

UNITED STATES-TAIWAN ANTI-BALLISTIC MISSILE
DEFENSE COOPERATION ACT

OCTOBER 6, 1997.—Committed to the Committee of the Whole House on the State
of the Union and ordered to be printed

Mr. GILMAN, from the Committee on International Relations,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 2386]

[Including cost estimate of the Congressional Budget Office]

The Committee on International Relations, to whom was referred the bill (H.R. 2386) to implement the provisions of the Taiwan Relations Act concerning the stability and security of Taiwan and United States cooperation with Taiwan on the development and acquisition of defensive military articles, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “United States-Taiwan Anti-Ballistic Missile Defense Cooperation Act”.

SEC. 2. FINDINGS.

The Congress finds the following:

(1) The stability and security of Taiwan and the balance of power in the Taiwan Strait are key elements for the continued peace and stability of the greater Asia-Pacific region, and the indefinite continuation of such stability and security and balance of power is in the vital national security interest of the United States.

(2) The People’s Republic of China is currently engaged in a comprehensive military modernization campaign that is enhancing the power-projection capa-

bilities of the People's Liberation Army, including the introduction of advanced ballistic and cruise missiles that could alter the current balance of power in the Taiwan Strait and in the greater Asia-Pacific region.

(3) The current lack of transparency in the People's Republic of China military infrastructure and its associated defense establishment and the opaqueness of the comprehensive efforts of the People's Liberation Army to modernize its ballistic and cruise missile programs could spark a regional arms race that would destabilize the East Asia and Western Pacific regions and threaten vital United States national security interests.

(4) In March 1996, the People's Liberation Army created a temporary, but de facto, blockade of both the international shipping lanes of the Taiwan Strait and the international airspace around Taiwan by conducting live-fire military exercises which included the launch of several advanced, nuclear-capable M-9 ballistic missiles to target areas close to major ports in both the northern and southern areas of Taiwan.

(5) In March 1996, the locations of People's Liberation Army military activities and M-9 missile target areas nearby to Taiwan's two largest ports, Keelung and Kaohsiung, created a de facto blockade of the Taiwan Strait, international waters and airspace, interfered with United States and international shipping and aviation, and impinged upon the national security interests of the United States, requiring the immediate deployment of two United States aircraft carrier battle groups to the South China Sea.

(6) The actions of the People's Liberation Army in such close proximity to Taiwan were deliberate attempts to disrupt Taiwan's social and economic stability and were carried out as attempts to intimidate the people of Taiwan during the period leading up to Taiwan's historic first democratic presidential election.

(7) The early development and deployment of an effective United States theater missile defense system to the Asia-Pacific region, and the adjustment of United States policy to include Taiwan, including the Penghu Islands, Kinmen, and Matsu, under the protection of such defense system, would be prudent and appropriate responses to—

(A) the refusal by the People's Republic of China to renounce the use of force to determine the future of Taiwan;

(B) the nature of the military threat of the People's Republic of China posed by the increased focus of the People's Liberation Army on advanced missile development; and

(C) the demonstrated intent of the Government of the People's Republic of China to use live-fire military exercises and ballistic missile tests against the people and Government of Taiwan as tools of so-called coercive diplomacy.

(8) The early deployment of a United States theater anti-ballistic missile system in the Asia-Pacific region would maintain a balance of power in the Taiwan Strait and deter the People's Republic of China from resorting to military intimidation tactics to coerce or manipulate the people and freely-elected Government of Taiwan in the future.

(9) Taiwan's local air-defense capability provided by the United States Modified Air Defense System (MADS) is not adequate for the task of defending local areas of Taiwan, including the Penghu Islands, Kinmen, and Matsu, from limited ballistic missile attacks or deterring the threat and use of force against Taiwan by the People's Liberation Army to achieve the political goals of the core leadership of the People's Republic of China.

(10) Taiwan has requested further United States cooperation on missile defense, including the conduct of a joint architecture study of the requirements for the establishment and operation of a missile defense system for Taiwan, including the Penghu Islands, Kinmen, and Matsu.

SEC. 3. STUDY AND REPORT RELATING TO ESTABLISHMENT AND OPERATION OF A THEATER BALLISTIC MISSILE DEFENSE SYSTEM IN THE ASIA-PACIFIC REGION.

(a) **STUDY.**—The Secretary of Defense shall carry out a study of the architecture requirements for the establishment and operation of a theater ballistic missile defense system in the Asia-Pacific region that would have the capability to protect Taiwan from ballistic missile attacks. The study shall include a description of appropriate measures by which the United States would cooperate with Taiwan and provide Taiwan with an advanced local-area ballistic missile defense system.

(b) **REPORT.**—Not later than July 1, 1998, the Secretary of Defense shall submit to the Committee on National Security of the House of Representatives and the Committee on Armed Services of the Senate a report containing—

(1) the results of the study conducted under subsection (a);

(2) the factors used to obtain such results;

(3) a description of any existing United States missile defense system that could be transferred to Taiwan in accordance with the Taiwan Relations Act in order to allow Taiwan to provide for its self-defense against limited ballistic missile attacks.

(c) FORM OF REPORT.—The report under subsection (b) shall be submitted in both classified and unclassified form.

SEC. 4. TRANSFER OF BALLISTIC MISSILE DEFENSE SYSTEMS TO TAIWAN.

It is the sense of the Congress that the President, if requested by the Government of Taiwan and in accordance with the results of the study conducted under section 3, should transfer to the Government of Taiwan appropriate defense articles or defense services under the foreign military sales program under chapter 2 of the Arms Export Control Act (22 U.S.C. 2761 et seq.) for the purpose of establishing and operating a local-area ballistic missile defense system to protect Taiwan, including the Penghu Islands, Kinmen, and Matsu, against limited ballistic missile attacks.

SEC. 5. STATEMENT OF POLICY RELATING TO UNITED STATES THEATER MISSILE DEFENSES FOR THE ASIA-PACIFIC REGION.

The Congress declares that it is in the national interest of the United States that Taiwan be included in any effort at ballistic missile defense cooperation, networking, or interoperability with friendly and allied nations in the Asia-Pacific region.

SEC. 6. SENSE OF THE CONGRESS URGING THE PRESIDENT TO MAKE CLEAR TO THE PEOPLE'S REPUBLIC OF CHINA THE COMMITMENT OF THE AMERICAN PEOPLE TO SECURITY AND DEMOCRACY IN TAIWAN.

It is the sense of the Congress that the Clinton Administration should make clear to the leadership of the People's Republic of China, the American people's firm commitment for security and democracy for the people of Taiwan and that the United States fully expects that the resolution of security issues on both sides of the Taiwan Strait will be resolved by peaceful means.

BACKGROUND AND PURPOSE

H.R. 2386, the U.S.-Taiwan Anti-Ballistic Missile Defense Cooperation Act, would implement provisions of the Taiwan Relations Act to enhance the stability and security of Taiwan and to facilitate U.S. cooperation with Taiwan in the development and acquisition of defensive military articles; in particular, modern air defense and anti-missile systems.

The security of Taiwan and the maintenance of a balance of power in the Taiwan Strait are key elements for the continued peace and stability of the greater Asia-Pacific region. The indefinite continuation of such stability and peace in a region of vibrant economic growth, expanding international trade and emerging democratic societies is a vital national security interest of the United States. Therefore, there is a basis for cooperation between the U.S. and Taiwan in support of defensive measures that will preserve a balance of power capable of deterring any resort to force, in particular, any attempt to reunite Taiwan with the Chinese mainland by violent means.

The People's Republic of China (PRC) is currently engaged in a comprehensive military modernization campaign that is enhancing the power-projection capabilities of the People's Liberation Army (PLA). Included in this campaign is the development and deployment of ballistic and cruise missiles that could alter the current balance of power in the Taiwan Strait and in the greater Asia-Pacific region. Besides increasing the number of medium and short-range ballistic missiles deployed in the region, the PRC is also striving to improve its guidance systems, including terminal radar guidance and global-positioning technologies. Long-range cruise

missiles are also under development. The nature and pace of the PRC's missile programs could spark a regional arms race that could destabilize the region and threaten vital United States national security interests.

In March, 1996, the PLA created a temporary, de facto blockade of both the international shipping lanes of the Taiwan Strait and the international airspace around Taiwan by conducting live-fire military exercises which included the launch of several advanced, nuclear-capable M-9 ballistic missiles to target zones close to major ports in both the northern and southern areas of Taiwan. These included missile strikes near Taiwan's two largest ports, Keelung and Kaohsiung. This interruption of international shipping and aviation impinged upon the national security interests of the United States. In response, the United States deployed two aircraft carrier battle groups to the South China Sea. Subsequently, the U.S. provided the government of Taiwan with Patriot air defense systems, which have a limited anti-missile capability.

The actions of the PLA in March, 1996 were deliberate attempts to disrupt Taiwan's social and economic stability and to intimidate the people of Taiwan during the period leading up to Taiwan's first democratic presidential elections.

The early development and deployment of an effective U.S. theater missile defense system to the Asia-Pacific region, and the adjustment of U.S. policy to include Taiwan (including the Matsu, Kinmen and Penghu islands) under the protection of such a defense system, would be prudent and appropriate. Such an early deployment would maintain the balance of power in the Taiwan Strait and deter the People's Republic of China from resorting to military intimidation tactics or other uses of force. The PRC has refused to renounce the use of force to determine the future of Taiwan. Furthermore, the rapid modernization and expansion of the PLA require that a policy of deterrence be adopted to counter these emerging capabilities.

Taiwan's current local air defense system, provided by the U.S., is not adequate to this task. Taiwan has requested further U.S. cooperation on missile defense, including the conduct of a joint architecture study of the requirements for the establishment and operation of a missile defense system. H.R. 2386 calls on the Secretary of Defense to carry out such a study of the architecture requirements, and to include a description of appropriate measures by which the U.S. could cooperate with Taiwan and provide Taiwan with an advanced local-area ballistic missile defense system.

H.R. 2386 also expresses the sense of the Congress that the President, if requested by the government of Taiwan and if consistent with the aforementioned study, should transfer to the government of Taiwan appropriate defense articles and defense systems for the purpose of establishing and operating a local-area ballistic missile system. Furthermore, the bill declares that it is in the national interest of the United States that Taiwan be included in any effort to establish a ballistic missile defense system for the Asia-Pacific region in cooperation with other friendly nations and allies.

COMMITTEE ACTION

H.R. 2386, the U.S.-Taiwan Anti-Ballistic Missile Defense Cooperation Act, was introduced September 3, 1997. It was referred to the Committee on International Relations and, in addition, to the Committee on National Security. The introduction of this bill culminated several months of work on the subject of how to respond to various provocations by the government of the People's Republic of China in ways that prudently address specific problems without adding to regional tensions of imposing hardships on the common people of China.

On September 30, 1997, the International Relations Committee considered and marked up the measure, adopting it by voice vote as amended, a quorum being present. Three amendments were adopted. One amendment, adopted by voice vote, struck Section 3 of the bill, which made explicit that the Taiwan Relations Act take precedence over any provisions of the Joint Communiqué of the U.S. and China issued in Shanghai on August 17, 1982. The consensus of the committee was that such a statement was not necessary. The Taiwan Relations Act already clearly provides the legal framework for the transfer of defensive articles and for cooperation between the U.S. and Taiwan.

Indeed, according to Susan Shirk, the Deputy Assistant Secretary of State for East Asia, who represented the Clinton Administration's position in testimony at the mark-up session, such cooperation is already underway and consistent with U.S. policy in the Asia-Pacific region. The U.S. is currently holding seminars with Taiwan on air and missile defense issues. Furthermore, Taiwan has purchased the first three of eight ordered batteries of PAC-II Modified Air Defense Systems which have an anti-ballistic missile defense capability.

In addition, the Committee adopted, by voice vote, an amendment by Representative Rohrabacher, adding language expressing the Sense of the Congress urging that the President to make clear to the People's Republic of China the commitment of the American people to security and democracy in Taiwan.

Just prior to reporting the bill, the Committee adopted, by unanimous consent, a Gilman amendment in the nature of a substitute consisting of the text of the bill as it had been amended through that point.

COMMITTEE OVERSIGHT FINDINGS

In compliance with clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee reports the findings and recommendations of the Committee, based on oversight activities under clause 2(b)(1) of rule X of the Rules of the House of Representatives, are incorporated in the descriptive portions of this report.

COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT FINDINGS

No findings or recommendations of the Committee on Government Reform and Oversight were received as referred to in clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives.

NEW BUDGET AUTHORITY AND TAX EXPENDITURES

The Committee adopts the cost estimate of the Congressional Budget Office, set out below, as its submission of any required information on new budget authority, new spending authority, new credit authority, or an increase or decrease in the national debt required by clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

CONSTITUTIONAL AUTHORITY STATEMENT

In compliance with clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee cites the following specific powers granted to the Congress in the Constitution as authority for enactment of H.R. 2386 as reported by the Committee: Article I, section 8, clause 3 (relating to the regulation of commerce with foreign nations and among the several states); and Article I, section 8, clause 18 (relating to making all laws necessary and proper for carrying into execution powers vested by the Constitution in the government of the United States).

CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

In compliance with clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the Committee sets forth with respect to H.R. 2386 as reported by the Committee the following estimate and comparison prepared by the Director of the Congressional Budget Office under section 403 of the Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 6, 1997.

Hon. BENJAMIN A. GILMAN,
*Chairman, Committee on International Relations,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 2386, the United States-Taiwan Anti-Ballistic Missile Defense Cooperation Act.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Joseph C. Whitehill.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

H.R. 2386—United States-Taiwan Anti-Ballistic Missile Defense Cooperation Act

The bill would require the Department of Defense to conduct a study of the architecture requirements for establishing and operating a theater defense system capable of protecting Taiwan from ballistic missile attack.

Based on information from the Department of Defense, CBO estimates that the architecture study would cost less than \$500,000, assuming the appropriation of the necessary funds. Because the bill would not affect direct spending or receipts, pay-as-you-go procedures would not apply.

The bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 and would not affect the budgets of state, local, or tribal governments.

The estimate was prepared by Joseph C. Whitehill. The estimate was approved by Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

JURISDICTIONAL ISSUES AND OTHER MATTERS

This legislation has been referred in addition to the Committee on National Security.

COMMITTEE ON NATIONAL SECURITY,
HOUSE OF REPRESENTATIVES,
Washington, DC, September 26, 1997.

Hon. NEWT GINGRICH,
*The Speaker, The Capitol,
House of Representatives, Washington, DC.*

DEAR MR. SPEAKER: I write with respect to H.R. 2188, a bill concerning the tariff treatment of commercial activities undertaken by communist Chinese military organizations, and H.R. 2386, the United States-Taiwan Anti-Ballistic Missile Defense Cooperation Act. Both of these bills have been referred to the Committee on National Security, in addition to other committees.

The Committee on National Security has reviewed H.R. 2188 and H.R. 2386 and, in order to expedite consideration of these measures in the House, waives its right to take up both pieces of legislation. I therefore ask that the committee be discharged from further consideration.

The Committee on National Security wishes to make clear that the foregoing waiver should not be construed as a waiver of the committee's jurisdiction with respect to any of the legislative provisions in H.R. 2188 and H.R. 2386 that fall within its jurisdiction. The committee also wishes to preserve its prerogatives concerning any House-Senate conference on these bills and any Senate amendments thereto, including the appointment of conferees with respect

to the provisions of the bills which fall within this committee's jurisdiction.

Thank you for your attention to this matter.

With warm personal regards, I am

Sincerely,

FLOYD D. SPENCE, *Chairman.*

SECTION-BY-SECTION ANALYSIS

Section 1. Short title

Provides that the Act may be cited as the "United States-Taiwan Anti-Ballistic Missile Defense Cooperation Act".

Section 2. Findings

Sets forth relevant findings of Congress, including that the indefinite continuation of stability, security, and the balance of power in the Taiwan Strait is in the vital national security interest of the United States; that the People's Republic of China is introducing missiles that could alter the balance of power in the Taiwan Strait; that in March 1996 the People's Liberation Army used ballistic missile firings to create a de facto blockade of the Taiwan Strait; that the United States should develop an effective theater missile defense system and place Taiwan (including the Penghu Islands, Kinmen, and Matsu) under the protection of such a system; and that Taiwan has requested further United States cooperation on missile defense, including the conduct of a joint architecture study for a missile defense system for Taiwan.

Section 3. Study and report relating to establishment and operation of a theater ballistic missile defense system in the Asia-Pacific region

Directs the Secretary of Defense to carry out a study of the architecture requirements for a theater missile defense system that could protect Taiwan. Not later than July 1, 1998, the Secretary of Defense shall submit to the appropriate committees of Congress the results of the study and a description of any existing United States ballistic missile defense system that could be transferred to Taiwan in accordance with the Taiwan Relations Act.

Section 4. Transfer of ballistic missile defense systems to Taiwan

Expresses the sense of Congress that the President, if requested by Taiwan and in accordance with the results of the study under section 3, should transfer to Taiwan appropriate defense articles or defense services under the foreign military sales program for the purpose of operating a local-area ballistic missile defense system to protect Taiwan.

Section 5. Statement of policy relating to United States theater missile defenses for the Asia-Pacific region

Declares it to be in the national interest of the United States to include Taiwan in any effort at ballistic missile defense cooperation, networking, or interoperability in the Asia-Pacific region.

Section 6. Sense of the Congress urging the President to make clear to the People's Republic of China the commitment of the American people to security and democracy in Taiwan

Expresses the sense of Congress that the Clinton Administration should make clear to the leadership of the People's Republic of China the American people's firm commitment for security and democracy for the people of Taiwan, and that the United States fully expects that security issues on both sides of the Taiwan Strait will be resolved by peaceful means.

DISSENTING VIEWS

This resolution mandates a Department of Defense study of the architecture requirements for the establishment and operation of a theater ballistic missile defense (BMD) system that would include Taiwan, and declares, as a sense of the Congress, that the President, if requested by the government of Taiwan, should make a BMD system available to Taiwan.

This resolution is flawed both substantively and procedurally. While this bill was improved through the amendment process, it retains its core serious substantive problems:

First, it is illogical for the bill to mandate a study and Presidential report concerning the establishment of a theater BMD system that includes Taiwan, while urging the President, without waiting for the results of the study, to make such a system available to Taiwan.

Second, inasmuch as China regards Taiwan as an integral part of the People's Republic of China, the offer to Taiwan of some of the world's most advanced weaponry appears deliberately designed to provoke China.

Third, Taiwan does not need this technology, and may not even want it. The U.S. Department of Defense already has an ongoing BMD program with Taiwan and has sold Taiwan a Patriot derivative (PAC-3) that is comparable to a system that is so advanced that it has been introduced into the U.S. Army only in the past year. Moreover, senior Taiwanese military leaders are reluctant to commit substantial financial resources for unproved BMD technology.

In short, this bill is simultaneously provocative and unnecessary. It carries risk, with no prospect for benefit. It will reduce rather than enhance the security of our friends on Taiwan.

Procedurally, the process followed by the Committee in marking up this resolution was most unfortunate.

First, the process did not reflect the way a responsible committee should operate. Members and staff were not given adequate notice to study this resolution, even though it deals with serious issues that could have a major adverse impact on the upcoming summit meeting with the Chinese president. The usual requirement of one week's notice for a mark up was reduced to barely more than 24 hours. No unusual or emergency circumstances exist that warranted waiving the customary one-week rule. No committee hearings have been held on this resolution, nor were any senior Administration officials permitted to testify on the policy implications of this resolution prior to the mark up.

Second, this resolution is badly timed. It does not enhance the ability of the President to advance U.S. non-proliferation goals at the upcoming U.S.-China summit, the first official U.S.-China summit in over eight years. It is counterproductive for the Committee—

on the basis of hasty deliberation and inadequate consultation with the Executive branch—to condemn Chinese actions and criticize Administration policy, since this approach is unlikely to persuade the Chinese that the Congress is serious about its commitment to nonproliferation. Adoption of this resolution will make the President's job more difficult as he attempts to persuade the Chinese to halt the transfer to Iran of dangerous weapons. The Congress should be working with the President to help make the summit successful, not passing bills to put obstacles in his way, and to create the impression that the Congress is moving in one direction and the President the other in China policy.

Finally, the cumulative impact of five resolutions on China marked up and voted out of Committee as a package—plus others that are circulating and may come to the Floor simultaneously with these five—is likely to be harmful to U.S. foreign policy interests. Congress of course has every right to express its views on these important issues. Nonetheless, when this many resolutions each with a strongly anti Chinese tilt suddenly come forward simultaneously, and only weeks before a summit meeting, it is difficult to escape the conclusion that considerations other than foreign policy are also at work here. The Chinese-American relationship will not advance if it becomes a game board for the purpose of scoring points of perceived domestic political advantage.

LEE H. HAMILTON.
GARY L. ACKERMAN.
AMO HOUGHTON.
BOB CLEMENT.

