

# TAIWAN RELATIONS ACT: TIME FOR A CHANGE?

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## THE TAIWAN RELATIONS ACT AT 35 YEARS: THE PATH AHEAD

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### Policy Recommendations

- There is no need at present to revise the TRA, but close, candid, and continuous consultations between the United States and Taiwan must be maintained.
- Washington should explicitly take Chinese intentions and capabilities into account when assessing Taiwan's defense needs, and Beijing ought to be reminded periodically of the linkage between its military posture and Taipei's defense requirements.
- The United States should regularly remind China of U.S. obligations to Taiwan under the terms of the TRA.
- Consistent with the TRA, the United States should continue to help Taiwan obtain meaningful participation in international organizations.

Recommendations continued on next page

April 10, 2014, marks the 35th anniversary of the Taiwan Relations Act, the U.S. legislation providing the legal underpinning for American ties with Taiwan. The Wilson Center's Asia Program is pleased to present this series of four policy briefs, each of which offers recommendations designed to ensure that the TRA remains relevant to the policy challenges of the 21st century.

### Policy Recommendations (continued)

- Taiwan should actively cooperate with the United States on an issue-by-issue basis on measures beneficial to regional stability, such as disaster relief under U.S. leadership and coordination.
- A strong U.S.-Taiwan relationship can contribute to improving cross-strait relations, while Taiwan for its part needs to further generate a domestic consensus on the most viable approaches for dealing with China.

Taiwan's relations with the United States faced severe challenges during the 1970s: In 1971, the seat of the Republic of China (ROC) in the United Nations was replaced by the People's Republic of China (PRC). In 1972, President Richard Nixon visited Beijing and negotiated the Shanghai Communiqué with Zhou Enlai. On December 15, 1978, President Jimmy Carter announced the decision to establish official relations with China, effective on January 1, 1979.

The U.S. Congress, in the meantime, emphasized the importance of the continuation of relations between the United States and Taiwan, and passed the Taiwan Relations Act (Public Law 96-8) barely two weeks after its introduction. President Carter signed it into law on April 10, 1979, and this act has guided U.S. policy toward Taiwan ever since. On TRA's 35 birthday, this policy brief aims to provide an evaluation of this important act, highlight its significance, and examine challenges and opportunities, from Taiwan's perspective, in the years to come. While facing changing realities in the Asia-Pacific, both the United States and Taiwan need to recommit to each other with shared goals.

### THE TAIWAN RELATIONS ACT AND TAIWAN'S RESPONSE

When the Carter administration made the decision to normalize relations with China in

late 1978, Taiwan was caught by surprise by the short notice—only seven hours prior to President Carter's official announcement. From Taiwan's perspective, the termination of official diplomatic ties and of the Mutual Defense Treaty with the United States was unacceptable. On December 16, 1978, ROC President Chiang Ching-kuo stated that the decision made by the United States, which represented nothing less than the casual abandonment of an ally, caused harm to the government and people on Taiwan, and to the free world. Taiwan bitterly realized United States needs for normalization with China due to strategic concerns, but President Chiang insisted that "five principles" must govern links between the United States and Taiwan: "reality, continuity, security, legality, and governmentality." This suggested that the United States must not ignore its continuing responsibilities to the ROC, including treaties, agreements, and defense obligations, because these were essential to Taiwan's security and to peace and stability in the western Pacific area. On top of that, Chiang was keen to maintain government-to-government ties with the United States as a means to restore the Kuomintang's (KMT) legitimacy, but this hope was rejected by the American side.

Meanwhile, the U.S. Congress was dissatisfied with the Carter administration for its lack of consultation before the decision to cut formal ties with Taipei. As a result, the Congress

drafted its own text and passed the TRA to guide unofficial relations with Taiwan in the face of the normalization of U.S.-China relations. The U.S. Congress heedfully noted the strategic importance of Taiwan and the well-being of the Taiwanese people. As indicated in the TRA, the purpose of this act was and is twofold: “To help maintain peace, security, and stability in the Western Pacific and to promote the foreign policy of the United States by authorizing the continuation of commercial, cultural, and other relations between the people of the United States and the people on Taiwan.” Three issue areas in the TRA particularly caught Taiwan’s attention.

### **Bridging The Security Gap**

Sections 2 and 3 of the TRA feature U.S. security concerns over Taiwan. To deal with external threats to Taiwan, Section 2 (b) states that any effort other than peaceful means to determine Taiwan’s future is considered “a threat to the peace and security of the Western Pacific area and of grave concern to the United States”; and that it is U.S. policy “to maintain the capacity of the United States 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.”

In line with Section 2, Section 3 of the TRA reads: “the United States will make available to Taiwan such defense articles and defense services . . . necessary to enable Taiwan to maintain a sufficient self-defense capability.” In addition, 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.” Finally, the president and the Congress “shall determine . . . appropriate action by the United States in response to any such danger.”

In addition to threats from abroad, the TRA also expressed the hope for an improvement

in human rights conditions in Taiwan. Section 2 (c) reads: “Nothing contained in this Act shall contravene the interest of the United States in human rights, especially with respect to the human rights of all the approximately eighteen million inhabitants of Taiwan. The preservation and enhancement of the human rights of all the people on Taiwan are hereby reaffirmed as objectives of the United States.”

These two sections partially met Taiwan’s expectations, especially since President Chiang saw arms sales as an indication of a continued U.S. willingness to safeguard Taiwan from Chinese coercion. The article on human rights protection led Taiwan to begin its transition to democracy in a gradual fashion throughout the 1980s, although this might not have been in the KMT’s interests.

### **Continuing Economic And Societal Ties**

Section 2 (a) of the TRA expresses U.S. willingness to continue economic and cultural ties with the people on Taiwan. To facilitate interactions, the United States decided to establish the American Institute in Taiwan (AIT) under Section 6 of the TRA. For Taiwan, Section 10 of the TRA stipulates that Taiwan can have the same number of offices as it previously operated in the United States prior to January 1, 1979. Taiwan then founded the Coordination Council for North American Affairs (CCNAA), with its main representative office in Washington, D.C., and 12 other offices in the United States.

The establishment of AIT and CCNAA had not met Chiang Ching-kuo’s wish to maintain government-to-government ties with the United States. Nonetheless, on February 15, 1979, he asserted that the ROC government had done its utmost to negotiate with the United States, and the establishment of the “unofficial” CCNAA was deemed an undesirable necessity

to safeguard the interests of the state and the people. The CCNAA in Washington served as an important vehicle for the United States and Taiwan to exchange views during the 1980s over arms sales and other issues.

**Securing Taiwan’s Legal Status**

Along with these security and economic elements, Section 4 (b) of the TRA stipulates that Taiwan be treated as a country or state under U.S. law. In addition, Section 4 (d) states that “Nothing in this Act 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.” Though this was designed to help Taiwan maintain its membership in the International Monetary Fund (IMF) and World Bank, these efforts proved futile in 1980 with China’s accession to full member status in both organizations.

**EVALUATION OF TRA ON ITS 35th BIRTHDAY**

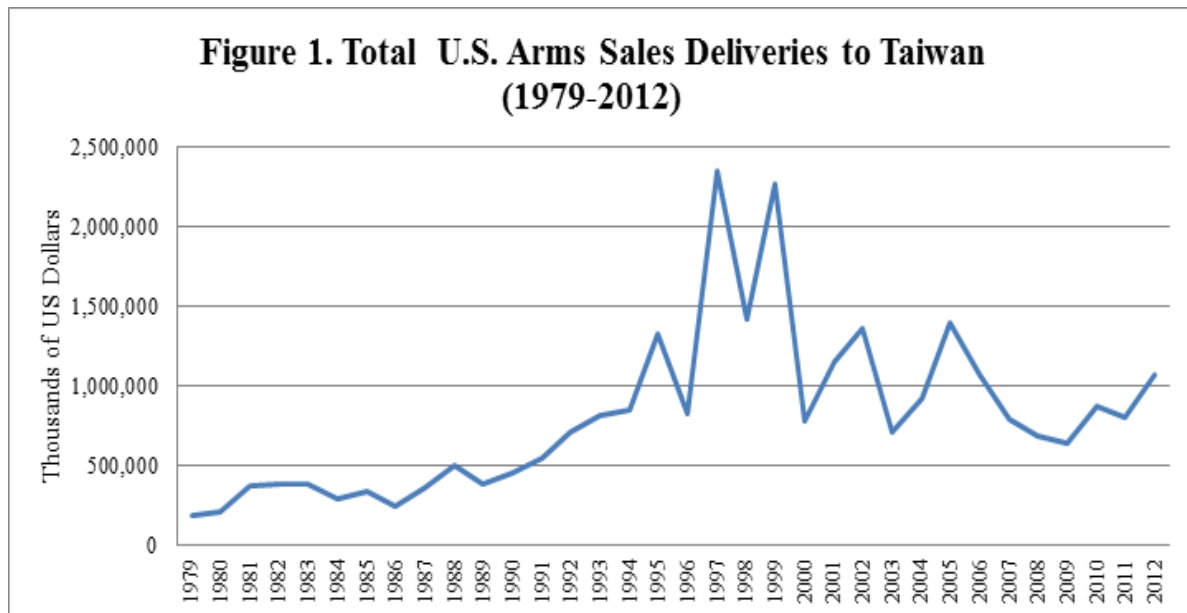
The TRA has been crucial for Taiwan to survive and thrive over the past three-and-a-half decades. This is revealed in the articles and in

the interpretations and practices of the TRA.

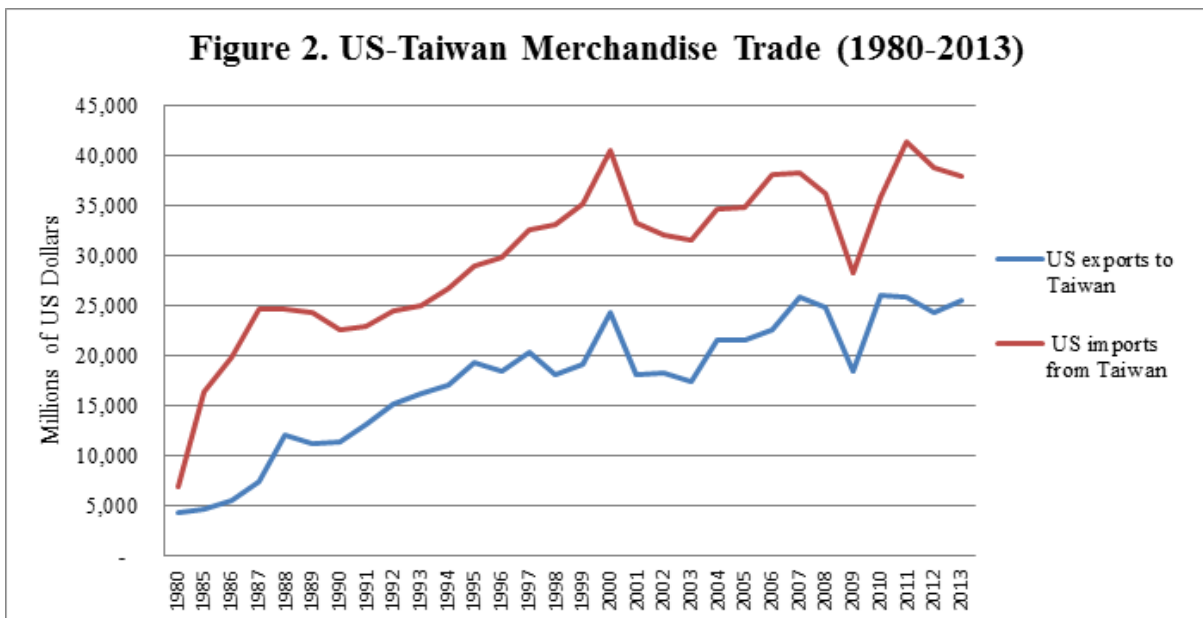
**Security**

In the security realm governed by the TRA, the issue of arms sales constitutes the most significant and sensitive one. Section 3 of the TRA designates the president and the Congress to decide the nature and quantity of defense articles and services provided to Taiwan, based solely upon the needs of Taiwan. The August 17, 1982 communiqué has complicated the situation, inasmuch as the Reagan administration was prepared to place limits in quantity and quality on future arms sales to Taiwan, provided that China maintained peaceful relations with Taipei. This was the first time China had tolerated the United States connecting these two issues. Nonetheless, the PRC has continued to use this communiqué to justify its protests against U.S. sales of weaponry systems to Taiwan, especially since the end of the Cold War.

During the Taiwan Strait crisis in 1996, the Clinton administration’s dispatch of two aircraft carriers to patrol international waters near Taiwan ensured security for the island, which facilitated the holding of the 1996 presidential



Source: U.S. Defense Security Cooperation Agency, fiscal year series, updated as of September 30, 2012.



Source: U.S. Census Bureau, Foreign Trade, <http://www.census.gov/foreign-trade/balance/c5830.html>; Office of the United States Trade Representative, <http://www.ustr.gov/countries-regions/china/taiwan>.

election, a watershed for its transition to democracy. In the aftermath of the crisis, President Clinton decided to strengthen military ties with Taiwan to include the development of and cooperation on “software.” Both sides developed other platforms to exchange views, such as the Monterey Talks, Defense Review Talks, and U.S.-Taiwan Defense Industry Conference. In 2002, Washington established a military hotline with Taipei. In other words, when the dynamics changed, U.S. administrations could and would interpret the TRA accordingly. Figure 1 illustrates U.S. arms sales deliveries to Taiwan from 1979 to 2012.

**Economic And Societal Ties**

The TRA sets a very impressive foundation for mutual benefits. For instance, in terms of merchandise trade, the trade volume between the United States and Taiwan has increased from US\$11 billion in 1980 to US\$63.6 billion in 2013, as indicated in Figure 2.

The United States is currently Taiwan’s third largest trading partner, and Taiwan is the 11th largest trading partner of the United States. Taiwan also constitutes the seventh largest market for United States food and agricultural products. U.S. foreign direct investment (FDI)

in Taiwan amounted to US\$15.8 billion in 2011, down from US\$21.8 billion in 2010. Taiwan and the United States have also been discussing, since 1995, a Trade and Investment Framework Agreement (TIFA) for coordination of trade and economic policies.

Societal exchanges also mark a success in U.S.-Taiwan relations. In terms of place of origin, more than 23,000 Taiwanese students studying in the United States made Taiwan the sixth largest provider of foreign students on American campuses in the 2011-2012 academic year. Taiwan was included as the 37th member in the U.S. Visa Waiver Program (VWP) in October 2012—and the only member with no diplomatic ties with the United States. To reciprocate, Taiwan began to permit U.S. passport holders to stay in Taiwan on a visitor visa for a maximum of 90 days, effective November 2012.

**Political Issues**

Although the TRA tends to confine U.S.-Taiwan relations to commercial and cultural ties, policies and practices carried out under the Act inevitably contain political meanings. After the Taiwan Policy Review of 1994 under President Clinton, the name of the CCNAA office in Washington was changed to the “Taipei Economic and

Cultural Representative Office” (TECRO) to better represent Taiwan in the United States. In February 2013, TECRO and AIT reached the Agreement on Privileges, Exemptions and Immunities to replace the previous agreement signed in 1980.

Visits of high-level officials also indicate strong ties between the United States and Taiwan. U.S. Trade Representative Carla Hills’s trip to Taiwan in 1992 marked the first U.S. cabinet-level official visit since 1979. After a period of mistrust between the United States and Taiwan under the independence-oriented Democratic Progressive Party (DPP), other ranking officials from USAID, Department of Energy, Department of Commerce, and Trade Representative Office paid visits to Taiwan in the past few years. The United States also permitted President Ma Ying-jeou to make transit visits through New York and other cities en route to other countries.

Moreover, the United States supports Taiwan’s meaningful participation in international organizations. The process by which Washington plays a role of facilitator has begun to bear fruit, as indicated by Taiwan’s attendance at the World Health Assembly (WHA) since 2009 and at the International Civil Aviation Organization (ICAO) in 2013. The Obama administration has continued to welcome Taiwan’s efforts in relaxing the tensions across the Taiwan Strait, as shown in high-level officials’ remarks.

### THE PATH AHEAD

The TRA is the backbone of U.S. policy toward Taiwan, and along with the three communiqués between the United States and China, these four documents guide U.S. overall policy toward both sides of the Taiwan Strait. The passage of the TRA in 1979 was an astute response to the shift of strategic importance between China and Taiwan, allowing the United States to recognize the new power realities while ensuring Taiwan’s security and status. However, the dynamics

have changed again: Regional stability has been complicated by the continuing rise of China, and Taiwan’s domestic politics has become more vibrant than in the 1970s. From Taiwan’s perspective, the United States and Taiwan need to continue to deepen their bilateral relations harbored in the TRA.

### Reaffirmation Of U.S. Support

*Arms Sales:* Taiwan needs to procure weaponry systems from the United States to defend itself, even though relations across the Taiwan Strait are improving. The TRA provision that the United States “will make available to Taiwan such defense articles and defense services” is generally seen as a binding statement on U.S. administrations, and demonstrates the U.S. intention to provide Taiwan with suitable weaponry systems. We should note, however, that this is not an obligation of the United States to provide whatever Taiwan asks. Nevertheless, we can recognize from practice that the asymmetry of military capabilities between Taiwan and China is considerably important when Washington evaluates Taiwan’s needs and determines what arms to provide.

Political elites in Taiwan currently are pragmatic on this issue. Many in both the ruling KMT and the opposition DPP parties perceive China’s threat as real, and maintain that Taiwan should not ask the United States to fight for Taiwan in a conflict provoked by Taiwan. Both KMT and DPP continue to emphasize the importance, substantively and symbolically, of receiving advanced weaponry systems from the United States. This explains why Taiwan heartily welcomed 14 arms sale packages in 2008, 2010, and 2011, that totaled US\$18 billion. However, partisanship between KMT and DPP prevents Taiwan from speaking on arms sales with a consistent voice, and government financial conditions serve to constrain Taiwan’s choices on which items to prioritize.

*TIFA and TPP:* In recent years, Taiwan has experienced an economic downturn while facing China's continuing growth. The United States had been Taiwan's number one trading partner until 2002; since 2005, this place has been taken by China. The United States and Taiwan have conducted seven rounds of TIFA talks since 1995, and meanwhile Taiwan reached the Economic Cooperation Framework Agreement (ECFA) with mainland China. Taiwan's current goal is to boost its economy, so every proposal that can achieve this goal, including the high-standard Trans-Pacific Partnership (TPP) agreement, is welcomed by Taiwan. Deepening economic linkages with the United States are believed to have this effect and thus can contribute to alleviating Taiwan's tilted economic dependence on China.

*International Organizations:* In the spirit of the TRA, Taiwan's security, social, and economic systems are to be guarded against any coercion, and the future of Taiwan is to be determined peacefully. Taiwan's meaningful participation in international organizations is a means to these two ends, since support from the United States and the international community can strengthen Taiwan's confidence in dealing with China. This continues to be a goal shared by both major political parties in Taiwan. Moreover, frequent U.S. references to the TRA as one of the components of its "one China" policy, especially on those occasions when the top leaders from the United States and China meet, is politically symbolic to Taiwan. For the people on Taiwan, this means the U.S. administrations are keen to help Taiwan secure its freedom.

### **Taiwan's Domestic Concerns**

*Cross-Strait Relations:* The issues pertaining to the interactions between Taiwan and China are complicated, but they are mainly related to Taiwan's national security and economic development. Some in Taiwan propose to forge a "Taiwan consensus" that can replace the

"1992 consensus," and are loath to cooperate with Beijing in the face of China's growing influence. However, the majority of the people on Taiwan prefer a delayed response on this sensitive issue while debating whether the pace of cross-strait relations is too fast and/or Taiwan is giving up too much to China.

*The United States:* Ambiguity in the TRA serves United States and Taiwan's interests, yet some in Taiwan wish the United States would change its policy to strategic clarity. Sometimes this group of people unintentionally urges the United States to abide by the TRA to "safeguard Taiwan's security and freedom," heedless to the fact that the TRA does not oblige the United States to do either of these things. This inevitably leads to strategic divergence between the United States and Taiwan. So far, fortunately, Taiwan under Ma Ying-jeou has adopted a "low-profile, zero-surprise" policy toward the United States, to avoid challenging the ambiguity the United States prefers.

Starting from a low point six or eight years ago, the United States and Taiwan have gradually restored mutual trust to a considerable degree. Given the difficulty of the process and possible unanticipated complications, at this moment there is no need to change or revise the TRA. Yet, from Taiwan's viewpoint, certain steps can help elevate U.S.-Taiwan ties to a new level:

- Close and continuous consultations are needed for healthy and stable U.S.-Taiwan relations. The "unofficial" nature of the relationship should not hinder the two sides from communicating with each other on a regular basis. Retrospectively, strategic divergence, along with the lack of communication, contributed to the exacerbation of U.S.-Taiwan relations between 2003 and 2008. Candid communication is of considerable significance to the maintenance of U.S.-Taiwan relations.

- The China factor is a constant in the equation of U.S.-Taiwan relations. With China's growing influence, the United States should explicitly take Chinese intentions and capabilities into account when assessing Taiwan's defense needs.
- Reiteration of the TRA from U.S. administrations will be welcomed by Taiwan. The Obama administration's mention of the Six Assurances was of significance in reminding China that there is a connection between Taipei's defense requirements and Beijing's military posture. This sort of statement can help maintain the U.S. strategy of ambiguity toward both sides of the Taiwan Strait.
- Taipei will continue to seek opportunities for meaningful participation in international organizations, and how to garner further support from the United States and the international community is a key task for Taipei. Meanwhile, Washington should not easily concede its role as a facilitator on this matter.
- The old "China lobby" in Washington waxed and waned, and now Taiwan needs to redefine its value in the overall U.S. strategy to Asia. Taiwan should try to achieve congressional support on an issue-by-issue basis, dealing with one specific issue at a time rather than pushing for a comprehensive approach (such as the Taiwan Security Enhancement Act of 2000) that oftentimes complicates the relationship between the U.S. president and Congress. For the time being, in addition to helping Taiwan defend itself, Taiwan can contribute more for regional stability with its capabilities in disaster relief with U.S. coordination.
- China should note that interactions between Taiwan and the United States

can be conducive to the improvement of cross-Strait relations. This is a required understanding for China. In the meantime, Taiwan should begin to generate a domestic consensus on the most viable approaches to dealing with China. Many experts and practitioners from Taiwan's major political parties have dedicated themselves to this task, and their contribution should be noted.

All in all, the TRA has helped Taiwan survive and thrive through the last three-and-a-half decades, and will continue to be the backbone of U.S.-Taiwan relations. Confucius once said, "At age 40, I have no more doubts." With aforementioned efforts from the United States and Taiwan, the TRA will move on and demonstrate its value and resilience on its 40th birthday.

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*This policy brief is the third in a series of four on the Taiwan Relations Act. The previous briefs in the series can be accessed from the Asia Program webpage at <http://www.wilsoncenter.org/publication-series/taiwan-relations-act-time-for-change>.*