To strengthen and clarify the commercial, cultural, and other relations between the people of the United States and the people of Taiwan, as codified in the Taiwan Relations Act, and for other purposes.

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IN THE HOUSE OF REPRESENTATIVES
SEPTEMBER 14, 2011

Ms. Ros-Lehtinen (for herself, Mr. Chabot, Mr. Diaz-Balart, Mr. Andrews, Mr. Royce, and Mr. Burton of Indiana) introduced the following bill; which was referred to the Committee on Foreign Affairs, and in addition to the Committees on the Judiciary and Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

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A BILL
To strengthen and clarify the commercial, cultural, and other relations between the people of the United States and the people of Taiwan, as codified in the Taiwan Relations Act, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Taiwan Policy Act of
5 2011”.


SEC. 2. FINDINGS.

Congress finds the following:

(1) The Taiwan Relations Act (Public Law 96–8; 22 U.S.C. 3301 et seq.), enacted in 1979, hereafter referred to as “the Act,” has continued for 32 years to be the cornerstone of United States-Taiwan relations and has served as an anchor for peace and security in the Western Pacific region.

(2) The Taiwan Relations Act, in furthering the national interests of the United States in the Western Pacific region, has mandated that 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, thus allowing the people of Taiwan to preserve a peaceful, democratic, and prosperous way of life.

(3) The future of Taiwan must be determined in a peaceful manner and with the assent of the people of Taiwan.

(4) The Taiwan Relations Act declares that—

(A) peace and stability in the Western Pacific area are in the political, security, and economic interests of the United States, and are matters of international concern;
(B) the United States decision to establish
diplomatic relations with the People’s Republic
of China rests upon the expectation that the fu-
ture of Taiwan will be determined by peaceful
means;

(C) the United States considers any effort
to determine the future of Taiwan by other
than peaceful means, including by boycotts or
embargoes, a threat to the peace and security
of the Western Pacific area and of grave con-
cern to the United States;

(D) the United States will maintain the ca-
pacity to resist any resort to force or other
forms of coercion that would jeopardize the se-
curity, or the social or economic system, of the
people on Taiwan; and

(E) the preservation and enhancement of
the human rights of all the people on Taiwan
are reaffirmed as objectives of the United
States.

(5) In recent years United States-Taiwan rela-
tions have suffered from inattention and lack of
strategic vision, thereby requiring the Congress to
both clarify United States policy toward Taiwan and
enhance its oversight role in the implementation of the Taiwan Relations Act.

(6) In October 2010, Taiwan’s National Security Bureau (NSB) Director estimated that China had 1,410 missiles across from Taiwan, mostly in the southeast, which constitute a threat to regional security, and other experts suggest that this number could increase to 1,800 in the near future.

(7) The anti-secession law, passed by the National People’s Congress of the People’s Republic of China, was found by House Concurrent Resolution 98, passed in the House of Representatives on March 16, 2005, by a vote of 424–4, “to create a legal framework for possible use of force against Taiwan” and “to provide a legal justification for the use of force against Taiwan, altering the status quo in the region, and thus is of grave concern to the United States.”.

(8) The legislative requirement to make available defensive articles and services should include the provision of new F–16 C/D aircraft and upgrades of the existing F–16 A/B fleet essential to Taiwan’s security.

(9) The 2011 Department of Defense’s Annual Report to Congress on “Military and Security Devel-
opments Involving the People’s Republic of China” noted that the People’s Liberation Army “seeks the capability to deter Taiwan independence and influence Taiwan to settle the dispute on Beijing’s terms” while “developing capabilities intended to deter, delay, or deny possible U.S. support for the island in the event of conflict. The balance of cross-Strait military forces and capabilities continues to shift in the mainland’s favor.”.

(10) The language contained in the Joint Communiqué of the United States of America and the People’s Republic of China, dated August 17, 1982, which states in part that “arms sales to Taiwan will not exceed, either in qualitative or in quantitative terms, the level of those supplied in recent years” shall not, to any degree, diminish the responsibility of the United States, as legislatively mandated in the Taiwan Relations Act, to “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.”.

(11) The United States has sought diplomatically to preserve Taiwan’s international space, despite outside pressure and coercion, and has sought
to secure Taiwan’s meaningful participation in such
international organizations as the World Health Or-
ganization (WHO).

(12) Given the critical importance of airport se-
curity in a post-September 11th international envi-
ronment, the United States recognizes it is crucial
for Taiwan to be admitted to meaningful participa-
tion in the International Civil Aviation Organization
(ICAO) so that Taiwan may contribute to the suc-
cess of a global strategy to address aviation security
threats based on effective international cooperation.

(13) Given that the Taiwan Relations Act
states that it is the policy of the United States to
“preserve and promote extensive, close, and friendly
commercial, cultural, and other relations between
the people of the United States and the people on
Taiwan,” the Department of Homeland Security
should therefore make it a priority to ascertain what
requirements must be met for Taiwan’s inclusion, at
an early date, in the visa waiver program (VWP) in
order to further enhance those commercial, cultural
and other relations addressed in the Act.

(14) The conclusion of the Economic Coopera-
tion Framework Agreement (ECFA) between Tai-
wan and the People’s Republic of China in June
2010 or the adoption of any other cross-Strait economic measures shall not diminish in any degree the requirement contained in the Act 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.”

(15) The theory recently put forward in certain academic circles that the United States should acquiesce to China’s ascendancy in Asia and put aside the commitments made in the Taiwan Relations Act is based upon a false premise that ignores the example of a democratic Taiwan, the historic ties of friendship of the peoples of the United States and Taiwan, and the determination of the United States to remain as a Pacific power.

(16) Total United States-Taiwan trade was approximately $57,000,000,000 in 2010, and Taiwan currently ranks as the ninth largest trading partner of the United States.

(17) It is in the economic interests of the United States and the national security interests of Taiwan for our two peoples to further strengthen and revitalize their trade and investment ties, in-
including through an expanded Trans Pacific Partnership (TPP) Agreement or similar mechanism.

SEC. 3. RULE OF CONSTRUCTION.

Nothing in this Act shall be construed to amend or supersede the Taiwan Relations Act.

TITLE I—POLITICAL RELATIONS

SEC. 101. RELATIONS WITH THE PEOPLE OF TAIWAN.

The following shall be the policies of the United States:

(1) Supporting Taiwan, Taiwan’s democracy, and the human rights of its people.

(2) As noted in the Taiwan Relations Act, “the absence of diplomatic relations or recognition shall not affect the application of the laws of the United States with respect to Taiwan, and the laws of the United States shall apply with respect to Taiwan in the manner that the laws of the United States applied with respect to Taiwan prior to January 1, 1979.”.

(3) The United States Government shall respect the right of the Taipei Economic and Cultural Representative Office (TECRO) to display its flag on its premises and the American Institute in Taiwan (AIT) and the residence of its Director in Taipei shall, correspondingly, publicly display the United
States flag in the same manner as United States embassies, consulates, and official residences throughout the world.

(4) The Taipei Economic and Cultural Representative Office and all other instrumentalities established by Taiwan, including the Twin Oaks Estate, may conduct official business activities, including activities which involve participation by Members of the United States Congress and other representatives of the Federal, State, and local governments, without any impediment from the United States Government or any foreign power.

SEC. 102. VISITS BY CABINET LEVEL OFFICIALS.

(a) FINDINGS.—Congress finds the following:

(1) Visits by United States cabinet officials and other high-ranking visitors are an indicator of the breadth and depth of ties between the United States and Taiwan.

(2) In December 1992, U.S. Trade Representative Carla Hills visited Taiwan, marking the first cabinet-level visit since 1979.

(3) Over the next 8 years the administrator of the U.S. Small Business Administration, the Secretary of Energy, and 2 Secretaries of Transportation visited Taiwan.
(4) No United States cabinet secretary has visited Taiwan since July 2000.

(5) In March 2008, candidate Barack Obama wrote in a message congratulating Ma Ying-jeou on his election victory that “[t]he U.S. should reopen blocked channels of communication with Taiwan officials”, yet no Cabinet-level visits to Taiwan have yet taken place.

(b) POLICY OF THE UNITED STATES.—It shall be the policy of the United States to encourage visits by cabinet-level officials between the United States and Taiwan to foster commercial, technological, and people-to-people exchanges.

SEC. 103. REVISION OF GUIDELINES FOR CONTACTS WITH TAIWAN.

Notwithstanding the 1994 Taiwan policy review and current mandatory guidance from the Department of State regarding contacts with Taiwan, it shall be the policy of the United States to—

(1) permit senior leaders of Taiwan to enter the United States under conditions which demonstrate appropriate courtesy and respect for the dignity of such leaders;
(2) permit meetings between high level Taiwanese and United States officials in all United States executive departments;

(3) allow official travel to Taiwan for Department of State and Department of Defense personnel above the rank of office director or, for uniformed military personnel, above the level of 06 (Colonel, Navy Captain); and

(4) support a decision by Taiwan to change the name of the Taipei Economic and Cultural Representative Office to that of the Taiwan Representative Office.

SEC. 104. REQUIREMENT FOR SENATE CONFIRMATION OF AN INDIVIDUAL APPOINTED TO SERVE AS THE DIRECTOR OF THE AMERICAN INSTITUTE IN TAIWAN.

(a) IN GENERAL.—Notwithstanding any other provision of law, the President shall appoint, by and with the advice and consent of the Senate, an individual to serve as the Director of the American Institute in Taiwan.

(b) TRANSITION.—The individual serving as the Director of the American Institute in Taiwan as of the date of the enactment of this Act may continue to serve in such capacity until such time as an individual is appointed and confirmed in accordance with subsection (a).
SEC. 105. EXTRADITION AGREEMENT.

(a) IN GENERAL.—It shall be the policy of the United States to enhance judicial cooperation with Taiwan, currently conducted on the basis of the 2002 Agreement on Mutual Legal Assistance in Criminal Matters, by signing a comprehensive extradition agreement.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to Congress a report that assesses whether a comprehensive extradition agreement between the United States and Taiwan may be submitted to the Senate for advice and consent as a treaty or whether, because of Taiwan’s unique status, such agreement must be submitted to both the House of Representatives and Senate for legislative approval.

SEC. 106. CONTINUATION OF THE SIX ASSURANCES AS GUIDELINES IN CONDUCTING UNITED STATES-TAIWAN RELATIONS.

Notwithstanding any communiqués entered into between the United States and the People’s Republic of China, the United States continues to assent to the six assurances provided to Taiwan in July, 1982, including that the United States—

(1) has not agreed to set a date for ending arms sales to Taiwan;
(2) has not agreed to hold prior consultations with the People’s Republic of China on arms sales to Taiwan;

(3) will not play any mediation role between Taipei and Beijing;

(4) has not agreed to revise the Taiwan Relations Act;

(5) has not altered its position regarding sovereignty over Taiwan; and

(6) will not exert pressure on Taiwan to negotiate with the People’s Republic of China.

SEC. 107. INTERNATIONAL ORGANIZATIONS.

To provide Taiwan with the international space it requires to function effectively in the world community, the Secretary of State shall direct the Department of State to continue its annual program to ensure meaningful participation by Taiwan in the World Health Assembly in Geneva, Switzerland, as well as meaningful participation for Taiwan in other relevant international organizations, such as the International Civil Aviation Organization (ICAO).

SEC. 108. REPORT ON TAIWAN’S PARTICIPATION IN ICAO.

(a) In General.—The Secretary of State shall initiate a United States plan to endorse and obtain meaningful participation for Taiwan at the periodic Assemblies held by the International Civil Aviation Organization
(ICAO) in Montreal, Canada, and in the meetings and activities of the ICAO and shall instruct the United States delegation to Montreal to implement such plan.

(b) REPORT.—Not later than 180 days after the date of the enactment of this Act and annually thereafter, the Secretary of State shall submit to Congress a report containing the plan required under subsection (a).

(c) FORM.—The report required under subsection (b) shall be submitted in unclassified form, but may contain a classified annex if necessary.

(d) ANNUAL BRIEFING.—The Secretary of State should provide an annual briefing to or consult with Congress on any efforts conducted by the United States Government in support of Taiwan’s progress toward meaningful participation in the ICAO.

TITLE II—SECURITY RELATIONS

SEC. 201. STRENGTHENING THE DEFENSE OF TAIWAN.

(a) MAINTENANCE OF SUFFICIENT SELF-DEFENSE CAPABILITIES OF TAIWAN.—Congress finds that any determination of the nature and quantity of defense articles or defense services to be made available to Taiwan that is made on any basis other than the defense needs of Taiwan, whether pursuant to the August 17, 1982, Communiqué signed with the People’s Republic of China, or any similar executive agreement, order, or policy would
violate the intent of Congress specified in section 3(b) of the Taiwan Relations Act (22 U.S.C. 3302(b)).

(b) **FOREIGN MILITARY SALES AND LICENSED DEFENSE EXPORTS UNDER THE ARMS EXPORT CONTROL ACT.**—Congress finds that, in accordance with the Taiwan Relations Act, the core purpose of foreign military sales and licensed commercial exports under the Arms Export Control Act should be to assist Taiwan in its ability to—

(1) deter coercion;

(2) defend against a strategy of coercive diplomacy employing threats or limited force;

(3) repel an invasion; and

(4) partner with civil responders and friendly foreign militaries.

(c) **DEFENSE TRANSFERS.**—In order to accomplish the purposes of this section, the President is authorized to make available to Taiwan defense items or defense services, including the following:

(1) Air and air defense capabilities, including—

(A) low-cost, survivable sensors;

(B) command and control systems;

(C) modern surface to air missiles;

(D) upgrades to existing modern combat aircraft as well as new combat aircraft, includ-
ing Vertical and Short Take-Off and Landing
Aircraft (V/STOL);

(E) radar, electronic warfare, and jamming
capabilities;

(F) passive defense measures (such as re-
dundancy, dispersal, camouflage/deception,
hardening, and rapid repair capabilities); and

(G) access to satellites for remote sensing
and communication;

(2) Maritime capabilities, including—

(A) additional sensor capacity for com-
prehensive maritime domain awareness;

(B) cost-effective submarines for anti-surf-
face, anti-submarine warfare, and other mis-
sions;

(C) mines and mine countermeasure ves-
sels; and

(D) anti-ship cruise missiles.

(3) Ground capabilities, including—

(A) layers, short-range air defense;

(B) critical infrastructure protection to en-
sure continuity of government;

(C) air mobility;

(D) unmanned air vehicles; and
(E) accurate, GPS-guided short-range rockets.

(4) Capacity for partnership with friendly foreign militaries, including—

(A) command, control, communications, computers, intelligence, surveillance, and reconnaissance situational awareness systems;

(B) enhanced doctrine exchange; and

(C) enhanced senior-level training.

(d) Rule of Construction Relating to Arms Export Control Act.—Nothing in this section shall be construed to supersede or modify section 36 of the Arms Export Control Act (22 U.S.C. 2776).

SEC. 202. ADVANCED COMBAT AIRCRAFT FOR TAIWAN.

Pursuant to the foreign military sales program authorized by the Arms Export Control Act, it shall be the policy of the United States to accept a letter of request from Taiwan for price and availability data or for a formal sales offer with respect to the F–16C/D Fighting Falcon multirole fighter aircraft.

SEC. 203. CONSULTATIONS ON TAIWAN ARMS SALES.

(a) Briefings.—Not later than 90 days after the date of the enactment of this Act and at least annually thereafter, the Secretary of State, in consultation with the
Secretary of Defense, shall provide detailed briefings to Congress on—

(1) any discussions conducted between any executive branch agency and the Government of Taiwan during a covered period; and

(2) any potential transfer to the Government of Taiwan of defense articles or defense services.

(b) Definitions.—In this section and section 201:

(1) Covered period.—The term “covered period” means, with respect to—

(A) the initial briefing required under subsection (a), the period beginning on the date of the enactment of this Act and ending on the date of such initial briefing; and

(B) subsequent briefings required under such subsection, the period beginning on the day after the date of the most recent briefing and ending on the date of any such subsequent briefing.

(2) Executive branch agency.—The term “executive branch agency” has the meaning given the term “agency” in section 551(1) of title 5, United States Code.
(3) DEFENSE ARTICLE.—The term “defense article” has the meaning given such term in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

(4) DEFENSE SERVICE.—The term “defense service” has the meaning given such term in section 47 of the Arms Export Control Act (22 U.S.C. 2794).

SEC. 204. ANNUAL REPORT ON DEFENSE TRANSFERS TO TAIWAN.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act and annually thereafter, the President shall transmit to Congress a report—

(1) detailing each of Taiwan’s requests for purchase of defense articles and defense services during the immediately preceding one-year period, whether submitted through a letter of request (LOR) or conveyed by other authoritative means, except that the first report under this section shall cover the period 2006 through 2011;

(2) describing the defense needs asserted by Taiwan as justification for such requests;

(3) describing the decision making process used to reject, postpone, or modify any such request, including—
(A) with respect to significant military equipment, the country team assessment and recommendation as to whether the United States should sell such equipment; and

(B) for each request, the elapse of time between the submission of such request and the completion of the interagency review process by the United States; and

(4) detailing those defense articles and defense services listed in the Arms Sale Proposal described in section 25 of the Arms Export Control Act (22 U.S.C. 2765), including a description of the rationale for including or not including in such Proposal, as the case may be, all sales and licensed exports to Taiwan under such Act of major weapons or weapons-related defense equipment for $7,000,000 or more, and the extent to which a decision to not include in such Proposal such sales to Taiwan is consistent with such section.

(b) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex if necessary.
SEC. 205. REPORT ON IMPLEMENTATION OF TAIWAN RELA-
TIONS ACT.

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the President shall sub-
mit to Congress a report on implementation of United States security policy under the Taiwan Relations Act.

(b) MATTERS TO BE INCLUDED.—The report re-
quired under subsection (a) shall include, at a minimum,
the following issues:

(1) A review of the operational planning, policy reviews, and other preparations of the United States since 2000 to implement section 2(b)(6) and sub-
sections (a), (b), and (c) of section 3 of the Taiwan Relations Act, including the extent to which the United States retains the capacity to resist any re-
sort to force or other forms of coercion that would jeopardize the security, or the social or economic system, of the people of Taiwan. Such review shall take into account whether Taiwan’s air and air de-
defense forces retain the ability to effectively defend Taiwan against China’s ballistic missile and air threats, and the extent to which the absence of cred-
ible Taiwanese air defense forces may complicate the ability of the United States to resist any resort to force that jeopardizes the security of Taiwan.
(2) An evaluation of all gaps in relevant knowledge about the People’s Republic of China’s capabilities and intentions as such might affect the current and future military balance between Taiwan and China, such as anti-access and area denial capabilities as well as anti-satellite and space warfare developments, including both classified United States intelligence information and Chinese open source writing.

(c) FORM.—The report required under subsection (a) shall be submitted in unclassified form, but may contain a classified annex if necessary.

TITLE III—ECONOMIC AND TRADE RELATIONS

SEC. 301. VISA WAIVER TREATMENT FOR TAIWANESE TRAVELERS TO THE UNITED STATES.

(a) STATEMENT OF POLICY.—It shall be the policy of the United States to include Taiwan in the list of countries that participate in the visa waiver program under section 217 of the Immigration and Nationality Act (8 U.S.C. 1187) when Taiwan satisfies the requirements for inclusion in such program specified in such section.

(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the Secretary of State shall submit to the Committee on Foreign Affairs and the Com-
mittee on Homeland Security of the House of Representatives and the Committee on Foreign Relations and the Committee on Homeland Security and Governmental Affairs of the Senate a report on the extent to which Taiwan satisfies the requirements specified in section 217 of the Immigration and Nationality Act for inclusion in the visa waiver program under such section and what additional steps, if any, are required in order for Taiwan to qualify for inclusion in such program.

SEC. 302. TRADE AND INVESTMENT FRAMEWORK AGREEMENT.

It is the sense of Congress that, at the earliest opportunity, the United States Trade Representative should seek to resume and successfully conclude negotiations of economic issues in the Trade and Investment Framework Agreement (TIFA) talks with Taiwan.

SEC. 303. FREE TRADE AGREEMENT.

(a) In General.—It is the sense of Congress that the ultimate goal of trade negotiations with Taiwan should be the negotiation of a free trade agreement with Taiwan. As building blocks toward that goal, the United States should study the feasibility of negotiating with Taiwan a bilateral—

(1) investment agreement; and

(2) tax agreement.
(b) REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to Congress a report that assesses whether economic and trade agreements between the United States and Taiwan may be submitted to the Senate for advice and consent as a treaty or whether, because of Taiwan's unique status, such agreements must be submitted to both the House of Representatives and Senate for legislative approval.