having the necessary authority under the laws applied by the people on Taiwan to provide assurances and take other actions on behalf of Taiwan in accordance with the Act. Nothing contained in this determination or order shall affect, or be construed to affect, the continued validity of agreements, contracts, or other undertakings, of whatever kind or nature, entered into previously by CCNAA.

SEC. 3. President’s Memorandum of December 30, 1978.

3-301. Agreements and arrangements referred to in paragraph (B) of President Carter’s memorandum of December 30, 1978, entitled “Relations With the People on Taiwan” (44 FR 1075) shall, unless otherwise terminated or modified in accordance with law, continue in force and be performed in accordance with the Act and this order.

SEC. 4. General. This order supersedes Executive Order No. 12143 of June 22, 1979.

WILLIAM J. CLINTON.

§ 3302. Implementation of United States policy with regard to Taiwan

(a) Defense articles and services

In furtherance of the policy set forth in section 3301 of this title, the United States will make available to Taiwan such defense articles and defense services in such quantity as may be necessary to enable Taiwan to maintain a sufficient self-defense capability.

(b) Determination of Taiwan’s defense needs

The President and the Congress shall determine the nature and quantity of such defense articles and services based solely upon their judgment of the needs of Taiwan, in accordance with procedures established by law. Such determination of Taiwan’s defense needs shall include review by United States military authorities in connection with recommendations to the President and the Congress.

(c) United States response to threats to Taiwan or dangers to United States interests

The President is directed to inform the Congress promptly of any threat to the security or the social or economic system of the people on Taiwan and any danger to the interests of the United States arising therefrom. The President and the Congress shall determine, in accordance with constitutional processes, appropriate action by the United States in response to any such danger.

(Pub. L. 96-8, § 3, Apr. 10, 1979, 93 Stat. 15.)

CONSULTATION WITH CONGRESS WITH REGARD TO
TAIWAN

Pub. L. 107-228, div. B, title XII, § 1263, Sept. 30, 2002, 116 Stat. 1434, provided that: “Beginning 180 days after the date of enactment of this Act [Sept. 30, 2002], and every 180 days thereafter, the President shall provide detailed briefings to and consult with the appropriate congressional committees regarding the United States security assistance to Taiwan, including the provision of defense articles and defense services.”

[For definitions of “appropriate congressional committees”, “defense article”, and “defense service” as

used in section 1263 of Pub. L. 107-228, set out above, see section 3 of Pub. L. 107-228, set out as a note under section 2651 of this title and section 1002 of Pub. L. 107-228, set out as a note under section 2151 of this title.]

TRANSFER OF WAR RESERVE MATERIEL AND OTHER
PROPERTY TO TAIWAN

Pub. L. 96-92, §23, Oct. 29, 1979, 93 Stat. 710, authorized President, during calendar year 1980, to transfer to Taiwan, under such terms and conditions as he may deem appropriate, United States war reserve materiel that was located on Taiwan on Jan. 1, 1979, and during calendar years 1979 and 1980, to transfer to Taiwan, under such terms and conditions as he may deem appropriate, rights of the United States in property (other than war reserve materiel) that was located on Taiwan on Jan. 1, 1979.

§ 3303. Application to Taiwan of laws and international agreements

(a) Application of United States laws generally

The absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.

(b) Application of United States laws in specific and enumerated areas

The application of subsection (a) of this section shall include, but shall not be limited to, the following:

(1) Whenever the laws of the United States refer or relate to foreign countries, nations, states, governments, or similar entities, such terms shall include and such laws shall apply with respect to Taiwan.

(2) Whenever authorized by or pursuant to the laws of the United States to conduct or carry out programs, transactions, or other relations with respect to foreign countries, nations, states, governments, or similar entities, the President or any agency of the United States Government is authorized to conduct and carry out, in accordance with section 3305 of this title, such programs, transactions, and other relations with respect to Taiwan (including, but not limited to, the performance of services for the United States through contracts with commercial entities on Taiwan), in accordance with the applicable laws of the United States.

(3)(A) The absence of diplomatic relations and recognition with respect to Taiwan shall not abrogate, infringe, modify, deny, or otherwise affect in any way any rights or obligations (including but not limited to those involving contracts, debts, or property interests of any kind) under the laws of the United States heretofore or hereafter acquired by or with respect to Taiwan.

(B) For all purposes under the laws of the United States, including actions in any court in the United States, recognition of the People's Republic of China shall not affect in any way the ownership of or other rights or interests in properties, tangible and intangible, and other things of value, owned or held on or prior to December 31, 1978, or thereafter acquired or earned by the governing authorities on Taiwan.

(4) Whenever the application of the laws of the United States depends upon the law that is or was applicable on Taiwan or compliance therewith, the law applied by the people on Taiwan shall be considered the applicable law for that purpose.

(5) Nothing in this chapter, nor the facts of the President's action in extending diplomatic recognition to the People's Republic of China, the absence of diplomatic relations between the people on Taiwan and the United States, or the lack of recognition by the United States, and attendant circumstances thereto, shall be construed in any administrative or judicial proceeding as a basis for any United States Government agency, commission, or department to make a finding of fact or determination of law, under the Atomic Energy Act of 1954 [42 U.S.C. 2011 et seq.] and the Nuclear Non-Proliferation Act of 1978 [22 U.S.C. 3201 et seq.], to deny an export license application or to revoke an existing export license for nuclear exports to Taiwan.

(6) For purposes of the Immigration and Nationality Act [8 U.S.C. 1101 et seq.], Taiwan may be treated in the manner specified in the first sentence of section 202(b) of that Act [8 U.S.C. 1152(b)].

(7) The capacity of Taiwan to sue and be sued in courts in the United States, in accordance with the laws of the United States, shall not be abrogated, infringed, modified, denied, or otherwise affected in any way by the absence of diplomatic relations or recognition.

(8) No requirement, whether expressed or implied, under the laws of the United States with respect to maintenance of diplomatic relations or recognition shall be applicable with respect to Taiwan.

(c) Treaties and other international agreements

For all purposes, including actions in any court in the United States, the Congress approves the continuation in force of all treaties and other international agreements, including multilateral conventions, entered into by the United States and the governing authorities on Taiwan recognized by the United States as the Republic of China prior to January 1, 1979, and in force between them on December 31, 1978, unless and until terminated in accordance with law.

(d) Membership in international financial institutions and other international organizations

Nothing in this chapter may be construed as a basis for supporting the exclusion or expulsion of Taiwan from continued membership in any international financial institution or any other international organization.

(Pub. L. 96-8, §4, Apr. 10, 1979, 93 Stat. 15.)

REFERENCES IN TEXT

The Atomic Energy Act of 1954, referred to in subsec. (b)(5), is act Aug. 1, 1946, ch. 724, as added by act Aug. 30, 1954, ch. 1073, §1, 68 Stat. 919, which is classified principally to chapter 23 (§2011 et seq.) of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see Short Title note set out under section 2011 of Title 42 and Tables.

The Nuclear Non-Proliferation Act of 1978, referred to in subsec. (b)(5), is Pub. L. 95-242, Mar. 10, 1978, 92 Stat.