

**Obama's policy on arms sales to Taiwan needs credibility and clarity** by Shirley Kan

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Just as President George W. Bush raised doubts with a much-criticized “freeze” on arms sales to Taiwan, President Barack Obama has raised questions about his adherence to the 1979 Taiwan Relations Act (TRA). The TRA guides US policy in making available to Taiwan defense articles and defense services for its “self-defense.” US leadership and credibility regarding the “Rebalance” to Asia requires decisive, urgent action regarding Taiwan. That policy should include tangible follow-up actions to support Taiwan, maintain stability in the Asia-Pacific, and help Taiwan avoid coercion and conflict.

In May, the Office of the Secretary of Defense submitted to Congress its annual report on China's military power, a report that is coordinated throughout the administration. In it, the administration claimed that “consistent with the TRA, the United States has helped to maintain peace, security, and stability in the Taiwan Strait by providing defense articles and services to enable Taiwan to maintain a sufficient self-defense capability. To this end, the United States has announced more than \$12 billion in arms sales to Taiwan since 2010.” The next month, Taiwan President Ma Ying-jeou boasted that “the U.S. has sold a total of \$18.3 billion worth of arms to Taiwan since he took office seven years ago.”

While this is a high-profile, political (perhaps disingenuous) sign of support for Taiwan, it is also incomplete. Compared to Bush's “freeze,” President Obama's inaction and changes to policy have dragged on longer with less critical attention. Obama has failed to notify Congress of major Foreign Military Sales (FMS) to Taiwan for almost four years. As Congress will soon recess in August, the president has an imperative to submit arms sales for Congressional review.

The last time that the president notified Congress of major FMS to Taiwan occurred on Sept. 21, 2011. Though not a so-called “package,” the president waited to send to Congress on a single day three notices of proposed programs worth \$5.9 billion, including upgrades for Taiwan's F-16A/B fighters.

Why has the president failed to exercise leadership and sell arms to Taiwan under the TRA since then? First, his inaction cannot be explained by a lack of defensive requirement. Officials and experts are increasingly concerned about China's potential use of coercion or attacks against Taiwan. The Defense Department's reports to Congress have warned annually that “preparing for potential conflict in the

Taiwan Strait remains the focus and primary driver of China's military investment.” Moreover, the PRC has been determined to reach military and economic benchmarks by 2020, moving toward a goal of fighting and winning potential conflicts that include those related to Taiwan. Ominously, this year's report warned that, while Taiwan historically has relied upon multiple military variables to deter aggression by the PRC, its increasingly modern weapons and platforms have “eroded or negated many of these factors” in Taiwan's defense.

Second, the administration's inaction cannot be explained by lack of preparation and authorization, nor Taiwan's lack of interest and funding. For more than five years, the US Navy, other parts of the Executive Branch, and Congress worked on authorization for the Navy to transfer *Perry*-class frigates as Excess Defense Articles to other navies. After consideration that started during the 112<sup>th</sup> Congress, the 113<sup>th</sup> Congress approved legislation that authorized the proposed transfer of excess frigates to Taiwan and Mexico. Last December, the Senate and House passed the authorizing legislation, and President Obama signed it into law.

Third, the administration's inaction cannot be explained by the US Navy, which would benefit from foreign funds and the transfer of decommissioned ships to other authorized navies without incurring the costs of maintaining inactivated ships. It is in the interest of the Navy to transfer the ships as soon as possible. Chairman Ed Royce of the House Foreign Affairs Committee just visited one of the ships that has completed its final deployment. Taiwan has prepared for years for the potential transfers and included in the 2014 defense budget about \$175 million to acquire two excess frigates.

Fourth, the administration's inaction cannot be explained by military-to-military contacts with China. Expanded contacts have not resulted in significant gains for US interests, since problems persist in China's military and cyber threats, weapons proliferation, the North Korean threat, buildup against Taiwan, and aggressive expansionism and environmental destruction in the East and South China Seas, etc. Moreover, despite the conventional wisdom about fears of Beijing's “suspensions” of meetings to retaliate for the arms sales, their impact has been minimal and mixed when it comes to “mil-to-mil” contacts with China.

Three other explanations remain. One, the administration is shifting policy in a smart response to changing conditions and new priorities, even as it demands the status quo from Taiwan.

Two, the president is preferring to delay overdue and justified actions on Taiwan until after a scheduled visit in September by Xi Jinping, the top ruler of the Communist Party of China.

Three, the administration is timing the arms sales to influence the presidential and legislative elections in Taiwan scheduled for January 2016.

These explanations could violate the law as well as stated policies. Section 3(b) of the TRA stipulates that both the president and 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. Moreover, in 1982, President Reagan extended “Six Assurances” to Taipei, including assurances that Washington had not agreed to set a date for ending arms sales to Taiwan nor to consult with Beijing on arms sales. At a hearing in the House in October 2011, Assistant Secretary of State for East Asian and Pacific Affairs Kurt Campbell reaffirmed the Six Assurances. At a hearing in the Senate in April 2014, in response to Sen. Marco Rubio, current Assistant Secretary of State Daniel Russel failed to reaffirm clearly the Six Assurances. After the hearing, Russel promptly clarified that the administration remained committed to the Six Assurances. In September 2011, an official of the administration raised doubts about its professed neutrality in Taiwan’s elections when he gave negative comments to the *Financial Times* about the Democratic Progressive Party (DPP)’s presidential candidate. In September-December 2011, the administration took various actions, including notifying Congress of arms sales, that some observers saw as attempts to support Ma’s re-election. This May, however, Russel publicly said that the United States does not take sides and does not “take actions that would imply that we are taking sides” in Taiwan’s elections.

To dispel dangerous perceptions that the administration is at odds with US principles, policies, and laws, President Obama should now submit the pending notification(s) to Congress for major arms sales to Taiwan. The sale of *Perry*-class frigates to Taiwan is authorized by law, supports our Navy, and complies with the TRA. The longer the president waits, the more he seems to undermine policies and the stronger is the PRC’s expectation of weakness, and its demand for compromise. Obama also should break the cycle started by President Bush of delaying ready notifications until a “safe time” for sending a bundle of notifications to Congress all on one day. Discussions with Taiwan that result in decisions should return to an on-going basis. Notifications to Congress should return to a routine process. The president should give a straight answer to Congress, industry, and Taiwan on an issue pending for 14 years: whether to assist Taiwan’s diesel-electric submarine program. This option involves the approval or denial of technical assistance for Taiwan’s indigenous defense programs. The president should finalize decision-making to determine if Taiwan needs new fighters to replace aging aircraft (including F-5s that have reached the end of their operational life). Finally, Obama should review policy with transparency, consultation with Congress, and coordination with allies, examining whether a new approach is needed to accommodate changing circumstances in the Taiwan Strait.

Congress has ways to ensure presidential compliance with the TRA. It could write letters to elicit explanations about pending actions. Congress could consider legislation to

require reports on the TRA’s implementation. Members might hold up confirmations of nominees in the Defense or State Departments. Along with restricting funds for or requiring reports about spending for military contacts with China, especially as the Pentagon “doubles-down” on such contacts, Congress could shift such spending for use in military cooperation with Taiwan. Congress could suspend reviews of all the president’s proposed arms sales until he notifies Congress to advance arms sales to Taiwan. Indeed, in 1999, after President Clinton delayed a visit by Pentagon officials and considered a cutoff of arms sales to Taiwan, Chairman Ben Gilman of the House International Relations Committee stated, “I cannot accept undercutting Taiwan’s national security and its right under the 1979 Taiwan Relations Act to receive appropriate security assistance from our nation to meet its legitimate self-defense needs. Accordingly, as a result of my concern, I plan at this point to withhold my approval for arms transfers notified to the Congress until this matter is resolved to my satisfaction.” In any case, Congress needs to increase oversight of the president’s approach to the security challenge in the Taiwan Strait.

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