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**UNITED STATES-TAIWAN INITIATIVE
ON 21ST-CENTURY TRADE FIRST
AGREEMENT IMPLEMENTATION ACT**

LEGISLATIVE TEXT AND EXPLANATORY STATEMENT
TO ACCOMPANY H.R. 4004

COMMITTEE ON FINANCE
UNITED STATES SENATE

RON WYDEN, *Chairman*
MIKE CRAPO, *Ranking Member*



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I. LEGISLATIVE TEXT

AN ACT

To approve and implement the Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States regarding Trade between the United States of America and Taiwan, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act”.

SEC. 2. FINDINGS.

Congress finds the following:

(1) As a leading democracy, Taiwan is a key partner of the United States in the Indo-Pacific region.

(2) The United States and Taiwan share democratic values, deep commercial and economic ties, and strong people-to-people connections. Those links serve as the impetus for expanding engagement by the United States with Taiwan.

(3) Taiwan is the eighth-largest trading partner of the United States and the United States is the second-largest trading partner of Taiwan.

(4) Since 2020, the United States and Taiwan, under the auspices of the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO), have held an economic prosperity partnership dialogue to enhance economic and commercial ties between the United States and Taiwan, including with respect to supply chain security and resiliency, investment screening, health, science, and technology, and the digital economy.

(5) On June 1, 2022, the United States and Taiwan launched the United States-Taiwan Initiative on 21st-Century Trade to deepen our economic and trade relationship, advance mutual trade priorities based on shared values, promote innovation, and support inclusive economic growth for workers and businesses.

(6) On August 17, 2022, the United States and Taiwan announced the negotiating mandate for formal trade negotiations under the United States-Taiwan Initiative on 21st-Century Trade and agreed to seek high-standard commitments.

(7) Article I, section 8, clause 3 of the Constitution of the United States grants Congress authority over international trade. The President lacks the authority to enter into binding trade agreements absent approval from Congress.

(8) Congressional approval of the United States-Taiwan Initiative on 21st-Century Trade First Agreement will ensure that the agreement, and the trade relationship between the United States and Taiwan more broadly, will be durable. A durable trade agreement will foster sustained economic growth and give workers, consumers, businesses, farmers, ranchers, and other stakeholders assurance that commercial ties between the United States and Taiwan will be long-lasting and reliable.

SEC. 3. PURPOSE.

The purpose of this Act is—

(1) to approve and implement the Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States regarding Trade between the United States of America and Taiwan, done on June 1, 2023;

(2) to strengthen and develop economic relations between the United States and Taiwan for our mutual benefit;

(3) to lay the foundation for further cooperation to expand and enhance the benefits of the Agreement; and

(4) to establish transparency and consultation requirements with respect to Further Agreements.

SEC. 4. DEFINITIONS.

In this Act:

(1) **AGREEMENT.**—The term “Agreement” means the Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States regarding Trade between the United States of America and Taiwan approved by Congress under section 5.

(2) **APPROPRIATE CONGRESSIONAL COMMITTEES.**—The term “appropriate congressional committees” means—

(A) the Committee on Finance of the Senate; and

(B) the Committee on Ways and Means of the House of Representatives.

(3) **FURTHER AGREEMENT.**—The term “Further Agreement” means—

(A) any trade agreement, other than the Agreement approved by Congress under section 5, arising from or relating to the August 17, 2022, negotiating mandate relating to the United States-Taiwan Initiative on 21st-Century Trade; or

(B) any nonministerial modification or nonministerial amendment to the Agreement.

(4) **NEGOTIATING TEXT.**—The term “negotiating text” means any document that proposes the consideration, examination, or

adoption of a particular element or language in an international instrument.

(5) STATE LAW.—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.

(6) TRADE REPRESENTATIVE.—The term “Trade Representative” means the United States Trade Representative.

SEC. 5. APPROVAL OF AGREEMENT.

Congress approves the Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States regarding Trade between the United States of America and Taiwan, done on June 1, 2023.

SEC. 6. ENTRY INTO FORCE OF AGREEMENT.

(a) CONDITIONS FOR ENTRY INTO FORCE OF AGREEMENT.—The President may provide for the Agreement to enter into force not earlier than 30 days after the date on which the President submits to Congress a certification under subsection (c).

(b) CONSULTATION AND REPORT.—The President, not later than 30 days before submitting a certification under subsection (c), shall—

- (1) consult with the appropriate congressional committees;
- (2) submit to the appropriate congressional committees a report that—

(A) explains the basis of the determination of the President contained in that certification, including by providing specific reference to the measures the parties to the Agreement intend to use to comply with the obligations in the Agreement; and

(B) describes, including through the use of economic estimates and analyses, how entry into force of the Agreement will further trade relations between the United States and Taiwan and advance the interests of workers, consumers, businesses, farmers, ranchers, and other stakeholders in the United States; and

(3) answer in writing any questions that relate to potential compliance and implementation of the Agreement that are submitted by the appropriate congressional committees during the 15-day period beginning on the date of the submission of the report under paragraph (2).

(c) CERTIFICATION.—A certification under this subsection is a certification in writing that—

(1) indicates the President has determined Taiwan has taken measures necessary to comply with the provisions of the Agreement that are to take effect not later than the date on which the Agreement enters into force; and

(2) identifies the anticipated date the President intends to exchange notes or take any other action to notify Taiwan that the

United States has completed all procedures necessary to bring the Agreement into force.

(d) REPORT ON IMPLEMENTATION.—

(1) IN GENERAL.—Not later than 180 days after entry into force of the Agreement, the Trade Representative shall submit to the appropriate congressional committees a report providing an assessment of the implementation of the Agreement, including by identifying any provisions for which further progress is necessary to secure compliance.

(2) FORM.—The report required by paragraph (1) shall be submitted with any confidential business information clearly identified or contained in a separate annex.

(3) PUBLICATION.—Not later than 5 days after the report required by paragraph (1) is submitted to the appropriate congressional committees, the Trade Representative shall publish the report, with any confidential business information redacted, on a publicly available website of the Office of the United States Trade Representative.

SEC. 7. TRANSPARENCY AND CONSULTATION WITH RESPECT TO FURTHER AGREEMENTS.

(a) SENSE OF CONGRESS ON DEEPENING RELATIONSHIP WITH TAIWAN.—It is the sense of Congress that—

(1) the United States should continue to deepen its relationship with Taiwan; and

(2) any Further Agreements should be high-standard, enforceable, and meaningful to both the United States and Taiwan, as well as subject to robust requirements on public transparency and congressional consultation.

(b) ACCESS TO TEXTS OF FURTHER AGREEMENTS.—The Trade Representative shall provide to the appropriate congressional committees the following with respect to a Further Agreement:

(1) Negotiating text drafted by the United States prior to sharing the negotiating text with Taiwan or otherwise sharing the text outside the executive branch.

(2) Negotiating text drafted by Taiwan not later than 3 days after receiving the text from Taiwan.

(3) Any consolidated negotiating texts that the United States and Taiwan are considering, which shall include an attribution of the source of each provision contained in those texts to either the United States or Taiwan.

(4) The final text not later than 45 days before the Trade Representative makes the text public or otherwise shares the text outside the executive branch.

(c) REVIEW OF TEXTS.—

(1) BRIEFING.—The Trade Representative shall schedule a briefing with the appropriate congressional committees to discuss the texts provided under subsection (b).

(2) REVIEW.—The appropriate congressional committees shall have not less than—

(A) 2 business days prior to the briefing under paragraph (1) to review the texts provided under subsection (b); and

(B) 4 business days after the briefing to provide comments with respect to the texts before the Trade Representative transmits any such texts to Taiwan.

(3) ADDITIONAL TIME TO REVIEW UNITED STATES NEGOTIATING TEXT.—If, during the period specified in paragraph (2)(B), two Members of Congress who are not of the same political party and each of whom is the Chair or Ranking Member of one of the appropriate congressional committees jointly request additional time to review the negotiating text provided under subsection (b)(1), the Trade Representative shall not transmit the text to Taiwan for a period of 15 business days following the request, unless the request indicates less time is necessary or such Members issue a subsequent joint notification to the Trade Representative that they have concluded their review sooner.

(d) NOTIFICATION AND BRIEFING DURING NEGOTIATIONS.—The Trade Representative shall—

(1) not later than one business day after scheduling any negotiating round with respect to a Further Agreement, promptly notify the appropriate congressional committees and provide those committees with the dates and locations for the negotiating round;

(2) ensure that any individual described in section 104(c)(2)(C) of the Bipartisan Congressional Trade Priorities and Accountability Act of 2015 (19 U.S.C. 4203(c)(2)(C)) that attends a negotiating round is accredited as a member of the United States delegation during any such negotiating round; and

(3) provide daily briefings to the individuals described in paragraph (2) during any such negotiating round regarding the status of those negotiations, including any tentative agreement to accept any aspect of negotiating text.

(e) APPROVAL.—A Further Agreement shall not take effect unless—

(1) the President, at least 60 days before the day on which the President enters into the Further Agreement, publishes the text of the Further Agreement on a publicly available website of the Office of the United States Trade Representative; and

(2) a bill is enacted into law expressly approving the Further Agreement and, if necessary, making any required changes to United States law.

SEC. 8. RELATIONSHIP OF THE AGREEMENT TO UNITED STATES AND STATE LAW.

(a) RELATIONSHIP OF THE 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) INTERNAL REVENUE CODE.—The Agreement does not constitute a free trade agreement for purposes of section 30D(e)(1)(A)(i)(II) of the Internal Revenue Code of 1986.

(3) CONSTRUCTION.—Unless specifically provided for in this Act, nothing in this Act shall be construed—

(A) to amend or modify any law of the United States; or

(B) to limit any authority conferred under any law of the United States.

(b) RELATIONSHIP OF THE AGREEMENT TO STATE LAW.—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.

(c) EFFECT OF THE AGREEMENT WITH RESPECT TO PRIVATE REMEDIES.—No person other than the United States—

(1) shall have any cause of action or defense under the Agreement or by virtue of congressional approval thereof; 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.

II. SUMMARY AND BACKGROUND

A. PURPOSE AND SUMMARY

H.R. 4004, the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, approves the First Agreement between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States regarding Trade between the United States of America and Taiwan (First Agreement), sets forth the terms of its implementation, and imposes consultation and transparency requirements for any subsequent trade agreement with Taiwan that may arise out of the United States-Taiwan Initiative on 21st-Century Trade (Initiative).

The First Agreement of the Initiative is an international trade agreement with binding commitments between the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the United States (TECRO). It includes chapters on Customs Administration and Trade Facilitation, Good Regulatory Practices, Services Domestic Regulation, Anticorruption, and Small and Medium-Sized Enterprises (SMEs). None of the obligations in the First Agreement require any changes to existing U.S. law.¹ Moreover, the Administration has not submitted—and

¹ Consistent with existing precedent, the term “law” encompasses regulations. *See, e.g., United States v. Place*, 693 F.3d 219, 229 (1st Cir. 2012) (“[T]he most common meaning of the word

Congress has not approved—a Statement of Administrative Action highlighting any regulatory changes the executive branch considers necessary to implement the First Agreement. Nonetheless, Congressional approval is necessary because the First Agreement contains commitments regarding foreign commerce, including commitments typically found in comprehensive free trade agreements. The President’s Article II powers do not empower the President to enter the United States into such agreements. Rather, Article I, Section 8, clause 3 of the United States Constitution vests Congress with the authority to regulate commerce with foreign nations.

B. BACKGROUND AND NEED FOR LEGISLATION

The First Agreement of the Initiative was signed on June 1, 2023, by representatives of the AIT and TECRO. These negotiations were launched on June 1, 2022, and on June 7, 2022, USTR requested public comment on the Initiative. On August 17, 2022, the United States and Taiwan, under the auspices of AIT and TECRO, announced consensus on a negotiating mandate to address, at minimum, the following areas: (1) trade facilitation, (2) good regulatory practices, (3) anticorruption, (4) SMEs, (5) agriculture, (6) standards, (7) digital trade, (8) labor, (9) environment, (10) state-owned enterprises, and (11) non-market policies and practices.

The United States and Taiwan, under the auspices of AIT and TECRO, held in-person conceptual discussions for the Initiative in New York in November 2022 and a negotiating round in Taipei in January 2023. On May 18, 2023, USTR announced the conclusion of negotiations on the First Agreement.

USTR intends to commence negotiations of further agreements under the Initiative on additional topics described in the August 2022 negotiating mandate. This legislation approves and implements the First Agreement of the Initiative, lays out conditions for entry into force of the First Agreement, establishes transparency and consultation requirements with respect to Further Agreements, and clarifies that an approval bill is required for any Further Agreements under the Initiative.

C. LEGISLATIVE HISTORY

H.R. 4004 was introduced on June 12, 2023, and was referred to the House Committee on Ways and Means. The Committee on Ways and Means marked up H.R. 4004, the United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act, on June 13, 2023, and ordered the bill, as amended by the amendment in the nature of a substitute, favorably reported (with quorum being present).

On June 21, 2023, H.R. 4004 was passed in the House on a motion to suspend the rules and pass the bill, as amended, by voice vote.

¹ ‘law’ is quite broad, and for that reason the Supreme Court has said only ‘a clear showing of . . . legislative intent’ can overcome the ‘traditional understanding’ that ‘law’ encompasses regulations.’ (quoting *Chrysler Corp. v. Brown*, 441 U.S. 281, 295–96 (1979)).

On July 18, 2023, H.R. 4004 was passed in the Senate without amendment by Unanimous Consent.

III. EXPLANATION OF THE BILL

Section 1. Short title

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

The short title of this Act is the “United States-Taiwan Initiative on 21st-Century Trade First Agreement Implementation Act.”

Section 2. Findings

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Section 2 provides the findings of Congress. Congress finds that Taiwan is a key partner in the Indo-Pacific region and that Congressional approval of the first agreement reached under the United States-Taiwan Initiative on 21st-Century Trade will ensure that the agreement, and the trade relationship between the United States and Taiwan more broadly, will be durable and meaningful. Further, Congress finds that Article I, section 8, clause 3 of the United States Constitution grants Congress authority over international trade and that the President lacks the authority to enter into binding trade agreements absent approval from Congress.

Section 3. Purpose

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Section 3 establishes the purpose of the Act: (1) to approve and implement the Agreement between the United States and Taiwan that was signed on June 1, 2023; (2) to strengthen economic relations between the United States and Taiwan; (3) to lay the foundation for further bilateral engagement; and (4) to establish transparency and consultation requirements with respect to further trade negotiations with Taiwan.

Section 4. Definitions

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Section 4 defines terms used in the Act, including “Agreement” (the Agreement between the AIT and TECRO that was signed on June 1, 2023) and “Further Agreement” (any future trade agree-

ments under the U.S.-Taiwan Initiative on 21st-Century Trade negotiating mandate, or modifications or amendments to the Agreement). It defines “appropriate congressional committees” as the House Ways and Means Committee and the Senate Finance Committee. The term “negotiating text” means any document that proposes the consideration, examination, or adoption of a particular element or language in an international instrument.

Section 5. Approval of Agreement

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Section 5 provides Congressional approval for the Agreement between the AIT and TECRO that was signed on June 1, 2023.

REASON FOR THE PROVISION

The provision makes clear that the bill approves the Agreement. Such approval is required for any binding trade agreement to enter into force, and it increases the durability of this agreement with Taiwan.

Section 6. Entry into force of Agreement

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Section 6 lays out requirements on transparency, consultation, analysis, and certification that the Administration must meet before and after entry into force of the Agreement.

At least 60 days before entry into force, the President must (1) consult with the appropriate congressional committees; (2) submit a report explaining the parties’ readiness to comply with the Agreement and describing the anticipated benefits for U.S. interests and U.S.-Taiwan trade relations; and (3) answer the committees’ questions regarding compliance and implementation.

Then, at least 30 days before entry into force, the President must submit to Congress a certification (1) indicating that Taiwan has taken measures necessary to comply with the agreement and (2) identifying the date the President intends to notify Taiwan that the United States is prepared for entry into force.

Not later than 180 days after entry into force, the United States Trade Representative (USTR) must submit to Congress a report providing an assessment of the implementation of the Agreement. The report shall be made public, with any confidential business information redacted.

REASON FOR THE PROVISION

These requirements will help ensure that Taiwan fully complies with the Agreement and that Members of Congress and the public

have appropriate and timely access to information and analysis regarding Taiwan's compliance and the effects of the Agreement.

Section 7. Transparency and consultation with respect to Further Agreements

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Section 7 expresses the sense of Congress that the United States should continue to deepen its relationship with Taiwan and that any Further Agreements should be high-standard, enforceable, meaningful to both the United States and Taiwan, and subject to robust transparency and consultation requirements. It also establishes statutory requirements for transparency and consultation with respect to Further Agreements. Specifically, USTR must provide the appropriate congressional committees with ongoing access to negotiating text drafted by both the United States and Taiwan. USTR must also consult with the committees on the negotiating text and give them an opportunity to provide comments before U.S. text is shared with Taiwan. In addition, USTR must promptly notify the committees when negotiating rounds are scheduled and provide briefings during the rounds.

This section provides that no Further Agreement with Taiwan shall take effect unless (1) the President makes the text publicly available at least 60 days before signing and (2) a bill is enacted into law expressly approving the Further Agreement and making any necessary changes to U.S. law.

REASON FOR THE PROVISION

Consultations with Congress are an essential part of the trade policy-making process, given that executive branch powers in this area are delegated by Congress. The Committee continues to expect the executive branch to consult fully with both the Senate Finance Committee and the House Ways and Means Committee, including by making available all relevant negotiating text.

This provision also clarifies that Further Agreements under the Initiative require a vote in Congress to provide legal certainty to the United States and Taiwan.

Furthermore, the Committee considers public transparency critical to the development and implementation of U.S. trade policy. Requiring the text of any Further Agreement to be public for at least 60 days before signing will help ensure that the American public has an adequate opportunity to scrutinize it and evaluate its contents.

Section 8. Relationship of the Agreement to United States and State law

PRESENT LAW

No provision.

EXPLANATION OF THE PROVISION

Consistent with prior implementing bills, Section 8 establishes the relationship of the Agreement to Federal and State law. Section 8 reflects that no changes in existing federal law, rules, regulations, or orders are necessary or will follow from approval of the Agreement.

Section 8(a) clarifies that no provision of the Agreement will be given effect under domestic law if it is inconsistent with U.S. Federal law. Further, this section makes clear that the Agreement is not a “free trade agreement” for the purposes of section 30D(e)(1)(A)(i)(II) of the Internal Revenue Code of 1986.

Section 8(b) clarifies that no State law may be declared invalid for being inconsistent with the Agreement, unless the United States itself brings a legal action to have the State law declared invalid.

Section 8(c) precludes any private right of action based on the provisions of the Agreement.

REASON FOR THE PROVISION

This provision addresses the operation of the Agreement relative to federal and state law, as well as private remedies. It makes clear that no provision of the Agreement will be given effect if it is inconsistent with federal law and that entry into force of the Agreement creates no private remedy.

Section 8(a)(2) makes clear that the agreement does not constitute a free trade agreement for purposes of section 30D(e)(1)(A)(i)(II) of the Internal Revenue Code.

EFFECTIVE DATE

The effective date is upon enactment of the law.

