

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.)

EFFECTIVE DATE

Section effective as of January 1, 1979, see section 18 of Pub. L. 96-8, set out as a note under section 3301 of this title.

NORMALIZING THE TRANSFER OF DEFENSE ARTICLES AND DEFENSE SERVICES TO TAIWAN

Pub. L. 115-91, div. A, title XII, § 1259A, Dec. 12, 2017, 131 Stat. 1685, provided that:

"(a) SENSE OF CONGRESS.—It is the sense of Congress that any requests from the Government of Taiwan for defense articles and defense services should receive a case-by-case review by the Secretary of Defense, in consultation with the Secretary of State, that is consistent with the standard processes and procedures in an effort to normalize the arms sales process with Taiwan.

"(b) REPORT.—

"(1) IN GENERAL.—Not later than 120 days after the date on which the Secretary of Defense receives a Letter of Request from Taiwan with respect to the transfer of a defense article or defense service to Tai-

wan, the Secretary, in consultation with the Secretary of State, shall submit to the appropriate congressional committees a report that includes—

“(A) the status of such request;

“(B) if the transfer of such article or service would require a certification or report to Congress pursuant to any applicable provision of section 36 of the Arms Export Control Act (22 U.S.C. 2776), the status of any Letter of Offer and Acceptance the Secretary of Defense intends to issue with respect to such request; and

“(C) an assessment of whether the transfer of such article or service would be consistent with United States obligations under the Taiwan Relations Act (Public Law 96-8; 22 U.S.C. 3301 et seq.).

“(2) ELEMENTS.—Each report required under paragraph (1) shall specify the following:

“(A) The date the Secretary of Defense received the Letter of Request.

“(B) The value of the sale proposed by such Letter of Request.

“(C) A description of the defense article or defense service proposed to be transferred.

“(D) The view of the Secretary of Defense with respect to such proposed sale and whether such sale would be consistent with United States defense initiatives with Taiwan.

“(3) FORM.—Each report required under paragraph (1) shall be submitted in unclassified form but may contain a classified annex.

“(c) BRIEFING.—Not later than 180 days after the date of the enactment of this Act [Dec. 12, 2017], and every 180 days thereafter, the Secretary of Defense, in coordination with the Secretary of State, shall provide a briefing to the appropriate congressional committees with respect to the security challenges faced by Taiwan and the military cooperation between the United States and Taiwan, including a description of any requests from Taiwan for the transfer of defense articles or defense services and the status, whether signed or unsigned, of any Letters of Offer and Acceptance with respect to such requests.

“(d) DEFINITIONS.—In this section:

“(1) APPROPRIATE CONGRESSIONAL COMMITTEES.—The term ‘appropriate congressional committees’ means—

“(A) the Committee on Armed Services and the Committee on Foreign Affairs of the House of Representatives; and

“(B) the Committee on Armed Services and the Committee on Foreign Relations of the Senate.

“(2) DEFENSE ARTICLE; DEFENSE SERVICE.—The terms ‘defense article’ and ‘defense service’ have the meanings given such terms in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

“(3) LETTER OF REQUEST; LETTER OF OFFER AND ACCEPTANCE.—The terms ‘Letter of Request’ and ‘Letter of Offer and Acceptance’ have the meanings given such terms for purposes of Chapter 5 of the Security Assistance Management Manual of the Defense Security Cooperation Agency, as in effect on the date of the enactment of this Act.”

#### 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