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The Taiwan Security Enhancement Act and Underlying Issues in U.S. Policy

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Summary

Taiwan has become an increasingly controversial issue in U.S.-China relations, and has attracted more attention from Congress. Some Members believe that China poses more of a threat now to Taiwan than in the past, while they see Taiwan's ability to defend itself as having eroded over time. Questions have also been raised about U.S. policy toward Taiwan, and particularly about the consistency and credibility of U.S. defense commitments as spelled out in P.L. 96-8, the Taiwan Relations Act. In response to these growing concerns, Members of the 106th Congress have introduced the Taiwan Security Enhancement Act (S. 693, H.R. 1838), legislation to enhance U.S.-Taiwan military communication and cooperation, and strengthen Taiwan's security. The Administration says it shares the desire to bolster Taiwan, but sees the legislation as unnecessarily provocative and potentially harmful to U.S. security interests. This report reviews what the legislation does, discusses its political implications and its status, and assesses how the measure compares with current U.S. policy.

Background

Since 1979, when the United States ended official relations with Taiwan and established official relations with the People's Republic of China, U.S. policy toward Taiwan, including arms sales policy, has been governed by P.L. 96-8, the Taiwan Relations Act (TRA), and by other U.S. policy statements about Taiwan contained in three communiqués the United States has signed with China since 1972. The TRA set forth a comprehensive prescription for how unofficial U.S. relations were to be conducted with Taiwan after official relations were severed. The Taiwan Security Enhancement Act (TSEA) is an attempt to expand upon and make more explicit the provisions of one particular section of the TRA — Section 3, which deals with U.S. defense commitments. Section 3 of the TRA is non-specific about the defense articles and services the United States will provide to Taiwan, merely calling for “such defense articles and services...as may be necessary.” It reads as follows:

Sec. 3.¹ (a) In furtherance of the policy set forth in section 2 of this Act, 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.²

(b) 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) 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.³

Some Members maintain that in the two decades since the TRA was enacted, several trends have helped erode Taiwan's ability to defend itself, and U.S. policy should be adjusted accordingly. In 1995, for instance, after the Clinton Administration yielded to heavy congressional pressure and issued a visa for Taiwan's president to make a private visit to the United States, an irate China responded by conducting an unprecedented series of live-fire missile exercises in the Taiwan Strait. The United States responded to the provocation in 1996 by sending two carrier battle groups to the area. In June 1998, President Clinton sparked renewed controversy during his summit trip to China when he made a public statement that has come to be known as the "Three Noes," raising questions about whether long-standing U.S. policy toward Taiwan had changed.⁴ In February 1999, the U.S. Department of Defense issued a congressionally-mandated report assessing the military balance between Taiwan and China. The report concluded that in light of improvements in offensive military capabilities, by the year 2005, China will have acquired the ability "to attack Taiwan with air and missile strikes which would degrade key military facilities and damage the island's economic infrastructure."⁵

¹22 U.S.C. 3302.

²Sec. 23 of the International Security Assistance Act of 1979 (P.L. 96-92; 93 Stat. 710) provided authorization for the President to transfer to Taiwan war reserve material and other property during calendar years 1980 and 1981. For text of sec. 23, see *Legislation on Foreign Relations Through 1994*, vol. I-A, page 504.

³Taiwan Relations Act (P.L. 96-8), Sec. 3. 22 USC 3302.

⁴According to a White House transcript of his remarks during a roundtable discussion in Shanghai on June 30, 1998, the President responded to a question about Taiwan saying: "I had a chance to reiterate our Taiwan policy, which is that we don't support independence for Taiwan, or two China's, or one Taiwan-one China. And we don't believe that Taiwan should be a member in any organization for which statehood is a requirement. So I think we have a consistent policy." Some Members believe that the President's statement went beyond earlier U.S. statements regarding Taiwan. See CRS Report RL30341, *China/Taiwan: Evolution of the "One-China" Policy*, by Shirley Kan.

⁵*The Security Situation in the Taiwan Strait*, Report to Congress pursuant to the FY1999 Appropriations Bill. The text of the report can be found at <http://www.usia.gov/regional/ea/uschina/twnstr.htm>

Along with these developments since 1995, concerned observers are disturbed that China continues to insist publicly on its right to use force against Taiwan – most recently, in a “white paper” the Chinese government issued on February 21, 2000. They further believe that China has demonstrated increasing hostility to Taiwan — not only in the 1995-96 missile exercises, but in a subsequent large military build-up on the Chinese mainland opposite Taiwan. They claim that U.S. administrations have been too cautious over the years in making decisions concerning arms sales to Taiwan, and that the current Administration prefers to “curry favor with Beijing,” as the Chairman of the Senate Foreign Relations Committee put it, at Taiwan’s expense.⁶ Finally, some are concerned that Taiwan’s military is increasingly anemic, out of step with international standards, and disadvantaged by its inability to conduct joint military exercises or participate in military exchanges with other countries because of Beijing’s objections. H.R. 1838 and S. 693 address these perceived shortcomings and obstacles.

Overview of H.R. 1838 and S. 693, and Comparison with Current Policy

As introduced, H.R. 1838 (introduced by Representatives Delay, Gilman, and others) and S. 693 (introduced by Senators Helms and Torricelli) were almost identical. But on October 26, 1999, the full House International Relations Committee marked up H.R. 1838 and, by a vote of 32-6, ordered it reported with an amendment in the nature of a substitute (H. Rept. 106-423, Pt. 1). The full House passed this amended version on February 1, 2000, by a vote of 341 - 70. The substitute, a compromise version which Chairman Gilman referred to as the result of lengthy negotiations between himself and Representatives Bereuter, Gejdenson, and Cox, made some important changes in the original House version.⁷ The Senate bill, S. 693, was the subject of Senate Foreign Relations Committee hearings on August 4, 1999. No markup has been scheduled yet, and reports are that the bill is being held for a range of concerns.

Sections 1 and 2. Both bills are called the Taiwan Security Enhancement Act (Section 1) and contain a number of findings about Taiwan and China (Section 2). S. 693 provides details about China’s military build-up, taken from a 1999 Pentagon report on the military balance in the Taiwan Strait.⁸ The House International Relations Committee toned down these findings in the substitute to H.R. 1838, removing details about China’s military build-up and substituting a series of statements about current U.S. obligations under the Taiwan Relations Act. Also, the substitute declared that “it is in the national interested of the United States to eliminate ambiguity” in U.S. policy toward Taiwan.⁹

Section 3. S. 693 makes several “sense of Congress” pronouncements concerning Taiwan’s special status, including statements that Taiwan should receive additional slots at the U.S. National Defense University and other senior service schools, and should have

⁶Statement by Senator Jesse Helms, Chairman of the Senate Foreign Relations Committee and a sponsor of S. 693, in opening an August 4, 1998 Committee hearing on the legislation.

⁷Representative Bereuter is Chairman of the Committee's Asia/Pacific Subcommittee; Representative Gejdenson is the Committee's ranking minority Member; Representative Cox, not a Committee Member, is Chairman of the House Republican Policy Committee.

⁸See *The Security Situation in the Taiwan Strait*, February, 1999.)

⁹Some on the Committee objected to making U.S. policy more express. Representative Tom Lantos, for instance, stated that in the case of the U.S. policy on Taiwan, “ambiguity is a virtue.”

“full and timely access to price and availability data” for defense goods and services. Section 3 of the substitute version of H.R. 1838 mandates these things.

Section 4 and 5(a). Sections 4 and 5(a) of S. 693 contain several mandates that go beyond current U.S. policy toward Taiwan. Although the substitute version of H.R. 1838 makes minor changes, the provisions are substantially similar in both bills:

- an increase in technical staff for the AIT office in Taiwan, with the caveat that this be upon a request from the Defense Security Cooperation Agency;
- an annual report to Congress detailing Taiwan’s defense requests, needs, and justifications for U.S. decisions on sale of defense articles to Taiwan;
- a finding that Taiwan’s defense needs (and not the 1982 Communique on arms sales to Taiwan or other U.S. policy documents) are to be the sole basis of determining the defense articles and services to be offered to Taiwan.

Section 5(b) - (h). It is from Section 5(b) and afterward that the substitute version of H.R. 1838 differs most from the original version and from S. 693.

Training/military exchanges. Section 5(b) of both measures requires the Secretary of Defense to develop and/or implement a plan for enhanced military exchanges and operational training with senior military officers in Taiwan within 210 days of enactment, and to submit that plan to Congress within 180 days of enactment. (S. 693 requires the submission of either a classified or unclassified version; the House substitute requires the submission of both.) Although the United States has contact with and provides some training for Taiwan military personnel, this appears to be limited to training on weapons doctrine, site visits, and other military contacts related to weapons sales. The United States does not now conduct joint exercises with Taiwan or joint operational training.

Reporting requirements. The House substitute contains additional reporting language, not found in S. 693, requiring the Secretary of Defense to submit an annual report on the security situation in the Taiwan Strait. The first such report, in both classified and unclassified form, is to be submitted not later than 45 days after enactment of the Act. The report is to include specific assessments of military threats to Taiwan, and an assessment of the steps Taiwan has taken.

Direct military communications. S. 693 and the original text of H.R. 1838 require the United States to establish secure direct communications between the U.S. Pacific Command and Taiwan's military command. The House substitute changed this language to direct the Secretary of Defense to "certify" to relevant congressional committees that such communications exist between U.S. and Taiwan armed forces.

Weapons sales and military assistance. Both bills originally established general guidelines for U.S. defense cooperation with Taiwan, and provided specific authorization President for specific weapons systems for the United States to transfer to Taiwan. The House substitute deleted all this language (Section 5(d) - (g)). There are no weapons systems mentioned now in H.R. 1838.

S. 693 still contains this language, much of which is general — mentioning ground-based and sea-based systems, reconnaissance and communications systems, and anti-submarine warfare (ASW) systems, for instance, without giving further specifics. In a

number of cases, the United States already has sold to Taiwan systems that fall under these general rubrics. For instance, the United States has sold the Patriot (modified PAC-3) system to Taiwan, which is a ground-based missile defense system with limited anti-missile capabilities, and also Taiwan S-70 Sikorsky helicopters and S2E Grumman maritime patrol aircraft, both of which are airborne ASW systems. (The United States has not been willing to sell Taiwan the P-3 Orion, a longer-range airborne ASW system, although some recent reports suggest that the United States may be rethinking that position. Although Taiwan has sought these planes in the past, one recent report is that Taiwan has decided to use helicopters for its fixed-wing ASW mission.)¹⁰ In four instances, S. 693 is more specific, mentioning diesel-powered submarines, AIM-120 AMRAAM air-to-air missiles, AWACS airborne warning systems, and Aegis destroyers. The United States has not been willing to sell Taiwan these systems to date, and a decision to do so could be considered a significant upgrade of U.S. military assistance to Taiwan.

Section 6. Found only in the House substitute as reported by the Committee, Section 6 of H.R. 1838, amended, requires the Secretary of Defense to submit, within 180 days of enactment of the Act, an additional report (classified and unclassified versions) on the U.S. ability to respond to a major military contingency "where U.S. interests on Taiwan are at risk." The report, to be "updated as appropriate," specifies "description of [U.S.] planning on the national, operational and tactical levels."

Contrasting Views

Both the original and substitute versions of the TSEA have opponents. The Clinton Administration opposes both versions, saying that the bill "could have serious, unintended negative consequences that would weaken Taiwan's security and impinge on [U.S.] security interests in the region."¹¹ The Administration also maintains that the TSEA's specificity on military matters constitutes congressional interference in the President's constitutional authority to make military decisions as Commander-in-Chief. The Pentagon doubtless finds the reporting requirements of the House substitute onerous. The Administration has expressed particular concern about the TSEA's plan for "operational training and exchanges of [U.S.-Taiwan military] personnel" (sec. 5(b), H.R. 1838 and S. 683), and the establishment of "secure direct communications" (sec. 5(c), S. 693) between the two militaries. These portions of the bill, the Administration maintains, are more suggestive of a military alliance than is compatible with U.S.-Taiwan unofficial relations.¹² The Administration also objects to S. 693's specific mention of ballistic missile defense and early warning radar (sec. 5(d)) as items that the President should consider selling to Taiwan, saying that sale of these systems is premature at this time.

¹⁰World Military and Civil Aircraft Briefing, Teal Group Corporation, March 1999, p. 12.

¹¹Testimony of Stanley Roth, Assistant Secretary of State for East Asian and Pacific Affairs, before the Senate Foreign Relations Committee on August 4, 1999.

¹²As part of the decision to establish official relations with China and break official relations with Taiwan, the United States had to terminate its defense alliance with Taiwan, the U.S. Mutual Defense Treaty. In 1979, the United States gave Taiwan the one-year notification of termination required by the Treaty; the Treaty was officially terminated on January 1, 1980.

The Administration's concerns are shared by some Members who believe that current U.S. arms sale policies are sufficient to meet Taiwan's needs, and that additional weapons sales and other measures are both unnecessary and needlessly provocative to U.S.-China relations. Representative Bereuter, Chairman of the House International Relations Committee's Asia/Pacific Subcommittee, maintains that the most recent U.S. arms sales approved for Taiwan already provide for early-warning radar for missile launch detection, upgraded Patriot 3 anti-missile batteries, and new equipment intended to ensure the technological superiority of the Taiwanese air force over its Chinese counterpart.¹³ The Administration also reportedly is discussing with Taiwan the possible sale of P-3 Orion aircraft and advanced Aegis radar for battleships.¹⁴ During mark-up, Representatives Lantos and Salmon both argued against the bill's specificity, and said that the Taiwan Relations Act was a sufficient directive for U.S. policy. Representative Lantos stated his belief that the motivations behind introduction of the legislation were purely political, designed to put the President in a difficult position.

Implications and Prospects

More important than the TSEA's practical implications are its political implications. The Administration's objections notwithstanding, the current language of S. 693 places no requirements on the President to sell specific weapons to Taiwan, merely authorizing him to make the specified sales. But under the TRA, the President already has broad authority to make available to Taiwan any type of U.S. defense equipment he deems necessary; in other words, current U.S. law places no exclusions on the types of defense articles and services that can be made available to Taiwan.

Congressional and other advocates of the new legislation argue, however, that no U.S. President yet has chosen to make available to Taiwan the specific kinds of defense articles and services that S. 693 and H.R. 1838 describe. The reason no President has done so, they contend, has far more to do with political considerations than with practical calculations about Taiwan's defense needs. Among these political considerations are: China's claims of sovereignty over Taiwan and its objections to U.S. arms sales; U.S. commitments in the 1982 Joint Communiqué on arms sales to Taiwan; the fact that the United States has neither an official relationship nor a defense treaty with Taiwan; and the potential implications of U.S. arms sales for independence sentiments in Taiwan. These same political considerations are operative in considering those portions of the TSEA that do mandate Executive Branch action, particularly where those provisions imply an operational linkage to weapons sales decisions and military contacts with Taiwan that goes beyond the character of current U.S. sales (sec. 4(b) and 5(c)). In essence, the TSEA places increased congressional pressure on the President to be more pro-active and aggressive in decisions about Taiwan's defense, but may not change the prevailing political dynamic surrounding arms sales to Taiwan.

¹³“White House Opposes Bill on Taiwan; Business Lobbyists Join Bid to Stop Security Measure That Could Anger China,” in *Washington Post*, October 3, 1999, p. A26.

¹⁴*Ibid.*