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RESILIENCE**

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SUBCHAPTER I—IMPLEMENTATION OF AN ENHANCED DEFENSE PARTNERSHIP BETWEEN THE UNITED STATES AND TAIWAN

§ 3351. Modernizing Taiwan's security capabilities to deter and, if necessary, defeat aggression by the People's Republic of China

(a) Appropriate congressional committees defined

In this section, the term "appropriate congressional committees" means—

- (1) the Committee on Foreign Relations of the Senate;
- (2) the Committee on Armed Services of the Senate;
- (3) the Committee on Appropriations of the Senate;

(4) the Committee on Foreign Affairs of the House of Representatives;

(5) the Committee on Armed Services of the House of Representatives; and

(6) the Committee on Appropriations of the House of Representatives.

(b) Taiwan security programs

The Secretary of State, in consultation with the Secretary of Defense, shall use the authorities under this section to strengthen the United States-Taiwan defense relationship, and to support the acceleration of the modernization of Taiwan's defense capabilities, consistent with the Taiwan Relations Act (Public Law 96-8) [22 U.S.C. 3301 et seq.].

(c) Purpose

In addition to the purposes otherwise authorized for Foreign Military Financing programs under the Arms Export Control Act (22 U.S.C. 2751 et seq.), a purpose of the Foreign Military Financing Program should be to provide assistance, including equipment, training, and other support, to build the civilian and defensive military capabilities of Taiwan—

(1) to accelerate the modernization of capabilities that will enable Taiwan to delay, degrade, and deny attempts by People's Liberation Army forces—

(A) to conduct coercive or grey zone activities;

(B) to blockade Taiwan; or

(C) to secure a lodgment on any islands administered by Taiwan and expand or otherwise use such lodgment to seize control of a population center or other key territory in Taiwan; and

(2) to prevent the People's Republic of China from decapitating, seizing control of, or otherwise neutralizing or rendering ineffective Taiwan's civilian and defense leadership.

(d) Regional contingency stockpile

Of the amounts authorized to be appropriated pursuant to subsection (h), not more than \$100,000,000 may be used during each of the fiscal years 2023 through 2032 to maintain a stockpile (if established pursuant to section 3352 of this title), in accordance with section 2321h of this title.

(e) Availability of funds

(1) Annual spending plan

Not later than March 1, 2023, and annually thereafter, the Secretary of State, in coordination with the Secretary of Defense, shall submit a plan to the appropriate congressional committees describing how amounts authorized to be appropriated pursuant to subsection (h), if made available, would be used to achieve the purpose described in subsection (c).

(2) Certification

(A) In general

Amounts authorized to be appropriated for each fiscal year pursuant to subsection (h) are authorized to be made available after the Secretary of State, in coordination with the Secretary of Defense, certifies not later than 1 year after December 22, 2023, and not less

than annually to the appropriate committees of Congress that Taiwan has increased its defense spending relative to Taiwan's defense spending in its prior fiscal year, which includes support for an asymmetric strategy, excepting accounts in Taiwan's defense budget related to personnel expenditures, (other than military training and education and any funding related to the All-Out Defense Mobilization Agency).

(B) Waiver

The Secretary of State may waive the certification requirement under subparagraph (A) if the Secretary, in consultation with the Secretary of Defense, certifies to the appropriate congressional committees that for any given year—

- (i) Taiwan is unable to increase its defense spending relative to its defense spending in its prior fiscal year due to severe hardship; and
- (ii) making available the amounts authorized under subparagraph (A) is in the national interests of the United States.

(3) Remaining funds

Amounts authorized to be appropriated for a fiscal year pursuant to subsection (h) that are not obligated and expended during such fiscal year shall be added to the amount that may be used for Foreign Military Financing to Taiwan in the subsequent fiscal year.

(f) Annual report on advancing the defense of Taiwan

(1) Initial report

Concurrently with the first certification required under subsection (e)(2), the Secretary of State and the Secretary of Defense shall jointly submit a report to the appropriate congressional committees that describes steps taken to enhance the United States-Taiwan defense relationship and Taiwan's modernization of its defense capabilities.

(2) Matters to be included

Each report required under paragraph (1) shall include—

- (A) an assessment of the commitment of Taiwan to implement a military strategy that will deter and, if necessary, defeat military aggression by the People's Republic of China, including the steps that Taiwan has taken and the steps that Taiwan has not taken towards such implementation;
- (B) an assessment of the efforts of Taiwan to acquire and employ within its forces counterintervention capabilities, including—
 - (i) long-range precision fires;
 - (ii) integrated air and missile defense systems;
 - (iii) anti-ship cruise missiles;
 - (iv) land-attack cruise missiles;
 - (v) coastal defense;
 - (vi) anti-armor;
 - (vii) undersea warfare, including manned and unmanned systems;
 - (viii) survivable swarming maritime assets;
 - (ix) manned and unmanned aerial systems;

- (x) mining and countermining capabilities;

- (xi) intelligence, surveillance, and reconnaissance capabilities;

- (xii) command and control systems;

- (xiii) defensive cybersecurity capabilities; and

- (xiv) any other defense capabilities that the United States determines, including jointly with Taiwan, are crucial to the defense of Taiwan, consistent with the joint consultative mechanism with Taiwan created pursuant to section 3355 of this title;

(C) an evaluation of the balance between conventional and counter intervention capabilities in the defense force of Taiwan as of the date on which the report is submitted;

(D) an assessment of steps taken by Taiwan to enhance the overall readiness of its defense forces, including—

- (i) the extent to which Taiwan is requiring and providing regular and relevant training to such forces;

- (ii) the extent to which such training is realistic to the security environment that Taiwan faces; and

- (iii) the sufficiency of the financial and budgetary resources Taiwan is putting toward readiness of such forces;

(E) an assessment of steps taken by Taiwan to ensure that the Taiwan's reserve forces and All-Out Defense Mobilization Agency can recruit, train, equip, and mobilize its forces;

(F) an evaluation of—

- (i) the severity of manpower shortages in the military of Taiwan, including in the reserve forces;

- (ii) the impact of such shortages in the event of a conflict scenario; and

- (iii) the efforts made by Taiwan to address such shortages;

(G) an assessment of the efforts made by Taiwan to boost its civilian defenses, including any informational campaigns to raise awareness among the population of Taiwan of the risks Taiwan faces;

(H) an assessment of the efforts made by Taiwan to secure its critical infrastructure, including in transportation, telecommunications networks, satellite communications, and energy;

(I) an assessment of the efforts made by Taiwan to enhance its cybersecurity, including the security and survivability of official civilian and military networks;

(J) an assessment of the efforts made by Taiwan to improve the image and prestige of its defense forces among the population of Taiwan;

(K) an assessment of any significant gaps in any of the matters described in subparagraphs (A) through (J) with respect to which the United States assesses that additional action is needed;

(L) a description of cooperative efforts between the United States and Taiwan on the matters described in subparagraphs (A) through (K);

(M) a description of any challenge in Taiwan to—

(i) implement the matters described in subparagraphs (A) through (J); or

(ii) United States support or engagement with regard to such matters;

(N) a description of actions taken to establish or expand a comprehensive training program with Taiwan pursuant to section 3353 of this title;

(O) a description of actions taken to establish a joint consultative mechanism with appropriate officials of Taiwan, and the multi-year plan to provide for the acquisition of appropriate defensive capabilities by Taiwan, pursuant to section 3355 of this title; and

(P) the list compiled pursuant to section 3356(a) of this title, and a description of actions taken pursuant to sections 3356(b) of this title and 3356(c) of this title.

(3) Subsequent reports

Concurrently with subsequent certifications required under subsection (e)(2), the Secretary of State and the Secretary of Defense shall jointly submit updates to the initial report required under paragraph (1) that provides a description of changes and developments that occurred in the prior year.

(4) Form

The reports required under paragraphs (1) and (3) shall be submitted in an unclassified form, but may contain a classified annex.

(5) Sharing of summary

The Secretary of State and the Secretary of Defense shall jointly share any unclassified portions of the reports, pursuant to paragraph (4), with Taiwan, as appropriate.

(g) Foreign military financing loan and loan guarantee authority

(1) Direct loans

(A) In general

Notwithstanding section 23(c)(1) of the Arms Export Control Act (22 U.S.C. 2763), during fiscal years 2023 through 2027, the Secretary of State is authorized to make direct loans available for Taiwan pursuant to section 23 of such Act.

(B) Maximum obligations

Gross obligations for the principal amounts of loans authorized under subparagraph (A) may not exceed \$2,000,000,000.

(C) Source of funds

(i) Defined term

In this subparagraph, the term “cost”—

(I) has the meaning given such term in section 661a(5) of title 2;

(II) shall include the cost of modifying a loan authorized under subparagraph (A); and

(III) may include the costs of selling, reducing, or cancelling any amounts owed to the United States or to any agency of the United States.

(ii) In general

Amounts authorized to be appropriated pursuant to subsection (g) may be made

available to pay for the cost of loans authorized under subparagraph (A).

(D) Fees authorized

(i) In general

The Government of the United States may charge processing and origination fees for a loan made pursuant to subparagraph (A), not to exceed the cost to the Government of making such loan, which shall be collected from borrowers through a financing account (as defined in section 661a(7) of title 2).

(ii) Limitation on fee payments

Amounts made available under any appropriations Act for any fiscal year may not be used to pay any fees associated with a loan authorized under subparagraph (A).

(E) Repayment

Loans made pursuant to subparagraph (A) shall be repaid not later than 12 years after the loan is received by the borrower, including a grace period of not more than 1 year on repayment of principal.

(F) Interest

(i) In general

Notwithstanding section 23(c)(1) of the Arms Export Control Act (22 U.S.C. 2763(c)(1)), interest for loans made pursuant to subparagraph (A) may be charged at a rate determined by the Secretary of State, except that such rate may not be less than the prevailing interest rate on marketable Treasury securities of similar maturity.

(ii) Treatment of loan amounts used to pay interest

Amounts made available under this paragraph for interest costs shall not be considered assistance for the purposes of any statutory limitation on assistance to a country.

(2) Loan guarantees

(A) In general

Amounts authorized to be appropriated pursuant to subsection (g) may be made available for the costs of loan guarantees for Taiwan under section 24 of the Arms Export Control Act (22 U.S.C. 2764) for Taiwan to subsidize gross obligations for the principal amount of commercial loans and total loan principal, any part of which may be guaranteed, not to exceed \$2,000,000,000.

(B) Maximum amounts

A loan guarantee authorized under subparagraph (A)—

(i) may not guarantee a loan that exceeds \$2,000,000,000; and

(ii) may not exceed 80 percent of the loan principal with respect to any single borrower.

(C) Subordination

Any loan guaranteed pursuant to subparagraph (A) may not be subordinated to—

(i) another debt contracted by the borrower; or

(ii) any other claims against the borrower in the case of default.

(D) Repayment

Repayment in United States dollars of any loan guaranteed under this paragraph shall be required not later than 12 years after the loan agreement is signed.

(E) Fees

Notwithstanding section 24 of the Arms Export Control Act (22 U.S.C. 2764), the Government of the United States may charge processing and origination fees for a loan guarantee authorized under subparagraph (A), not to exceed the cost to the Government of such loan guarantee, which shall be collected from borrowers, or from third parties on behalf of such borrowers, through a financing account (as defined in section 661a(7) of title 2).

(F) Treatments of loan guarantees

Amounts made available under this paragraph for the costs of loan guarantees authorized under subparagraph (A) shall not be considered assistance for the purposes of any statutory limitation on assistance to a country.

(3) Notification requirement

Amounts authorized to be appropriated to carry out this subsection may not be expended without prior notification of the appropriate committees of Congress.

(h) Authorization of appropriations

(1) Authorization of appropriations

In addition to amounts otherwise authorized to be appropriated for Foreign Military Financing, there is authorized to be appropriated to the Department of State for Taiwan Foreign Military Finance grant assistance up to \$2,000,000,000 for each of the fiscal years 2023 through 2027.

(2) Training and education

Of the amounts authorized to be appropriated under paragraph (1), the Secretary of State should use not less than \$2,000,000 per fiscal year for one or more blanket order Foreign Military Financing training programs related to the defense needs of Taiwan.

(3) Direct commercial contracting

The Secretary of State may use amounts authorized to be appropriated under paragraph (1) for the procurement of defense articles, defense services, or design and construction services that are not sold by the United States Government under the Arms Export Control Act (22 U.S.C. 2751 et seq.).

(4) Procurement in Taiwan

Of the amounts authorized to be appropriated for Foreign Military Financing and made available for Taiwan, not more than 15 percent of the amount made available for each fiscal year may be available for the procurement by Taiwan in Taiwan of defense articles and defense services, including research and development, as agreed by the United States and Taiwan.

(i) Sunset provision

Assistance may not be provided under this section after September 30, 2032.

(Pub. L. 117-263, div. E, title LV, § 5502, Dec. 23, 2022, 136 Stat. 3292; Pub. L. 118-31, div. A, title XIII, § 1308(a), Dec. 22, 2023, 137 Stat. 494.)

Editorial Notes

REFERENCES IN TEXT

The Taiwan Relations Act, referred to in subsec. (b), is Pub. L. 96-8, Apr. 10, 1979, 93 Stat. 14, which is classified generally to chapter 48 (§3301 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 3301 of this title and Tables.

The Arms Export Control Act, referred to in subsecs. (c) and (h)(3), is Pub. L. 90-629, Oct. 22, 1968, 82 Stat. 1320, which is classified principally to chapter 39 (§2751 et seq.) of this title. For complete classification of this Act to the Code, see Short Title note set out under section 2751 of this title and Tables.

AMENDMENTS

2023—Subsec. (e)(2)(A). Pub. L. 118-31, § 1308(a)(1), inserted “not later than 1 year after December 22, 2023, and” before “not less than annually”.

Subsec. (f)(2)(N) to (P). Pub. L. 118-31, § 1308(a)(2), added subpars. (N) to (P).

Statutory Notes and Related Subsidiaries

SHORT TITLE

Pub. L. 117-263, div. E, title LV, § 5501, Dec. 23, 2022, 136 Stat. 3292, provided that: “This subtitle [subtitle A (§§ 5501-5540) of title LV of div. E of Pub. L. 117-263, enacting this chapter, amending sections 2318, 2321h, 2321j, and 2348a of this title, and enacting provisions set out as notes under this section] may be cited as the ‘Taiwan Enhanced Resilience Act’.”

Pub. L. 117-263, div. E, title LV, § 5526, Dec. 23, 2022, 136 Stat. 3324, provided that: “This part [part 5 (§§ 5526-5535) of subtitle A of title LV of div. E of Pub. L. 117-263, enacting subchapter IV of this chapter] may be cited as the ‘Taiwan Fellowship Act’.”

MILITARY CYBERSECURITY COOPERATION WITH TAIWAN

Pub. L. 118-31, div. A, title XV, § 1518, Dec. 22, 2023, 137 Stat. 549, provided that:

“(a) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act [Dec. 22, 2023], the Secretary of Defense, acting through the Under Secretary of Defense for Policy, with the concurrence of the Secretary of State and in coordination with the Commander of the United States Cyber Command and the Commander of the United States Indo-Pacific Command, shall seek to engage with appropriate officials of Taiwan for the purpose of cooperating with the military forces of Taiwan on defensive military cybersecurity activities.

“(b) IDENTIFICATION OF ACTIVITIES.—In cooperating on defensive military cybersecurity activities with the military forces of Taiwan under subsection (a), the Secretary of Defense may carry out efforts to identify cooperative activities to—

“(1) defend military networks, infrastructure, and systems;

“(2) counter malicious cyber activity that has compromised such military networks, infrastructure, and systems;

“(3) leverage United States commercial and military cybersecurity technology and services to harden and defend such military networks, infrastructure, and systems; and

“(4) conduct combined cybersecurity training activities and exercises.

“(c) BRIEFINGS.—

“(1) REQUIREMENT.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense, in coordination with the Secretary of State, shall provide to the appropriate congressional committees a briefing on the implementation of this section.

“(2) CONTENTS.—The briefing under paragraph (1) shall include the following:

“(A) A description of the feasibility and advisability of cooperating with the Ministry of Defense of Taiwan on the defensive military cybersecurity activities identified pursuant to subsection (b).

“(B) An identification of any challenges and resources that would be needed to address to conduct such cooperative activities.

“(C) An overview of efforts undertaken pursuant to this section.

“(D) Any other matters the Secretary determines relevant.

“(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ‘appropriate congressional committees’ means—

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

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

SENSE OF CONGRESS ON TAIWAN DEFENSE RELATIONS

Pub. L. 118–31, div. A, title XIII, §1307, Dec. 22, 2023, 137 Stat. 493, provided that: “It is the sense of Congress that—

“(1) the United States’ one China policy, as guided by the Taiwan Relations Act (Public Law 96–8; 22 U.S.C. [3301] et seq.), the Three Communiques between the United States and the People’s Republic of China, and the Six Assurances provided by the United States to Taiwan in July 1982, is the foundation for United States-Taiwan relations;

“(2) as set forth in the Taiwan Relations Act, the United States decision to establish diplomatic relations with the People’s Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means, and that any effort to determine the future of Taiwan by other than peaceful means, including boycotts and embargoes, is of grave concern to the United States;

“(3) the increasingly coercive and aggressive behavior of the People’s Republic of China toward Taiwan is contrary to the expectation of the peaceful resolution of the future of Taiwan;

“(4) as set forth in the Taiwan Relations Act, the capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan should be maintained;

“(5) the United States should continue to support the development of capable, ready, and modern defense forces necessary for Taiwan to maintain sufficient defensive capabilities, including by—

“(A) supporting acquisition by Taiwan of defense articles and services through foreign military sales, direct commercial sales, and industrial cooperation, with an emphasis on capabilities that support an asymmetric strategy;

“(B) ensuring timely review of and response to requests of Taiwan for defense articles and services;

“(C) conducting practical training and military exercises with Taiwan that enable Taiwan to maintain sufficient defensive capabilities, as described in the Taiwan Relations Act;

“(D) exchanges between defense officials and officers of the United States and Taiwan at the strategic, policy, and functional levels, consistent with the Taiwan Travel Act (Public Law 115–135; 132 Stat. 341), especially for the purposes of—

“(i) enhancing cooperation on defense planning;

“(ii) improving the interoperability of the military forces of the United States and Taiwan; and

“(iii) improving the reserve force of Taiwan;

“(E) cooperating with Taiwan to improve its ability to employ military capabilities in asymmetric ways, as described in the Taiwan Relations Act; and

“(F) expanding cooperation in humanitarian assistance and disaster relief; and

“(6) the United States should increase its support to a free and open society in the face of aggressive efforts by the Government of the People’s Republic of China to curtail or influence the free exercise of rights and democratic franchise.”

Pub. L. 117–263, div. E, title LV, §5512, Dec. 23, 2022, 136 Stat. 3308, provided that: “It is the sense of Congress that—

“(1) the Taiwan Relations Act (Public Law 96–8; 22 U.S.C. [3301] et seq.) and the Six Assurances provided by the United States to Taiwan in July 1982 are the foundation for United States-Taiwan relations;

“(2) as set forth in the Taiwan Relations Act, the United States decision to establish diplomatic relations with the People’s Republic of China rests upon the expectation that the future of Taiwan will be determined by peaceful means, and that any effort to determine the future of Taiwan by other than peaceful means, including boycotts and embargoes, is of grave concern to the United States;

“(3) the increasingly coercive and aggressive behavior of the People’s Republic of China toward Taiwan is contrary to the expectation of the peaceful resolution of the future of Taiwan;

“(4) as set forth in the Taiwan Relations Act, the capacity to resist any resort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people on Taiwan should be maintained;

“(5) the United States should continue to support the development of capable, ready, and modern defense forces necessary for Taiwan to maintain sufficient defensive capabilities, including by—

“(A) supporting acquisition by Taiwan of defense articles and services through foreign military sales, direct commercial sales, and industrial cooperation, with an emphasis on capabilities that support an asymmetric strategy;

“(B) ensuring timely review of and response to requests of Taiwan for defense articles and services;

“(C) conducting practical training and military exercises with Taiwan that enable Taiwan to maintain sufficient defensive capabilities, as described in the Taiwan Relations Act;

“(D) exchanges between defense officials and officers of the United States and Taiwan at the strategic, policy, and functional levels, consistent with the Taiwan Travel Act (Public Law 115–135; 132 Stat. 341), especially for the purposes of—

“(i) enhancing cooperation on defense planning;

“(ii) improving the interoperability of the military forces of the United States and Taiwan; and

“(iii) improving the reserve force of Taiwan;

“(E) cooperating with Taiwan to improve its ability to employ military capabilities in asymmetric ways, as described in the Taiwan Relations Act; and

“(F) expanding cooperation in humanitarian assistance and disaster relief; and

“(6) the United States should increase its support to a free and open society in the face of aggressive efforts by the Government of the People’s Republic of China to curtail or influence the free exercise of rights and democratic franchise.”

§ 3352. Establishment

Subject to section 2321h of this title, the President may establish a regional contingency stockpile for Taiwan that consists of munitions and other appropriate defense articles.

(Pub. L. 117–263, div. E, title LV, §5503(b), Dec. 23, 2022, 136 Stat. 3298.)