US Congress approach to US-Taiwan relations

The first year of the 117th US Congress (2021-2022) under a ‘unified government’, where President Biden’s party holds a majority of Democrats in the House of Representatives and the Senate, saw strong bipartisan support for shaping closer security, economic and political ties with Taiwan. Perceived as a vibrant democracy, worth protecting to secure peace and security in the Indo-Pacific region, the Biden administration invited Taiwan to the 2021 US Summit for Democracy, defining shared values rather than statehood as the criterion for participation. However, like the Trump executive, Biden’s administration has not delivered on Congress’s call to start talks with Taiwan on a free trade agreement, but has embraced an alternative framework for engagement.

Legal framework for US-Taiwan economic and security relations

While the United States of America (USA) severed diplomatic ties with Taiwan in 1978, and recognised the People’s Republic of China (PRC) as the sole legal government of China, the USA nevertheless maintained unofficial relations with the island. In 1979, Congress passed the Taiwan Relations Act (TRA), which (together with the US’s Six Assurances to Taiwan of 1982 and the three US-PRC Communiqués concluded in 1972, 1978, and 1982) are the cornerstones of US-Taiwan ties. The TRA notably sets out the US commitment to support Taiwan in maintaining ‘a sufficient self-defence capability’ by making the necessary defence articles and services available. In the absence of a traditional defence pact, such as those between the US and allies Japan and South Korea, the US has adhered to a policy of ‘strategic ambiguity’ on whether it would defend Taiwan against an attack from the PRC. This strategy is intended to deter the PRC from using force against Taiwan, and Taiwan from declaring de jure independence.

In 1994, the American Institute in Taiwan (AIT) and the Taipei Economic and Cultural Representative Office in the USA (TECRO) signed the Trade and Investment Framework Agreement (TIFA) as a strategic framework for dialogue. Owing to long-standing bilateral trade irritants, including a 2007 ban by Taiwan of US exports of beef and pork that contain ractopamine (a feed additive that promotes leanness), only recently reversed by the Tsai Ing-wen government and a referendum, TIFA Council talks were at times suspended for longer periods, most recently since 2016. However, the Biden administration revived the talks in June 2021 and Taiwan hopes to step up ties with the USA via an Indo-Pacific economic framework, announced by President Biden at the 2021 East Asia Summit. This platform for engagement will cover, inter alia, the digital economy, technology, resilient supply chains, decarbonisation and clean energy, infrastructure, and labour standards.

Selected Taiwan-related legislation enacted under the Trump administration

Congressional legislative efforts to shape US policy on Taiwan have been found to correlate with tensions in US-PRC and Taiwan-PRC relations since the late 1970s. As US-PRC relations deteriorated under Trump in all their dimensions and cross-Strait tensions intensified, Congress became more vocal in favour of closer security, economic and political ties with Taiwan in the face of new geopolitical circumstances. Some analysts consider this trend amounts to a Congressional push for a return to the ‘pre-1979 status quo’.

Congress has passed Taiwan-related provisions as individual legislative acts, such as the 2018 Taiwan Travel Act (TTA). As is more common for the US Congress, provisions were passed as part of ‘must pass’ omnibus packages, notably the annual National Defense Authorization Act (NDAA). In a significant symbolic gesture, the broadly bipartisan TTA establishes a US policy of encouraging high-level US-Taiwan government exchanges and reverses US policy (in place since 1979), prohibiting senior officials from reciprocal visits.

The 2018 Asia Reassurance Initiative Act (ARIA) provides a comprehensive framework for US policy and strategy in the Indo-Pacific region and links Taiwan to US security interests. It sets out US policy as supporting a close economic, security and political relationship with Taiwan, as countering the PRC’s efforts to change the status quo in the Taiwan Strait, and as supporting a peaceful resolution acceptable to Taiwan and the PRC.
The 2019 Taiwan Allies International Protection and Enhancement Initiative (TAIPEI) Act seeks to leverage US diplomatic, economic and military relations to help Taiwan strengthen its diplomatic ties, partnership, and engagement with countries and partners globally, in response to the PRC’s poaching of Taiwan’s diplomatic partners and obstruction of Taiwan’s ability to participate in international organisations.

The 2020 Taiwan Assurance Act (TAA), included in the 2021 Consolidated Appropriations Act, urges Taiwan to increase its defence spending, advocates regular US sale and transfer of defence articles to Taiwan to enhance the latter's self-defence capabilities, and for Taiwan’s meaningful participation or membership in international organisations. It directs the Department of State to review and reissue its guidance on relations with Taiwan completed by the Biden administration in 2021, and allocates US$3 million under the Economic Support Fund to support the Global Cooperation and Training Framework (GCTF), which organised 45 international workshops by the end of 2021. Launched under the Obama administration in 2015, Japan, Taiwan and the USA now administer the GCTF. For 2022, workshops are planned on law enforcement, health cooperation, sustainable oceans, gender equality, smart farming, internet freedom and the digital economy.

In 2018, the Trump administration triggered a tradewar with the PRC, and later engaged in negotiations of a bilateral Phase One Deal, concluded in 2020 and inherited by the Biden administration. In 2019, 161 House members, led by the then co-chairs of the House Taiwan Caucus, sent a letter to the US Trade Representative urging him, in vain, to start free trade agreement negotiations with Taiwan. In 2020, 50 Senators followed suit.

**US Congress's Taiwan-related action under the Biden administration**

Taiwan-related bills in 2021 show a certain continuity with bills under the 115th/116th Congress in terms of substance, and can be divided into bills seeking closer ties with Taiwan to boost its self-defence capabilities, its international diplomatic space, its integration in the global economy and bilateral educational exchanges.

As the military balance in the Taiwan Strait tilted in the PRC’s favour, Republican lawmakers reintroduced bills that were not passed earlier and that make the case for Taiwan and the USA to do more to deter the PRC from invading Taiwan or staging a ‘fait accompli’ ahead of a potential US intervention. They propose the privileged treatment of Taiwan as a ‘major non-NATO ally’ under the US Arms Export Control Act, for example, and the authorisation of annual US grants of US$2 or 3 billion to upgrade Taiwan’s asymmetric defence capabilities – conditional on Taiwan spending an equal amount and increasing its defence spending as a share of its GDP. The most hawkish bill towards the PRC would imply the end of US ‘strategic ambiguity’ with regard to US defence of Taiwan in a contingency, amid a broader renewed debate as to whether US strategic ambiguity is still an effective deterrent. However, this was reaffirmed as current US policy at a Senate hearing in late 2021.

The NDAA for the 2022 Fiscal Year, enacted at the end of 2021, does not incorporate these bills, but calls to invite Taiwan to participate in the 2022 Pacific Rim (RIMPAC) military exercise – from which the PRC was disinvited in 2018. It also mandates an annual report on Taiwan’s asymmetric defensive capabilities, and a briefing, no later than February 2022, on the feasibility and advisability of enhanced cooperation between the National Guard and Taiwan (an idea included in the proposed Taiwan Partnership Act of 2021). It also sets policy objectives on defence alliances and partnerships in the Indo-Pacific region, including Taiwan.

Bills sponsored by House and Senate Democrats tend to seek not only to reinforce the credibility of Taiwan’s military deterrence, but also to foster Taiwan’s international participation (e.g. in the WHO) and economic integration, and to buttress Taiwan’s resilience against PRC economic coercion. They stress the need for conflict avoidance and a military crisis hotline; and propose to bolster engagement initiatives, including increasing support for the GCTF and expanding unofficial contacts – issues also raised in a related Senate hearing of June 2021. Republican Senators have proposed to establish a US-Taiwan Exchange Foundation to allow more US students and officials to study Mandarin, to develop a strategy to combat misinformation and economic coercion, and to establish an interagency Taiwan policy task force.

The bipartisan Taiwan Fellowship Act would establish a fellowship exchange programme for US federal government employees. With other Taiwan-related provisions, it was included in the Senate US Innovation and Competition Act (USICA), as well as in the House companion bill, the America COMPETES Act. These bills are set to be reconciled in a single piece of legislation and enacted in early 2022. In 2021, US lawmakers paid several visits to Taiwan, to announce a donation of US vaccines, among other things.