105TH CONGRESS 2d Session | HOUSE OF REPRESENTATIVES | REPORT 105–582

TO ESTABLISH THE SELECT COMMITTEE ON U.S. NATIONAL SECURITY AND MILITARY/COMMERCIAL CONCERNS WITH THE PEOPLE'S REPUBLIC OF CHINA

JUNE 16, 1998.—Referred to the House calendar and ordered to be printed

Mr. SOLOMON, from the Committee on Rules, submitted the following

R E P O R T

together with

MINORITY VIEWS

[To accompany H. Res. 463]

The Committee on Rules, to whom was referred the resolution (H. Res. 463) To establish the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, having considered the same, report favorably thereon with an amendment and recommend that the resolution as amended be agreed to.

The amendment is as follows:

Strike all after the resolving clause and insert the following:

SECTION 1. ESTABLISHMENT.

There is hereby created the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China, (hereafter in this resolution referred to as the "Select Committee"). The Select Committee may sit and act during the present Congress at such times and places within the United States, including any Commonwealth or possession thereof, or in any other country, whether the House is in session, has recessed, or has adjourned, as it shall deem appropriate for the completion of its work.

SEC. 2. JURISDICTION.

(a) IN GENERAL.—The Select Committee shall conduct a full and complete inquiry regarding the following matters and report such findings and recommendations, including those concerning the amendment of existing law or the enactment of new law, to the House as it considers appropriate:

(1) The transfer of technology, information, advice, goods, or services that may have contributed to the enhancement of the accuracy, reliability, or capability of nuclear-armed intercontinental ballistic missiles or other weapons of the People's Republic of China, or that may have contributed to the enhancement of the intelligence capabilities of the People's Republic of China.

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(2) The transfer of technology, information, advice, goods, or services that may have contributed to the manufacture of weapons of mass destruction, missiles, or other weapons or armaments by the People's Republic of China.

(3) The effect of any transfer or enhancement referred to in paragraphs (1) or (2) on regional security and the national security of the United States.

(4) The conduct of the executive branch of the United States Government with respect to the transfers or enhancements referred to in paragraphs (1) or (2), and the effect of that conduct on regional security and the national security of the United States.

(5) The conduct of defense contractors, weapons manufacturers, satellite manufacturers, and other private or government-owned commercial firms with respect to the transfers or enhancements referred to in paragraphs (1) or (2).

(6) The enforcement of United States law, including statutes, regulations, or executive orders, with respect to the transfers or enhancements referred to in paragraphs (1) or (2).

(7) Any effort by the Government of the People's Republic of China or any other person or entity to influence any of the foregoing matters through political contributions, commercial arrangements, or bribery, influence-peddling, or other illegal activities.

(8) Decision-making within the executive branch of the United States Government with respect to any of the foregoing matters.

(9) Any effort to conceal or withhold information or documents relevant to any of the foregoing matters or to obstruct justice, or to obstruct the work of the Select Committee or any other committee of the House of Representatives in connection with those matters.

(10) All matters relating directly or indirectly to any of the foregoing matters.

(b) PERMITTING REPORTS TO BE MADE TO HOUSE IN SECRET SESSION.—Any report to the House pursuant to this section may, in the Select Committee's discretion, be made under the provisions of rule XXIX of the Rules of the House of Representatives.

SEC. 3. COMPOSITION; VACANCIES.

(a) COMPOSITION.—The Select Committee shall be composed of 9 or fewer Members of the House to be appointed by the Speaker of the House of Representatives, one of whom he shall designate as Chairman. Service on the Select Committee shall not count against the limitations on committee service in clause 6(b)(2) of rule X.

(b) VACANCIES.—Any vacancy occurring in the membership of the Select Committee shall be filled in the same manner in which the original appointment was made.

SEC. 4. RULES APPLICABLE TO SELECT COMMITTEE.

(a) QUORUM.—One-third of the members of the Select Committee shall constitute a quorum for the transaction of business other than the reporting of a matter, which shall require a majority of the committee to be actually present, except that the Select Committee may designate a lesser number, but not less than 2, as a quorum for the purpose of holding hearings to take testimony and receive evidence.

(b) APPLICABILITY OF HOUSE RULES.—The Rules of the House of Representatives applicable to standing committees shall govern the Select Committee where not inconsistent with this resolution.

(c) RULES OF SELECT COMMITTEE.—The Select Committee shall adopt additional written rules, which shall be public, to govern its procedures, which shall not be inconsistent with this resolution or the Rules of the House of Representatives.

SEC. 5. CLASSIFIED INFORMATION.

No employee of the Select Committee or any person engaged by contract or otherwise to perform services for or at the request of such committee shall be given access to any classified information by such committee unless such employee or person has—

(1) agreed in writing and under oath to be bound by the rules of the House (including the jurisdiction of the Committee on Standards of Official Conduct and of the Select Committee as to the security of such information during and after the period of his employment or contractual agreement with the Select Committee); and

(2) received an appropriate security clearance as determined by the Select Committee in consultation with the Director of Central Intelligence.

The type of security clearance to be required in the case of any such employee or person shall, within the determination of the Select Committee in consultation with the Director of Central Intelligence, be commensurate with the sensitivity of the classified information to which such employee or person will be given access by such committee.

SEC. 6. LIMITS ON DISCLOSURE OF INFORMATION.

The Select Committee shall formulate and carry out such rules and procedures as it deems necessary to prevent the disclosure, without the consent of the person or persons concerned, of information in the possession of such committee which unduly infringes upon the privacy or which violates the constitutional rights of such person or persons. Nothing herein shall be construed to prevent such committee from publicly disclosing any such information in any case in which such committee determines that national interest in the disclosure of such information clearly outweighs any infringement on the privacy of any person or persons.

SEC. 7. PROCEDURES FOR HANDLING INFORMATION.

(a) The Select Committee may, subject to the provisions of this section, disclose publicly any information in the possession of such committee after a determination by such committee that the public interest would be served by such disclosure. Whenever committee action is required to disclose any information under this section, the committee shall meet to vote on the matter within five days after any member of the committee requests such a vote. No member of the Select Committee shall disclose any information, the disclosure of which requires a committee vote, prior to a vote by the committee on the question of the disclosure of such information or after such vote except in accordance with this section. In any case in which the Select Committee votes to disclose publicly any information, which has been classified under established security procedures, which has been submitted to it by the executive branch, and which the executive branch requests be kept secret, the Select Committee shall submit such classified information to the Permanent Select Committee on Intelligence.

(b)(1) As set forth in clause 7(b) of rule XLVIII, in any case in which the Permanent Select Committee on Intelligence votes to disclose publicly any information submitted pursuant to subsection (a), which has been classified under established security procedures, which has been submitted to the Select Committee by the executive branch, and which the executive branch has requested be kept secret, the Permanent Select Committee on Intelligence shall notify the President of such vote.

(2) The Permanent Select Committee on Intelligence may disclose publicly such information after the expiration of a five-day period following the day on which notice of such vote is transmitted to the President, unless, prior to the expiration of such five-day period, the President, personally in writing, notifies the Permanent Select Committee on Intelligence that he objects to the disclosure of such information, provides his reasons therefor, and certifies that the threat to the national interest of the United States posed by such disclosure is of such gravity that it outweighs any public interest in the disclosure.

(3) If the President, personally, in writing, notifies the Permanent Select Committee on Intelligence of his objections to the disclosure of such information as provided in paragraph (2), the Permanent Select Committee on Intelligence may, by majority vote, refer the question of this disclosure of such information with a recommendation thereon to the House for consideration. The Permanent Select Committee on Intelligence shall not publicly disclose such information without leave of the House.

(4) Whenever the Permanent Select Committee on Intelligence votes to refer the question of disclosure of any information to the House under paragraph (3), the chairman of the Permanent Select Committee on Intelligence shall, not later than the first day on which the House is in session following the day on which the vote occurs, report the matter to the House for its consideration.

(5) If within four calendar days on which the House is in session, after such recommendation is reported, no motion has been made by the chairman of the Permanent Select Committee on Intelligence to consider, in closed session, the matter reported under paragraph (4), then such a motion will be deemed privileged and may be made by any Member. The motion under this paragraph shall not be subject to debate or amendment. When made, it shall be decided without intervening motion, except one motion to adjourn.

(6) If the House adopts a motion to resolve into closed session, the Speaker shall then be authorized to declare a recess subject to the call of the Chair. At the expiration of such recess, the pending question, in closed session, shall be, "Shall the House approve the recommendation of the Permanent Select Committee on Intelligence?"

(7) After not more than two hours of debate on the motion, such debate to be equally divided and controlled by the chairman and ranking minority member of the Permanent Select Committee on Intelligence, or their designees, the previous question shall be considered as ordered and the House, without intervening motion except one motion to adjourn, shall immediately vote on the question, in open session but without divulging the information with respect to which the vote is being taken.

If the recommendation of the Permanent Select Committee on Intelligence is not agreed to, the question shall be deemed recommitted to the Permanent Select Committee on Intelligence for further recommendation.

(c)(1) No information in the possession of the Select Committee relating to the lawful intelligence or intelligence-related activities of any department or agency of the United States which has been classified under established security procedures and which the Select Committee, the Permanent Select Committee on Intelligence, or the House pursuant to this section, has determined should not be disclosed shall be made available to any person by a Member, officer, or employee of the House except as provided in paragraph (2).

(2) The Select Committee shall, under such regulations as the committee shall prescribe, make any information described in paragraph (1) available to any other committee or any other Member of the House and permit any other Member of the House to attend any hearing of the committee which is closed to the public. Whenever the Select Committee makes such information available (other than to the Speaker), the committee shall keep a written record showing, in the case of any particular information, which committee or which Members of the House received such information. No Member of the House who, and no committee which, receives any information under this paragraph, shall disclose such information except in a closed session of the House.

(d) The Committee on Standards of Official Conduct shall investigate any unauthorized disclosure of intelligence or intelligence-related information by a Member, officer, or employee of the House in violation of subsection (c) and report to the House concerning any allegation which it finds to be substantiated.

(e) Upon the request of any person who is subject to any such investigation, the Committee on Standards of Official Conduct shall release to such individual at the conclusion of its investigation a summary of its investigation, together with its findings. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant breach of confidentiality or unauthorized disclosure by a Member, officer, or employee of the House, it shall report its findings to the House and recommend appropriate action such as censure, removal from committee membership, or expulsion from the House, in the case of a Member, or removal from office or employment or punishment for contempt, in the case of an officer or employee.

SEC. 8. TRANSFER OF INFORMATION TO SELECT COMMITTEE.

Any committee of the House of Representatives having custody of records, data, charts, and files concerning subjects within the jurisdiction of the Select Committee shall furnish the originals or copies of such materials to the Select Committee. In the case of the Permanent Select Committee on Intelligence, such materials shall be made available pursuant to clause 7(c)(2) of rule XLVIII.

SEC. 9. INFORMATION GATHERING.

(a) IN GENERAL.—The Select Committee is authorized to require, by subpoena or otherwise, the attendance and testimony of such witnesses, the furnishing of such information by interrogatory, and the production of such books, records, correspondence, memoranda, papers, documents, calendars, recordings, electronic communications, data compilations from which information can be obtained, tangible objects, and other things and information of any kind as it deems necessary, including all intelligence materials however classified, White House materials, and materials pertaining to unvouchered expenditures or concerning communications interceptions or surveillance.

(b) SUBPOENAS, DEPOSITIONS AND INTERROGATORIES.—Unless otherwise determined by the Select Committee, the Chairman, upon consultation with the ranking minority member, or the Select Committee may—

(1) authorize and issue subpoenas;

(2) order the taking of depositions, interrogatories, or affidavits under oath or otherwise; and

(3) designate a member or staff of the Select Committee to conduct any deposition.

(c) INTERNATIONAL AUTHORITIES.—Unless otherwise determined by the Select Committee, the Chairman of the Select Committee, upon consultation with the ranking minority member of the Select Committee, or the Select Committee may—

(1) authorize the taking of depositions and other testimony, under oath or otherwise, anywhere outside the United States; and

(2) make application for issuance of letters rogatory, and request through appropriate channels, other means of international assistance, as appropriate.

(d) HANDLING OF INFORMATION.—Information obtained under the authority of this section shall be—

(1) considered as taken by the Select Committee in the District of Columbia, as well as the location actually taken; and

(2) considered to be taken in executive session.

SEC. 10. TAX RETURNS.

Pursuant to sections 6103(f)(3) and 6104(a)(2) of the Internal Revenue Code of 1986, for the purpose of investigating the subjects set forth in this resolution and since information necessary for this investigation cannot reasonably be obtained from any other source, the Select Committee shall be specially authorized to inspect and receive for the tax years 1988 through 1998 any tax return, return information, or other tax-related material, held by the Secretary of the Treasury, related to individuals and entities named by the Select Committee as possible participants, beneficiaries, or intermediaries in the transactions under investigation. As specified by section 6103(f)(3) of the Internal Revenue Code of 1986, such materials and information shall be furnished in closed executive session.

SEC. 11. ACCESS TO INFORMATION OF THE SELECT COMMITTEE.

The Select Committee shall provide other committees and Members of the House with access to information and proceedings, consistent with clause 7(c)(2) of rule XLVIII, except that the Select Committee may direct that particular matters or classes of matter shall not be made available to any person by its members, staff, or others, or may impose any other restriction. The Select Committee may require its staff to enter nondisclosure agreements, and its chairman, in consultation with the ranking minority member, may require others, such as counsel for witnesses, to do so. The Committee on Standards of Official Conduct may investigate any unauthorized disclosure of such classified information by a Member, officer, or employee of the House or other covered person upon request of the Select Committee. If, at the conclusion of its investigation, the Committee on Standards of Official Conduct determines that there has been a significant unauthorized disclosure, it shall report its findings to the House and recommend appropriate sanctions for the Member, officer, employee, or other covered person consistent with clause 7(e) of rule XLVIII and any committee restriction, including nondisclosure agreements. The Select Committee shall, as appropriate, provide access to information and proceedings to the Speaker and the minority leader and an appropriately cleared and designated member of each staff.

SEC. 12. COOPERATION OF OTHER ENTITIES.

(a) COOPERATION OF OTHER COMMITTEES.—The Select Committee may submit to any standing committee specific matters within its jurisdiction and may request that such committees pursue such matters further.

(b) COOPERATION OF OTHER FEDERAL ENTITIES.—The Chairman of the Select Committee, upon consultation with the ranking minority member, or the Select Committee may request investigations, reports, and other assistance from any agency of the executive, legislative, and judicial branches of the Federal Government.

SEC. 13. ACCESS AND RESPONSE TO JUDICIAL PROCESS.

In addition to any applications to court in response to judicial process that may be made in behalf of the House by its counsel, the Select Committee shall be authorized to respond to any judicial or other process, or to make any applications to court, upon consultation with the Speaker consistent with rule L.

SEC. 14. ADMINISTRATIVE MATTERS.

(a) PERSONNEL.—The Chairman, upon consultation with the ranking minority member, may employ and fix the compensation of such clerks, experts, consultants, technicians, attorneys, investigators, clerical and stenographic assistants, and other appropriate staff as the Chairman considers necessary to carry out the purposes of this resolution. Detailees from the executive branch or staff of the House or a joint committee, upon the request of the Chairman of the Select Committee, upon consultation with the ranking minority member, shall be deemed staff of the Select Committee to the extent necessary to carry out the purposes of this resolution.

(b) PAYMENT OF EXPENSES.—(1) The Select Committee may reimburse the members of its staff for travel, subsistence, and other necessary expenses incurred by them in the performance of the duties vested in the Select Committee.

(2) Not more than $2,500,000 are authorized for expenses of the Select Committee for investigations and studies, including for the procurement of the services of individual consultants or organizations thereof, and for training of staff, to be paid out of the applicable accounts of the House of Representatives upon vouchers signed by the Chairman and approved in the manner directed by the Committee on House Oversight.

SEC. 15. APPLICABILITY OF OTHER LAWS TO SELECT COMMITTEE.

The Select Committee shall be deemed a committee of the House for all purposes of the rules of the House of Representatives and shall be deemed a committee for all purposes of law, including, but not limited to, section 202(f) of the Legislative Reorganization Act of 1946 (2 U.S.C. 72a(f)), sections 102 and 104 of the Revised Statutes (2 U.S.C. 192 and 194), sections 1001, 1505, 1621, 6002, and 6005 of title 18, United States Code, section 502(b)(1)(B)(ii) of the Mutual Security Act of 1954 (22 U.S.C. 1754(b)(1)(B)(ii)), and section 734 of title 31, United States Code.

SEC. 16. DISPOSITION OF RECORDS.

At the conclusion of the existence of the Select Committee, all records of the Select Committee shall be transferred to other committees, or stored by the Clerk of the House, as directed by the Select Committee, consistent with applicable rules and law concerning classified information.

PURPOSE OF THE RESOLUTION

The purpose of H. Res. 463 is to establish the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China.

SUMMARY OF THE RESOLUTION

H. Res. 463 creates a select committee in the House to investigate U.S. National Security and Military/Commercial Concerns With the People's Republic of China and delineates the scope of the inquiry. The resolution allows the Speaker to appoint 9 or fewer Members of the Select Committee, and states that service on the Select Committee shall not count against the Member committee assignment limits contained in clause 6(b)(2) of House rule X.

The resolution allows a ⅓ quorum requirement for all business except reporting a matter, and provides the option for the Select Committee to designate a quorum of not less than 2 Members for hearings to take testimony and receive evidence. The resolution requires the Select Committee to adopt its own written rules, and makes the Select Committee a standing committee for all applicable House rules.

H. Res. 463 contains provisions providing for the protection of classified information including non-disclosure agreements with a referral to the Committee on Standards of Official Conduct in the case of a violation. It allows the Select Committee to vote to submit classified information to the House Permanent Select Committee on Intelligence for its consideration pursuant to House rule XLVIII, the House Intelligence Committee rule.

The resolution authorizes the chairman to issue subpoenas in consultation with the ranking member. It provides the chairman of the Select Committee the ability to order a deposition by a single Member or staff of the Select Committee. It also provides for certain international evidence-gathering techniques.

The resolution additionally authorizes the Select Committee to inspect and receive tax information for tax years 1988 through 1998, pursuant to current authority contained in the Tax Code for the House Ways and Means Committee, the Senate Finance Committee, and the Joint Committee on Taxation.

The resolution also allows the Select Committee to respond to any judicial process and make applications to court, upon consultation with the Speaker and consistent with Rule L, procedure for response to subpoenas.

Finally, the resolution authorizes not more than $2.5 million for the expenses of the Select Committee.

COMMITTEE CONSIDERATION

H. Res. 463 was introduced by Rules Chairman Solomon on June 9, 1998 and referred to the Committee on Rules.

On Tuesday, June 16, the Committee held a General Accounting Office briefing on the subject of export controls related to commercial communications satellites. Presenters were Katherine Schinasi, Associate Director for Defense Acquisitions, National Security and International Affairs Division; and David Trimble, Senior Evaluator, National Security and International Affairs Division.

On Tuesday, June 16, the Committee held a hearing H. Res. 463 and received testimony from: Hon. Christopher Cox, Chairman-designate of the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China; Hon. Norman Dicks, Ranking Minority Member-designate of the Select Committee; Hon. William Thomas, Chairman, Committee on House Oversight; James Woolsey, former Director of Central Intelligence; and Richard Allen, former National Security Advisor to President Reagan; Dr. Paul Freedenberg, International Trade Consultant, Baker & Botts; Joel Johnson, Vice-President, Aerospace Industries Association of America, Inc.; John Pike, Director of the Space Policy Project, Federation of American Scientists.

On Tuesday, June 16, the Committee held a mark-up of the resolution. During the mark-up, an amendment to the amendment in the nature of a substitute was agreed to by voice vote and subsequently the amendment in the nature of a substitute was agreed to by voice vote. The Committee then favorably reported H. Res. 463, as amended, by voice vote with a quorum present.

BACKGROUND DEVELOPMENTS ON THE ISSUE

Since the late 1980s, United States companies have been using Chinese launch services for satellites. This situation arose after the Challenger disaster of 1986, which created concerns over U.S. launch capabilities. Subsequent to the Tiananmen Square massacre in June 1989, the United States imposed a variety of sanctions on China in the Foreign Relations Act for Fiscal Year 1990 and 1991 (P.L. 101–246). In addition to other sanctions, this law included a suspension on the export of satellites. In 1991, President Bush imposed further sanctions on China, including a bar on satellite exports, due to a determination that China had transferred M–11 missile technology to Pakistan.

Since that time, thirteen waivers of the sanctions have been issued (three by President Bush and ten by President Clinton) covering twenty satellite launch projects in China (nine under President Bush and eleven under President Clinton). In February 1996, a Chinese launch carrying a Loral company satellite failed, destroying the satellite. In April 1996, Loral and Hughes, Inc. led a commission to study the cause of the launch failure.

On April 4, 1998, the New York Times reported that a federal grand jury was investigating whether, during the investigation of the 1996 launch failure, Loral and Hughes provided any information to the Chinese without State Department approval which may

have advanced Chinese ballistic missile capabilities. On April 13, the New York Times reported further than in May 1997, the Pentagon issued a classified report which concluded that Loral and Hughes had provided information that "significantly improved" China's missile capabilities.

On February 18, 1998, while the Justice Department investigation of Loral was ongoing, President Clinton issued another waiver for Loral to export a satellite to China. According to the April 4 New York Times article, some administration officials claimed that the February waiver undermined the investigation, since this proposed export involved the transfer of the same kind of expertise that prompted the Justice Department to investigate in the first place. In fact, the Justice Department made these very concerns known to the White House prior to the February 1998 waiver.

According to a June 1, 1998 New York Times article, the State Department also advised the White House, prior to the waiver, that Loral's actions in 1996 appeared to be "criminal" and "knowing," and that U.S. law might prohibit satellite exports to China in any event due to China's recent transfers of missile technology to Iran. The June 1 article also reports that the administration was well aware of the Defense Department's concerns over possibly aiding China's missile program, citing a February 12 memorandum to the President from National Security Advisor Samuel Berger. Also according to the June 1 article, and again citing internal White House and State Department memoranda, the National Security Advisor and the President were made well aware of the fact that Loral supposedly stood to lose the contract and $20 million if the waiver were not granted by January 20, 1998. Although the waiver was not issued until a month after the supposed deadline, the launch project is still on schedule for November and Loral has not incurred any penalties from the Chinese.

Press accounts have indicated that the CEO of Loral, Bernard Schwartz, is a close personal friend of the President's and was the largest single donor to the Democratic Party in 1996. Additional press accounts have asserted that a Chinese military officer, Lt. Col. Liu Chao-Ying, funneled nearly $300,000 to Democratic party fund-raiser Johnny Chung, while Chung was in turn funneling tens of thousands of dollars to the Democratic party during the 1996 election cycle. Liu Chao-Ying is a vice-president of China Aerospace Corporation, a company that is integrally involved in China's satellite launching program. Liu Chao-Ying was previously an executive with China Great Wall Industry Corporation and China Precision Machinery Import Export Corporation, the manufacturers and sellers of M–11 missile components to Pakistan.

During this period, several other related developments have aroused concern or raised questions regarding the Administration's export policies, especially toward China. On March 14, 1996, President Clinton decided to transfer ultimate control of satellite exports from the State Department to the Commerce Department, which is bureaucratically disposed to favoring looser export restrictions in order to aid U.S. business. A General Accounting Office official testified before the Senate Intelligence Committee on June 10, 1998, that the decision has diminished the ability of the Defense Department to block satellite exports, as DOD was routinely deferred to

by State, but now must garner a majority of agencies to agree to block an export. It has been reported in the media that then-Secretary of State Warren Christopher issued a memorandum opposing this policy change in October 1995.

Other press accounts have indicated that at the same time, the Administration also transferred control of so-called "hot section" technology to the Commerce Department. Hot section technology enhances the performance of fighter aircraft, and according to former Reagan administration official Steve Bryen (who was the first head of the Defense Technology Security Administration, the Pentagon agency in charge of export reviews), is so sensitive that it previously had not even been shared with close U.S. allies.

Press accounts have also reported that the Clinton Administration plans to abolish the Defense Technology Security Administration and transfer its responsibilities to an acquisitions department that is seen as more amenable to looser export controls. In testimony before the Rules Committee, former Director of Central Intelligence in the Clinton Administration James Woolsey said "The Defense Technology Security Administration has been the most effective watchdog [over] technology transfer in the government but has been effectively cut back and banished from the Pentagon."

The Clinton Administration has also loosened controls on the export of supercomputers, which can be used to enhance the capability and reliability of nuclear weapons. In testimony before Congress last year, Commerce Department official William Reinsch acknowledged that forty-seven supercomputers had been sold to China, and that the U.S. government was unsure of their whereabouts.

The administration has also proposed to trade a blanket waiver of all Tiananmen Square sanctions and the speeding up of missile technology exports to China for an agreement by China to join the Missile Technology Control Regime (MTCR), which bars exports of certain missile technologies to non-members. The proposal was rejected by the Chinese, who have frequently violated the parameters of the MTCR.

All of these developments and reports give rise to a number of unanswered questions that will be the object of the Select Committee's focus:

Did the transfer of technology, information, advice, goods or services contribute to the enhancement of the accuracy, reliability, or capability of nuclear armed intercontinental ballistic missiles or other weapons of the People's Republic of China? Or did such transfers contribute to the enhancement of the intelligence capabilities of the PRC?

Did such transfers contribute to the manufacture of weapons of mass destruction, missiles or other weapons or armaments by the PRC?

What effect, if any, did such transfers or enhancements have on regional security and the national security of the United States?

What was the conduct of the executive branch of the U.S. government with respect to such transfers or enhancements, and what was the effect of that conduct on the national security of the United States?

What was the conduct of defense contractors, weapons manufacturers, satellite manufacturers and other private or government-

owned commercial firms with respect to such transfers or enhancements?

Was United States law, including statutes, regulations or executive orders, enforced with respect to such transfers or enhancements?

Was there any effort by the government of the PRC or any other person or entity to influence any of the above matters through political contributions, commercial arrangements or bribery, influence peddling or other illegal activity?

What was the decision-making process within the executive branch of the U.S. government with respect to any of the above matters?

Was there any effort to conceal or withhold information or documents relevant to any of the above matters or to obstruct justice or to obstruct the work of the Select Committee or any other committee of the House of Representatives in connection with those matters?

In sum, the Select Committee is being created to ascertain what happened, how did it happen, and what impact it has had on U.S. national security and interests. The Rules Committee concurs with the assessment made by Woolsey in his testimony that "[I can think of] no subject [that] more clearly would require a careful and thorough investigation by a select committee of the Congress, and I could think of few that would even be in the same league."

BACKGROUND AND NEED FOR THE RESOLUTION

The standing rules of the House provide authority for the committees of the House to conduct investigations and inquiries relating to their general oversight jurisdiction. Provisions governing the investigative procedures for House committees can be found in House rule XI, which establishes quorum requirements, contains guidelines for the conduct of hearings, authorizes committees to sit and act if the House has recessed or adjourned, grants authority to committees for the collegial issuance of subpoenas, and allows committees some flexibility in promulgating their own rules to govern such proceedings.

For the most part, these existing provisions of House rules have proven adequate and effective in ensuring that the legitimate oversight function of House committees may be pursued. However, at various times in recent history, the House has chosen to supplement its standing rules by granting additional authorities to existing committees, or by creating select committees, subcommittees, or task forces, for the conduct of a specific inquiry. In those instances, the House has determined that the gravity and special characteristics of the issues and policies under review dictated the need for establishment of a special entity and for expanded procedures beyond those provided in House rules. Particularly in cases where crucial questions have been raised about U.S. national security and adherence to the laws and regulations intended to safeguard national security, the House has, in several instances, opted to empower a special panel to conduct a focused review.

The Committee on Rules believes that the allegations raised in this case warrant the creation of a select committee in the House for several reasons: the issue is one of a threat to U.S. national se-

curity and the investigation cannot be efficiently conducted in the current standing committee system. The scope, methods, duration, and costs are clearly spelled out in the resolution creating the Select Committee.

The Select Committee proposed by H. Res. 463 deals with an extremely significant and major issue. The Select Committee, as outlined in the jurisdiction section of the resolution and in the background section above, will examine profound issues of U.S. national security. The issues and questions raised by this matter affect the peace and security of American citizens, and are, in the judgment of the Rules Committee, of grave importance.

The House has, on several occasions in the recent past, opted to create a special panel to investigate matters relating to major foreign policy or national security issues. In the cases involving covert arms transactions to Iran and diversion of funds to the Nicaraguan Contras, the so-called "October Surprise" inquiry into allegations relating to American hostages in Iran, and the investigation of the so-called "green light" policy involving arms transfers from Iran to Croatia and Bosnia, the House has determined that the need for a focused and timely accounting to the American people justified establishment of a select committee, task force or select subcommittee.

On prior occasions, there has been bipartisan support for developing a special oversight mechanism to provide answers when serious national security questions regarding specific policies and circumstances have been raised. There has been similar bipartisan commentary in Congress and in our public debate asserting the need for such a mechanism in the current case involving technology transfers to China.

The Rules Committee believes that the important national security and foreign policy questions raised in the case that is now before the House are comparable in significance and scope to those of past inquiries involving select panels. Currently, there are potentially eight standing or select committees of the House with jurisdictional claims over pieces of this inquiry, a situation of jurisdictional overlap which could lead to confusion, duplication or delay in bringing this investigation to a conclusion. It is clear that the broad range of national security and foreign policy topics that arise in this instance can best be studied, considered, analyzed, and assessed by a single panel, whose sole focus is to conduct this inquiry and report its findings to the House and to the American people.

The American people want answers to the questions of how U.S. policy in this area has been determined and managed, and how decisions relating to technology transfers with China have impacted upon U.S. national security. The Rules Committee believes the House has an obligation to respond to those questions as expeditiously and thoroughly as possible. Creation of a select committee is the best means to accomplish that end.

In addition to creating this Select Committee, the Rules Committee believes it should be empowered with certain tools currently not envisioned by the standing rules of the House.

The issues before the Select Committee created by H. Res. 463 are among the most serious and difficult of oversight matters—chiefly the safeguarding of U.S. national security—and therefore

the Rules Committee has provided the Select Committee with single member or staff deposition authority and international evidence gathering authorities.

In addition, based on a careful review of the issues to be addressed in this inquiry, the Rules Committee has researched prior precedents and has provided the Select Committee with several additional authorities and guidelines.

The Rules Committee recognizes the likelihood that significant portions of the Select Committee's work will deal with sensitive and classified national security information. As a result, the Rules Committee has incorporated into H. Res. 463 provisions of House rules (specifically rule XLVIII) governing the conduct of the House Permanent Select Committee on Intelligence (HPSCI) and provisions of the HPSCI rules, to ensure that the gravity of protecting sensitive material is understood by the House, the members of the Select Committee, its staff, and all witnesses or other individuals with whom the Select Committee works.

In H. Res. 463, the Rules Committee is attempting to ensure that the Select Committee has sufficient authorities to conduct and conclude a thorough inquiry, while remaining within the bounds of precedent and House practice. The Rules Committee has examined prior House resolutions of this nature closely.

In prior cases, as in this instance, the Rules Committee and the House have taken special care to ensure that the resolutions granting committees additional investigative authorities have been specifically tailored for the particular investigation at hand and have been drafted to conform to the standing rules of the House.

H. Res. 463 tracks closely the language employed in H. Res. 12 (the 100th Congress), which established the Select Committee to Investigate Covert Arms Transactions with Iran, and which offers the most recent precedent for the creation of a select committee for a specific inquiry. In addition, the Rules Committee notes that similar language was employed in the 102nd Congress, for the establishment of the Task Force to Investigate Allegations Concerning the Holding of Americans as Hostages by Iran (H. Res. 258, regarding the so-called "October Surprise" allegations). In the 104th Congress, the House agreed to H. Res. 416, a resolution Establishing a Select Subcommittee of the Committee on International Relations to Investigate the United States role in Iranian Arms Transfers to Croatia and Bosnia (the so-called "Green Light" investigation), which employs authorities similar to H. Res. 463.

The Rules Committee recognizes that the charter of the Select Committee is ambitious and will require extraordinary effort on the part of the members and staff involved. Likewise, the Rules Committee expects that the Administration will cooperate fully with this important inquiry. The Select Committee, like all House Committees, will be bound by the time constraints inherent in the schedule for the 105th Congress, and therefore will have to organize rapidly. H. Res. 463 was drafted in close consultation with the House Oversight Committee. In addition, the resolution offers flexibility for the chairman of the Select Committee, in consultation with the ranking minority member, to employ the necessary staff to get the job of the Select Committee done.

In each instance in which the Rules Committee has provided such special authorities, the Committee has continually underscored its view that the standing rules of the House remain a sound basis for most congressional inquiries and are not in need of general revision. H. Res. 463 is brought forward for the consideration of the House in the same spirit.

SECTION-BY-SECTION ANALYSIS OF THE RESOLUTION

Section 1 creates the Select Committee on U.S. National Security and Military/Commercial Concerns With the People's Republic of China (hereafter referred to as the "Select Committee") in the House of Representatives for the remainder of the 105th Congress. This section authorizes the Select Committee to sit and act within the United States or in any other country whether the House is in session, has recessed, or has adjourned.

Section 2 sets forth the jurisdiction of the inquiry to be conducted by the Select Committee. The resolution does not confer any legislative jurisdiction to the Select Committee.

This section also requires the Select Committee to report its findings to the House as it considers appropriate. It further permits such a report to be made under the provisions of House rule XXIX, relating to secret session of the House.

Section 3 sets the size of the Select Committee at 9 or fewer Members of the House to be appointed by the Speaker. It further provides that service on the Select Committee shall not count against the Member committee assignment limits contained in clause 6(b)(2) of House rule X, which limit Members to service on two standing committees and 4 subcommittees.

Section 4 establishes a quorum requirement of ⅓ of the Members of the Select Committee for the transaction of business other than reporting a matter. It further provides that the Select Committee may designate a lesser number but not less than two as a quorum for the purpose of holding hearings to take testimony and receive evidence.

This section applies the rules of the House applicable to standing committees to the Select Committee where not inconsistent with the resolution. It also requires the Select Committee to adopt written rules to govern its proceedings and which shall not be inconsistent with this resolution or the rules of the House. The Rules Committee encourages the Select Committee to develop rules governing the conduct of depositions and other committee procedures.

Section 5 prohibits employees of the Select Committee or persons engaged by contract to perform services for the Select Committee from gaining access to any classified information unless that person has agreed in writing and under oath to be bound by the rules of the House including the Committee on Standards of Official Conduct; and has received an appropriate security clearance as determined by the Select Committee in consultation with the Director of Central Intelligence.

Section 6 states that the Select Committee shall formulate and carry out rules to prevent the disclosure of information which unduly infringes upon the privacy or violates the constitutional rights of persons.

Section 7 relates to the procedures for handling classified information. Subsections (a) and (b) give the Select Committee the ability to vote to disclose publicly any classified information, which has been submitted by the executive branch or requested by the executive branch to be kept secret. Such information shall then be submitted to the House Permanent Select Committee on Intelligence, which may then employ the procedures contained in clause 7(b) of House rule XLVIII, to vote to disclose publicly information and make a recommendation in that regard to the House.

This process would only be utilized in those instances where the Select Committee finds that there is public interest in the disclosure of otherwise classified information, but which the Administration refuses to declassify. Currently, the only committee of the House that has recourse to this procedure is the Permanent Select Committee on Intelligence (HPSCI). In order to maintain the relationship between the House and the Intelligence Community, which is vital to the conduct of meaningful oversight of U.S. intelligence activities and the protection of sources and methods, it is necessary to refer any adversarial declassification issues to the HPSCI for further proceedings consistent with clause 7 of rule XLVIII. In this way, the HPSCI will be allowed to weigh in on any decision to force the Administration to disclose information and make an independent determination of the risk to sources or methods if the information is declassified.

Subsections (c), (d), and (e) relate to the treatment of classified information by the Select Committee, and closely resemble provisions contained in House rule XLVIII for the Permanent Select Committee on Intelligence.

Section 8 provides that committees of the House having custody of records, data, charts, and files on subjects in the Select Committee's jurisdiction shall furnish such information to the Select Committee. The Committee acknowledges that memoranda, notes, indexes, analysis, or staff work product are not committee records.

The issues raised in this inquiry fall within the jurisdiction of several standing and permanent select committees of the House, several of which have already begun pursuing related inquiries and gathering relevant material. The Rules Committee believes that this resolution provides for appropriate and properly managed cooperation between the Select Committee and the relevant House committees. The Rules Committee notes that this provision is consistent with previous resolutions creating select committees or task forces and is consistent with House practice.

Section 9 grants the Select Committee the authority to require by subpoena the testimony of a witness, at a hearing or in a deposition, or the furnishing of information.

This section further authorizes the chairman of the Select Committee, upon consultation with the ranking minority member, to authorize and issue subpoenas.

It also authorizes the chairman, upon consultation with the ranking minority member, to order the taking of depositions, interrogatories, or affidavits under oath by a single Member or majority and minority staff of the Select Committee.

This section also authorizes the chairman of the Select Committee, upon consultation with the ranking minority member, to order

the taking of depositions and other testimony under oath anywhere outside the United States and make application for letters rogatory and request, through appropriate channels, other means of international assistance.

Given the breadth and complexity of some of the investigations undertaken by the House in recent years, members have recognized the value of allowing the chairman of a committee, in consultation with the ranking member, to authorize a single member or designated staff to take depositions. The constraints on members' time, as well as the reality that depositions in some of these cases can often take hours or even days to complete, make this enhanced flexibility important to the timely and thorough completion of an investigation.

Additionally, the international aspects of certain inquiries have at times created the need for committees to seek testimony and other information beyond the borders of the United States. For this reason, the House has on several occasions granted international evidence gathering authorities, including the ability to take depositions and other testimony anywhere outside the United States, to make application for issuance of letters rogatory, and to request, through appropriate channels, other means of international assistance.

The Committee on Rules is aware that letters of request are quite properly honored on the basis of international comity between governments or courts and understands that cooperation and assistance from the Department of State and foreign governments will be critical to securing evidence and testimony overseas. The Committee on Rules strongly encourages the executive branch to assist the Select Committee in this regard.

In its report accompanying H. Res. 167 (House Report 105–139), a resolution providing special investigative authorities for the Committee on Government Reform and Oversight, the Rules Committee traced the recent legislative history for this type of action by the House and incorporated a detailed appendix outlining 11 cases in which the House had provided similar special authorities for single member or staff deposition authority and international evidence gathering, dating back to the 93rd Congress (see pages 27–32 of that report).

Finally, this section considers information obtained under its authority as taken by the Select Committee in the District of Columbia as well as the location actually taken and considers such information as taken in executive session. The Committee on Rules intends that such information, taken in executive session, should not be released or used in public sessions without the consent of the select committee, as provided in clause 2(k)(7) of House rule XI.

Section 10 authorizes the Select Committee to inspect and receive tax information for tax years 1988 through 1998. The Committee believes that the Select Committee needs this authority to obtain a full and comprehensive understanding of this matter. The Committee on Rules intends that the Select Committee exercise caution and due diligence in ensuring that such information is handled in the most judicious and appropriate manner. The Committee further notes that the U.S. Tax Code contains criminal penalties for unauthorized disclosure of this information. The Rules Commit-

tee intends that the authority granted by Section 10 extends to the Select Committee acting collegially.

Section 11 allows the Select Committee to provide other committees and Members of the House access to information consistent with clause 7(c)(2) of House rule XLVIII, relating to the House Permanent Select Committee on Intelligence. The Rules Committee notes that the Committee on Standards of Official Conduct may investigate pursuant to its authority contained in the standing rules of the House.

Section 12 provides that the Select Committee may request that other standing committees pursue matters within the Select Committee's jurisdiction, and states that the chairman, upon consultation with the ranking minority member, may request information and assistance from the Executive Branch.

Section 13 authorizes the Select Committee the ability to respond to judicial or other process, and to make applications to court, upon consultation with the Speaker and consistent with House rule L, procedures for response to subpoenas.

The Rules Committee envisions that this authority will supplement the existing provisions in House rules which provide for the House Counsel to take such action on behalf of the House.

Section 14 allows the chairman, upon consultation with the ranking minority member, to hire staff for the Select Committee, It further deems detailees from the executive branch as staff of the Select Committee, upon request of the chairman of the Select Committee and upon consultation with the ranking minority member.

This section authorizes not more than $2.5 million for expenses of the Select Committee to be paid out of applicable accounts of the House upon vouchers signed by the chairman and approved in the manner directed by the Committee on House Oversight.

Section 15 deems the Select Committee a committee of the House for all purposes of the rules of the House and all purposes of law.

Section 16 provides for the proper disposition of records of the Select Committee at the conclusion of its existence.

CONGRESSIONAL BUDGET OFFICE ESTIMATES

Clause 2(l)(3)(C) of rule XI requires each committee to include a cost estimate prepared by the Director of the Congressional Budget Office, pursuant to section 403 of the Congressional Budget Act of 1974, if the cost estimate is timely submitted. No cost estimate was received from the Congressional Budget Office.

OVERSIGHT FINDINGS

Clause 2(l)(3)(A) of rule XI requires each committee report to contain oversight findings and recommendations required pursuant to clause 2(b)(1) of rule X. The Committee has no oversight findings.

OVERSIGHT FINDINGS AND RECOMMENDATIONS OF THE COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Clause 2(l)(3)(D) of rule XI requires each committee report to contain a summary of the oversight findings and recommendations made by the Government Reform and Oversight Committee pursu-

ant to clause 4(c)(2) of rule X, whenever such findings have been timely submitted. The Committee on Rules has received no such findings or recommendations from the Committee on Government Reform and Oversight.

VIEWS OF COMMITTEE MEMBERS

Clause 2(l)(5) of rule XI requires each committee to afford a two day opportunity for members of the committee to file additional, minority, or dissenting views and to include the views in its report. Although this requirement does not apply to the Committee, the Committee always makes the maximum effort to provide its members with such an opportunity. The following views were submitted:

MINORITY VIEWS

Numerous allegations have appeared in the press recently that licensing the launch of U.S. commercial satellites by China resulted in a transfer of technology that threatens U.S. security and that campaign contributions played a role in the issuance of such licensing. We agree that these allegations are serious and should be adequately investigated. However, we are not convinced that a select committee should be the response. If we find that the House has the ability through its normal committee structure to carry out any investigation necessary, a select committee seems wasteful and duplicative. In fact, at least four of the committees with jurisdiction in this matter are presently conducting their own investigations.

In drafting a resolution to establish the Select Committee, the Majority chose the Iran-Contra Select Committee as a model for this Select Committee. This particular model bestows extraordinary powers on the Chairman of the Select Committee. We are hopeful that the manner in which the Select Committee conducts its business will also follow the Iran-Contra model. The Iran-Contra Committee under the bipartisan leadership of Chairman Lee Hamilton and Ranking Republican Richard Cheney, along with their Senate counterparts Senators Daniel Inouye and Warren Rudman, made decisions jointly on all matters of procedural issues. In fact, Representative Hamilton stated in a letter to Representative Henry Waxman, dated June 16, 1997, that "I do not recall a single instance in which the majority acted unilaterally." It is our belief that if a committee does not conduct itself in a professional, fair, and bipartisan manner, then its findings, no matter how earth-shattering, are tainted and damaged. It is for that reason that we hope that this committee will conduct its proceedings in the most serious bipartisan manner.

Even though we approach the establishment of the Select Committee with the hope that fair-mindedness will prevail, we find it difficult to support establishing the Select Committee without assurances that the minority will be included on an equal footing in the decision making process. The Rules Committee report states that the resolution has been "drafted to conform with the standing rules of the House." This is not a fair statement. The resolution grants extraordinary authority to the chairman of the Select Committee which, in fact, weakens the rights of the minority and of witnesses. Our fears of abuse of this power are not groundless. One need look no further than the recent campaign finance investigations conducted by the Committee on Government Reform and Oversight. Chairman Burton's conduct during that investigation demonstrated the dangers of granting such unilateral powers with no limitations. Chairman Burton gave the members of the Government Reform and Oversight Committee, as well as the Rules Committee, assurances that he would not abuse the unilateral authori-

ties granted by the Committee and by the House. In spite of these assurances, the Burton investigation is filled with examples of abuses of the extraordinary grant given him. As the Burton investigation has proven, the investigation has proven, the process only works if the chairman does not abuse his power and seeks to include the minority.

Throughout the hearing and mark-up process we were constantly told by the majority, including the designated chairman of the Select Committee, Representative Cox, that every effort would be made to guarantee the rights of the minority in the investigative process and to include the minority in all aspects of the investigation. We hope the chairman and ranking minority member will have a good working relationship. It is our responsibility, as the Committee on Rules, to make sure the rules of the Select Committee are fair. However, our concern, based on experience in this Congress, is that these rules will permit abuses by the majority party, if that party chooses that route. We have many reservations about this process and will explain below why we remain uneasy with the resolution.

There are a number of unilateral authorities granted to the chairman of the Select Committee by this resolution that cause us concern. The most important concerns are the provisions of section 9(b) of the resolution which grant the chairman, "upon consultation with the ranking minority member," the authority to authorize and issue subpoenas. This unilateral subpoena authority is problematic in that merely requiring the chairman to consult with the ranking minority member before authorizing or issuing subpoenas does not require the chairman to include the minority in the investigative process. At the Government Reform and Oversight Committee, Chairman Burton unilaterally issued over 1000 information requests, including subpoenas, depositions, and document requests with neither a vote of the committee nor the concurrence of the ranking minority member. Our hopes are that this kind of abuse of power does not occur in the Select Committee.

The resolution also allows the chairman, after consulting with the ranking minority member, to take depositions anywhere in the world and authorizes a variety of mechanisms to obtain international assistance in gathering information. This authority has been granted in other major congressional investigations, and we do not necessarily object to its inclusion in this resolution. We would add a note of caution, however. The most recent example of the use of this authority was by the Government Reform Committee. As stated earlier, that investigation has been marked by partisanship, harassment of witnesses, misrepresentation and misleading statements, information leaks by staff, and disregard for the right of the minority to participate in this process. This does not instill confidence that international working relationships can be achieved. The ability to gain access to and information from foreign sources depends almost totally upon the willingness of the host country to allow it. This requires comity and clarity. We urge the Committee to engage in the kind of cooperative, bipartisan working arrangements which have enabled other congressional investigations to succeed.

Section 10 of the resolution grants the Select Committee the authority to receive and examine any tax return related to individuals and entities named by the Select Committee as possible participants, beneficiaries, or intermediaries in the transactions under investigation. Virtually unfettered access to the tax records of individuals and others is a very risky venture and must be pursued with the utmost responsibility and respect for the privacy of those individuals. We urge the Select Committee to use the greatest of care in exercising this authority. We support the inclusion of language in the report that directs the Select Committee to vote to obtain these records.

Section 11 of the resolution grants the chairman the authority to impose a "gag rule" on individuals associated with the investigation, including witnesses and their attorneys. The numerous abuses of witnesses before the Government Reform Committee are well documented. It is extremely perilous to allow staff, in a closed session, to have virtually unlimited questioning of a witness with little or no rights given to the individual being deposed. There is ample opportunity for staff to intimidate and harass witnesses. These interrogatory sessions are not trials or courts of law and do not afford the same protections. If individuals giving depositions are deprived of the protections that are generally available to those giving statements under oath and are treated unfairly, these individuals, along with their counsels, would be prevented by these "gag rules" from coming forward to report such abuses or other inappropriate actions taken by the Select Committee or its staff. This is a troubling provision, and we urge the Select Committee to use this power in only the most judicious fashion.

Section 12 of the resolution states that "the Select Committee may submit to any standing committee specific matters within its jurisdiction and may request that such committees pursue such matters further." This language is not clear in its intent. We believe that any jurisdictional referral by the Select Committee of its recommendations should be based on the jurisdiction of the standing committees as stated in the Rules of the House. The jurisdiction of the Select Committee is a temporary grant of authority by the House and should not prejudice the jurisdictions of the standing committees. Therefore in the interest of the precedents of the House, referrals should be based on the jurisdictions of the standing committees.

Section 14 authorizes $2.5 million for the Select Committee to conduct an investigation which will last no longer than 6 months. There are only three standing committees of the House that are expected to spend more over the next 6 months. At this rate of spending, this will become the most expensive select committee in the history of the House. Our hope is that this will not be a waste of taxpayers' money to duplicate much of the investigation already being carried on by other committees of the House.

It is our hope that as the Select Committee develops and adopts its rules, it will do so in a manner that protects minority rights. We urge the Select Committee to include in its rules provisions to provide for concurrence and advance notice to the minority when issuing subpoenas, scheduling witness interviews, and authorizing travel of staff inside and outside the U.S. to conduct those inter-

views. Also, we believe that any database which the Select Committee may develop itself or any databases which it may receive from other standing committees under section 8 of this resolution be shared with the minority.

We clearly recognize and fully support the right of Congress through its committee structure to conduct investigations and we recognize there are serious issues to be investigated. We are including with these views: an article by current National Security Advisor Samuel R. Berger which appeared in the Wall Street Journal on June 3, 1998; an article by Secretary of Commerce William M. Daley which appeared in the New York Times on June 5, 1998; an article by former National Security Advisor Brent Scowcroft and Arnold Kanter of the Forum for International Policy which appeared in the Washington Times on June 5, 1998; an article by former Secretary of State Warren Christopher which appeared in the Los Angeles Times on June 7, 1998; and a document created by the National Security Council with input and clearance from the Department of State, Department of Defense, Department of Commerce, and the Arms Control and Disarmament Agency. We believe that these articles and document which address the core issues will clear up some of the confusion surrounding allegations reported in the press.

In conclusion, we have reservations about the resolution and we believe that the Select Committee may be redundant in light of other ongoing investigations. In fact, the investigation could be properly carried out by an existing committee, most likely the Intelligence Committee which has at its disposal all the necessary powers and expertise to conduct this investigation. But if the majority insists on having a select committee, we hope that its investigations will be done in the fairest, most bipartisan manner possible. Anything less will cast doubt on the integrity of the investigation.

Finally, there is a real danger that this type of resolution is now becoming a routine tool to circumvent the traditional committee process. It should be used rarely, only when warranted by extraordinary circumstances. The regular hearing route coupled with informal staff interviews should always be the preferred means for conducting investigations, as it is for the other standing committees of the House. We should not be in the habit of making this type of resolution a routine occurrence.

JOE MOAKLEY.
TONY P. HALL.
MARTIN FROST.
LOUISE M. SLAUGHTER.

[From the Wall Street Journal, June 3, 1998]

LAUNCHING SATELLITES IN CHINA IS GOOD FOR THE U.S.

(By Samuel R. Berger)

If you watched the Winter Olympics on television, there's a good chance the images of figure skating or downhill racing came to you from Japan via an American-made satellite that was launched by a Chinese rocket. That's a reflection of U.S. leadership in satellite technology—the demand for American satellites exceeds our domestic launch capacity. As a result, the government licenses U.S. companies to have their satellites launched abroad, allowing people on every continent—through television, telephones, pagers and other electronic means—to share ideas, information and images.

In a reaction to reports misleading linking Democratic Party campaign fundraising to Clinton administration decisions affecting our national security, members of Congress voted recently to ban U.S. companies from using Chinese rockets to launch satellites into orbit. If enacted into law, this legislation would harm our national interest.

A ban would endanger American leadership in the global satellite business. More importantly, it would do great harm to our relationship with China—a relationship that is vital to our security interests in Asia and around the world, as vividly illustrated by events in the past few weeks: nuclear testing by India and Pakistan, political change in Indonesia and financial challenge throughout Asia. In each of these areas, China has the potential to promote or to undermine U.S. national interests. Given the stakes, it is time the facts catch up with the emotions.

In 1988, President Reagan approved the export of U.S. satellites for launch by Chinese rockets, a policy that has enjoyed broad bipartisan support ever since. It serves important national interests: creating incentives for China to help us stop the spread of missile technology, improving American competitiveness in the global satellite business and helping broadcast Western ideas and values into China.

Since 1989, approval of license applications for commercial satellite launches on Chinese rockets has required a presidential wavier of the sanctions imposed following the Tiananmen Square massacre. The Bush administration issued waivers for nine satellite programs in three years. The Clinton administration has issued waivers for 11 programs over five years. Each was carefully scrutinized by the Department of Defense, the State Department and the Arms Control and Disarmament Agency. And each was reported to Congress.

The satellites exported to China for launch are not used for military purposes, not do they result in the transfer of missile technology. All are subject to strict controls and safeguards developed by the Department of Defense to prevent the transfer of technology that would improve China's missile capabilities.

In 1992, President Bush granted the Loral Corp. permission to launch a satellite on a Chinese rocket. The launch took place in February 1996, but the rocket exploded and destroyed the satellite. Loral allegedly worked with the Chinese to review why the explosion occurred and to prevent it from happening again. The Justice

Department is investigating whether in that review—not in the launch—technology or know-how may have been provided improperly to the Chinese.

When President Clinton granted Loral a waiver in February 1998 for another launch, he did not "overrule" or "ignore" Justice Department views. The State Department's recommendation for that waiver noted that the 1996 incident was under investigation. The White House took the added, prudent step of asking the Justice Department of its view on the request, even though it normally has no role in the licensing or waiver process. The Justice Department raised concerns about the impact of the waiver on a potential prosecution if the facts lead in that direction. These objections were not related to national security concerns about the 198 waiver and associated licenses.

The Justice Department's concern was factored into the president's decision to grant a waiver, which also took into account four supporting factors. The State Department determined that the waiver would be in the national interest and would in no way compromise U.S. national security, and the Defense Department and the Arms Control and Disarmament Agency concurred in that judgment. The licensing request was for a commercial satellite, not for the kind of activity (launch-failure analysis) for which Loral was being investigated. The State Department has a longstanding practice of not presumptively barring applicants under investigation—as opposed to prosecution—from receiving a license. And if the investigation ripened into a prosecution, the license could be revoked and other serious penalties imposed.

Mr. Clinton's decision in March 1996 to give the Commerce Department the lead in licensing commercial satellites did not relax our controls over the export of satellites, nor did it allow the transfer of sensitive technology. Under the approach adopted, the Defense and State departments and the Arms Control and Disarmament Agency still review all proposed commercial satellite licenses to ensure that they are consistent with U.S. national security. If any agency disagrees with a proposed license, it can block the license and put the issue into a dispute resolution process that can ultimately rise to the president.

The decision to transfer lead responsibility to the Commerce Department followed an intensive six-month review, which led to an inclusive process that protected national security and was approved by both the State and Defense departments. It was part of a broader, bipartisan effort, and supported by the Reagan and Bush administrations, both to streamline the process for licensing essentially commercial products and to make the process more transparent to exporters.

The shift of jurisdiction also was supported by majorities in both houses of Congress. Beginning in 1990, both houses repeatedly passed bills specifically mandating the shift of commercial satellite licensing to Commerce, one of which was pending at the time of the president's decision. Mr. Clinton's decision followed the intent of that legislation while adding national security safeguards—such as a strengthened role for Defense and State—that were not included in the legislative proposals.

In every waiver case the decision-making process flows from the bottom up—a request for a license is made by the company to the relevant government agency (State or Commerce), which then solicits the views of other relevant agencies on the pending license application, Once these agencies agree that the license application may be granted, a recommendation for a waiver "in the national interest" is made to the president. Each waiver approved by President Clinton was based on a recommendation from the State Department or the Commerce Department. And each license under these waivers had the concurrences of the Department of Defense and the Department of State. At no time did campaign contributions have any effect on U.S. policy or national security.

The record speaks for itself: The policy initiated by President Reagan and continued by Presidents Bush and Clinton is good for our country. We should focus on the facts—and on our national interest.

[From The New York Times, June 5, 1998]

COMMERCE CAN DO THE JOB

(By William M. Daley)

The Senate Intelligence Committee began its hearings this week on the American satellites launched by Chinese rockets. Among the issues are whether our export control laws were violated and whether private companies committed illegal acts in the aftermath of the 1996 Loral rocket launch in China. Those specific charges should be investigated thoroughly, and if there was any wrongdoing it should be punished.

But it is simply untrue to suggest that the 1996 transfer of jurisdiction over communications satellites to the Commerce Department from the State Department jeopardized national security. In fact, that transfer completed a process begun by President George Bush in 1990 and encouraged by Congress. In 1990 and 1992, Congress passed legislation that would have transferred this jurisdiction, but the bills failed to become law because of other controversial provisions.

The transfer brought the United States into line with the licensing approach used by every other satellite producer in the world. Every satellite license the Commerce Department approved has had the unanimous approval of the reviewing agencies—the State and Defense Departments as well as the Arms Control and Disarmament Agency—and has been subject to the same level of technology safeguards as satellites licensed at the State Department. It has been made clear to exporters that under the license they could not transfer any rocket technology to a foreign country. Any such transfer still requires a license from the State Department.

Beginning in 1990, the Bush Administration reviewed items on the Munitions List, which required a State Department export license, to see if they should be moved to the Commodity Control List, which required a Commerce Department license. In President Bush's words, he wanted to make "export license decisions more predictable and timely."

The differences between the two are procedural. The Commerce Department must meet firmer deadlines for decisions on "dual use" items (those with commercial as well as military applications) and must include all relevant Federal agencies.

Yes, economic considerations play a role. Exports bring in billions of dollars and account for millions of American jobs, and the strength of our technology industries is critical to national security.

But contrary to what some have asserted, the Commerce Department's method of licensing is every bit as thorough and careful as that used by the State Department to regulate munitions. Satellite exports are governed by an executive order issued by President Clinton in December 1995, which gives these agencies the right to participate in the decision on any license application.

If there is disagreement, then cases move quickly to a committee of senior officials from these departments and agencies, which votes on the application. If the Pentagon, say, is unhappy with the outcome, it can take the case to the President—although such an appeal has never happened. Today, reviews of dual use licenses are more thorough and more careful than at any time in the past.

The broader issue is how our Government should regulate exports of high-technology goods. The most important issue is, as it should be, our national security.

But imposing the tightest possible restrictions on high-tech exports is not necessarily the best way to protect our security. In fact, our current policy—developed under the Reagan and Bush Administrations—recognizes that we must consider various factors in controlling high-technology exports.

The United States has a monopoly over very few technologies. Therefore, rigid export controls would not protect national security in a growing number of situations because the same products can be obtained readily from foreign sources.

Indeed, such controls would harm American security. Our high-tech companies would become less competitive globally, making them less able to produce the innovative products that our military and private businesses depend on. And to avoid export controls, some companies would undoutedly move their research and manufacturing outside of the United States.

Take high-performance computers. These machines are essential to a modern military, but the Pentagon and American businesses do not buy enough of them to maintain a thriving domestic industry.

Without exports, the industry would be crippled, and in the long term, it would be unable to plow profits back into developing the next generation of even more powerful computers.

In short, we must consider the full ramifications of our decisions—including the costs of ill-reasoned controls that damage our technology base without protecting national security.

[From the Washington Times, June 5, 1998]

WHAT TECHNOLOGY WENT WHERE AND WHY

(By Brent Scowcroft and Arnold Kanter)

The last few weeks have seen an avalanche of melodramatic charges about American "technology transfers" to China and claims that these actions have enhanced the capabilities of nuclear missiles aimed at the United States. In combination with confusing—and confused—media reporting and inept responses by the Clinton administration, these accusations threaten both to do needless damage to important U.S. national security interests and to impede the investigation of serious allegations of wrongdoing.

A great deal hangs in the balance. The consequences, if these allegations are proven, would be substantial. But the costs of accusations which turn out to be ill-founded—if not reckless—also can be great. Nowhere is this more clear than in the case of our relations with China. Not only is the character of our strategic relationship with China of fundamental importance to U.S. national security, but that relationship also is at an unusually critical and formative stage both bilaterally and with respect to larger issues ranging from North Korea to South Asia.

The investigative congressional committees that are being established will have the responsibility for sorting out this complicated affair. Meanwhile, however, the protagonists in this controversy need to cool the rhetoric, get some basic facts straight and identify the real issues before more harm is done to U.S. security, political and economic interests.

Much of the confusion arises from the fact that four different issues are being lumped together:

U.S. government waivers to permit American commercial satellites to be launched on Chinese space boosters.

The unauthorized transfer to China of technical information by two U.S. satellite manufacturers, Loral and Hughes.

Large campaign contributions to the Democratic Party by Loral's chairman, Bernard Schwartz.

Alleged contributions to the Democratic Party by Chinese citizens with ties both to the Chinese military and the Chinese company that launches American commercial satellites.

Satellite waivers. The current controversy has its roots in the 1986 Challenger disaster. There was serious concern that the loss of U.S. launch capability that resulted from the ensuing moratorium on shuttle flights would jeopardize America's pre-eminence in space. The Reagan administration responded by adopting a policy that opened the way for U.S. commercial satellites to be launched on Chinese space boosters on a case-by-case basis. The sanctions imposed by the Bush administration following the Tiananmen Square massacre in June 1989 blocked satellite launches by the Chinese but included a provision for case-by-case presidential waivers.

Last February, the State and Defense Departments recommended, and President Clinton approved, such a waiver to allow a commercial communications satellite built by Loral to be launched into orbit by a Chinese booster. This was the eighth waiver—covering eleven launches—approved by the Clinton administra-

tion. Previously, the Bush administration approved three waivers covering the launch of nine satellites.

The satellites in question are civilian, not military. More important, "no technology transfer" is permitted in connection with these satellite launches, which are the space-age equivalent of having Federal Express deliver a package across the country. On the contrary, there are strict safeguards designed to confine Chinese access to the most basic information about the U.S. payload these rockets carry—for example, size, weight and other mating data needed to ensure that the satellite will fit on top of the rocket and can be boosted into the correct orbit. (The waivers in question relate to the application of Tiananmen sanctions—which are designed to punish the Chinese for human rights abuses—not the safeguards against technology transfer.)

In principle, these safeguards mean that the Chinese learn no more about the "package" they are launching than FedEx knows about the package it is shipping, and that no information is provided which would improve the capabilities of their civilian space boosters, much less their nuclear-armed missiles. The March 1996 transfer of responsibility for licensing commercial satellite exports from the State Department to the Commerce Department likewise should not have had any effect on the strictness or application of the safeguards because a separate State Department license typically is still required to permit the Chinese to launch U.S. satellites, and the Defense Department continues to review all proposed waivers to ensure they are in the national security interest of the U.S.

Assistance to the Chinese Rocket Program. The Justice Department is investigating the unauthorized transfer of information to China by Loral and Hughes in connection with a 1996 review of the explosion of a Long March rocket launching a U.S. satellite. Because of the virtual identity between these Chinese "space boosters" and military missiles, assistance to the former could lead to improvements in the latter.

Experts from Loral, Hughes and other companies became involved in this review at the insistence of the international insurance industry, which refused to insure more Long March launches until an "outside" team reviewed the Chinese analysis of, and remedies for, the malfunctions their rockets had been experiencing. Ironically, the Chinese initially resisted this proposal, and allowed the international team of experts to conduct their review only when they became convinced that these insurance problems would jeopardize their commercial space launch business.

According to news reports, a Pentagon agency has determine that the information which Loral and Hughes transferred to the Chinese caused "harm" to U.S. national security, but the nature and extent of whatever harm was done is not yet clear. The congressional investigating committees will try to get the answers to that question. What does seem clear at this point is that the Chinese government never requested information or other assistance from our government to improve the space boosters they use to launch satellites. What is even more clear is that in 1996 the U.S. government did not provide, or approve Loral and Hughes providing, in-

formation which would improve Chinese space launch or missile capabilities.

Indeed, Loral and Hughes are under investigation for unauthorized transfers of information. The Justice Department's reservations about the February 1998 satellite waiver stemmed not from the waiver itself, but from a concern about how it might affect a jury's psychology should Justice decide to prosecute these two satellite manufacturers for what they may have done in connection with their review of the 1996 Long March rocket failure.

Loral Campaign Contributions. According to news reports, Mr. Schwartz—Loral's chairman and CEO—is the largest single contributor to the Democratic Party. Loral also was the beneficiary of the waiver which President Clinton approved in February. In addition, Loral successfully sought (along with other U.S. satellite manufacturers) presidential approval for the transfer of authority over the licensing process from the State Department to the Commerce Department. Many have suggested a relationship between the Schwartz campaign contributions and these Clinton decisions.

The question not only is legitimate, but goes to the heart of the larger issue of the impact of campaign fundraising and contributions on the American political process. But even if suspicions prove correct, the fact remains that no "technology transfer" is authorized when Loral (or any other American) satellites are launched by Chinese rockets. Moreover, there is no current indication that any of the laws, policies and other safeguards against such technology transfers were relaxed as a result of campaign contributions. The issue of whether campaign contributions influenced president decisions in this case is of profound seriousness and should be pursued by the congressional investigative committees, but appears at this point to be essentially unrelated to the issue of technology transfer to China.

Chinese Campaign Contributions. Democratic fundraiser Johnny Chung reportedly has told investigators that he served as a conduit for political contributions from the Chinese government. Specifically, he claims that Liu Chaoying, who is an officer in the Chinese army and an executive in the Chinese company which (among its many business enterprises) launches satellites, gave him money with instructions to donate a portion of those funds to the Democratic Party.

If substantiated, these assertions could have serious implications. That said, it also should be noted that, provided the safeguards described above do their job, even if a quid pro quo were sought and given, a satellite waiver might work to the commercial advantage of Liu's company, but would not have contributed to China's military capabilities.

In sum, several of the issues being raised in the current controversy are real and serious. Others, particularly those related to charges that satellite launch waivers somehow enhanced Chinese missile capabilities, may be based on fundamentally mistaken premises. Key to making that determination is an assessment of the practical effectiveness of the safeguards policies and practices that apply to these satellite launches.

If careful analysis determines that these safeguards have substantially achieved their objectives, then the imposition of blanket

prohibitions on satellite launches by China would largely miss the point. On the one hand, it would not deal with concerns about how campaign contributions—from Americans, to say nothing of Chinese—might influence government decisions in ways which produce commercial advantage. On the other hand, it could prove to be worse than redundant with the safeguards already in place, because it would both place American industry at a competitive disadvantage and do needless damage to our critically important relationship with China.

One fact, however, already is abundantly clear. A great deal is at stake in the answers to the questions being raised in the current controversy. It therefore is essential that we get it right—that all of the charges be thoroughly investigated, that penalties be levied where appropriate, and that remedial actions be taken where required. But we should let the congressional committees do their jobs before a rush to judgment that may harm rather than advance our interests.

Brent Scowcroft, president of the Forum for International Policy, was national security advisor under Presidents Ford and Bush. Arnold Kanter, a senior fellow at the Forum for International Policy, served as under secretary of state for Political Affairs from 1991 to 1993.

[From the Los Angeles Times, June 8, 1998]

SATELLITE EXPORTS: NOBODY WAS OVERRULED

(By Warren Christopher)

In March 1996, President Clinton announced a decision to transfer responsibility from the State Department to the Commerce Department for licensing the export of commercial satellites. My role in that decision has become the subject of extensive media discussion, much of it confusing and misleading. Hence, I think it is important to look at the facts.

In October 1995, I was presented with the question of whether to agree to eliminate completely State Department licensing authority over commercial satellites by transferring it to the Commerce Department or, as had been recommended by an interagency committee, to retain State's licensing role over a category of commercial satellites employing more advanced technologies. I chose the latter option.

Whether State or Commerce should have licensing jurisdiction over commercial satellites is an issue that goes back to the Reagan and Bush administrations. Competing views on the matter rest on the differences between the missions and export regulatory regimes of each department.

Under the authority provided in the Arms Export Control Act, State has export licensing authority for items that are designed, developed or modified for military applications. Under the Export Administration Act, Commerce licenses most dual-use items—items with both commercial and military uses.

The objective of the two systems differ. The Arms Export Control Act gives State the authority to use regulatory export controls primarily to protect U.S. national security. Under the Export Admin-

istration Act, on the other hand, Commerce weighs economic and trade interests along with national security and foreign policy concerns.

The Commerce Department objected to my conclusion that certain satellites should remain under State Department licensing jurisdiction and sought presidential review. The National Security Council then began—as it should have—a comprehensive interagency review aimed at developing a resolution. At the end of this process, I was satisfied that State would continue to play a significant role in commercial satellite licensing decisions and would have an opportunity to raise national security concerns to the highest level, notwithstanding that it would not be the licensing authority. My conclusion was based upon the recommendation was based upon the recommendation of Lynn Davis, the highly regarded undersecretary of State for arms control and international security affairs, and senior Defense officials.

As the situation now stands, the Commerce Department cannot act unilaterally on an application to export a commercial communications satellite. Instead, every such export application requires evaluation for national security concerns by the State and Defense departments and by the Arms Control and Disarmament Agency. If any of these reviewing authorities objects to a commercial satellite export proposed by Commerce, it can initiate a process that ultimately will bring conflicting views to the president.

When President Clinton decided to move the licensing authority to the Commerce Department, he did so with agreement by the interested parties, including the State Department. No one was overruled. The president's decision represented a melding of national security and business interests, a result advocated by the Bush administration as well as by American manufacturers involved in the satellite business.

THE FACTS ABOUT THE ADMINISTRATION'S COMMERCIAL SATELLITE LICENSING POLICY

The globalization of the commercial satellite industry is a positive and powerful development at the dawn of a new century. Satellites launched from the United States, Europe, Russia and China allow people everywhere—through television, telephones, paging and many other electronic means—to share ideas, information and aspirations. They are powerful multipliers of free speech and thought. The United States is the world leader in satellite technology. But we lack the launch capacity to meet the demand for our satellites. And other nations can launch them more inexpensively. In 1988, President Reagan approved the export of U.S. satellites for launch by Chinese rockets—a policy that has enjoyed broad bipartisan support. Since 1989, approval of license applications for commercial satellite launches on Chinese rockets has required a Presidential waiver of the Tiananmen Square sanctions. The Bush Administration issued three waivers in three years for nine satellites. The Clinton Administration has issued ten waivers over five years for eleven satellite programs. Each of these waivers was scrutinized to ensure consistency with our nonproliferation goals and each was reported to Congress.

The benefits of licensing commercial satellite launches by China are clear. This program enhances American competitiveness by increasing our launch capacity and lowering the cost of launches while bringing tremendous benefits to consumers (greater cell phone, pager and satellite television capacity.) It furthers our efforts to stop the transfer of missile technology to third countries by providing incentives for China to observe non-proliferation norms. It can beam objective sources of information and democratic values into China—some of the very satellites China sends into space send back CNN and other western television programming. And more broadly, it serves our policy of engagement with China, which is expanding our cooperation in areas important to the national interest (such as stability in Asia; preventing the spread of weapons of mass destruction; combating international crime and drug trafficking; protecting the environment; promoting trade and creating jobs) while giving us opportunities to deal forthrightly with our differences (such as human rights.)

Misleading news reports and misinformation now surround the policy of licensing the launch of U.S. commercial satellites on Chinese rockets. To set the record straight, here are the facts:

THE LICENSING PROGRAM

1. Allegation: Licensing the launch of U.S. commercial satellites by China results in a transfer of technology that threatens U.S. security

The Facts: None of the satellite licenses or waivers authorizes the transfer of sensitive missile technology to China. All are for commercial satellites, the licenses are subject to careful inter-agency scrutiny by the Department of Defense, the Department of State, the Arms Control and Disarmament Agency (ACDA) and the Department of Commerce and are subject to strict controls and safeguards. The current safeguards include a detailed plan for shipping the satellite, a detailed operational security plan for the satellite while in China awaiting launch, and approved procedures for the supervised mating of the satellite to the launch vehicle. In addition, the plan includes Defense Department monitoring of technical meetings between the U.S. company and Chinese launch officials, and of the launch itself. The conditions imposed on companies that use Chinese rockets for satellite launches require that there be no improvement in China's missile capabilities.

2. Allegation: U.S. policy regarding the export of satellites to China has put U.S. cities at risk from Chinese ICBMs

The Facts: China's Inter Continental Ballistic Missiles (ICBMs) have had the range and accuracy to reach U.S. cities since they were first deployed in the early 1980s. Thus, this capability existed before President Reagan approved the first exports of satellites to China in 1988.

3. Allegation: The waiver granted to Loral subsequent to the start of a Justice Department investigation into whether Loral illegally transferred technology to China was granted over the opposition of Justice and compromised U.S. national security

The Facts: The Clinton Administration did not "overrule" or "ignore" Justice Department views, nor has granting the license compromised U.S. national security.

In 1992, President Bush granted a waiver which permitted the Loral Corporation to launch a commercial communications satellite on a Chinese rocket. The launch took place in February 1996, but the rocket exploded and destroyed the satellite. Loral and another U.S. company allegedly worked with the Chinese to determine why the explosion occurred and how to prevent such accidents in the future. Any analysis of a launch failure would have to be separately authorized by State and is not authorized in State or Commerce licenses for the launch of commercial communications satellites. The Justice Department is investigating whether, in any such review technology or know-how may have been illegally given to the Chinese.

When the State Department recommended a waiver for another Loral satellite in 1998, it noted that an investigation of Loral was under way. The White House therefore took the added step of asking Justice for its views on the request. The Justice Department raised concerns about the potential impact of the waiver on its ability to persuade a jury to convict Loral in the event that the incident warrants prosecution.

The Justice Department views were weighed carefully by the President against factors which supported a waiver: (i) the State Department recommended that the waiver would be in the national interest, and State and the Department of Defense found that the license referenced in the waiver contained the safeguards necessary to protect the national security; (ii) the licensing request was for a commercial satellite export, not for the kind of activity (launch-failure analysis) for which Loral was being investigated; (iii) the State Department has a long-standing practice of considering license applications on a case-by-case basis in accordance with normal procedures for individuals who may be subject to criminal investigations but have not been indicted; and (iv) if an investigation leads to indictment license revocation and other serious penalties may be imposed. In balancing all these factors, the President decided to approve the waiver.

This is how decisions in government are made—balancing the views of all relevant agencies and then making a broader judgment based on overall national interests. The process was transparent and open. Agencies responsible for our national security reviewed and supported the request, the White House took the additional step of asking Justice for its views and agency considerations were reflected in a memorandum for the President.

TRANSFER FROM STATE TO COMMERCE

4. Allegation: The State Department opposed the 1996 transfer of licensing jurisdiction for commercial satellites to the Commerce Department

The Facts: President Clinton's decision to transfer licensing jurisdiction over commercial satellites to Commerce came at the end of a 6-month process. It ultimately enjoyed the consensus of Commerce, State and Defense because it provided for continued State licensing of technical data and assistance related to launch vehicles, and because of additional procedural protections added to the Commerce licensing process.

Under the approach adopted in 1996, Defense, State, Energy and ACDA review all proposed commercial satellite exports to ensure that they are consistent with U.S. national security. If any of these agencies disagrees with a proposed export, it can block the license and put the issue into a dispute resolution process that can ultimately rise to the President.

The decision to transfer jurisdiction was part of a broader, bipartisan effort supported by the Reagan and Bush Administrations to move primary authority for licensing essentially commercial items to Commerce in order both to streamline the process and make it more transparent to exporters, and where such transfers could be made in a manner fully consistent with national security interests. Commerce applies stricter deadlines that are better suited for commercial products.

The shift of jurisdiction from State to Commerce was also supported by majorities in both Houses of Congress. Beginning in 1990, both Houses repeatedly passed bills specifically mandating the shift of jurisdiction over commercial satellites to Commerce (although none of those bills became law.) Indeed, the President's decision in 1996 was directly responsive to legislative language that would have transferred jurisdiction. The President followed the intent of such legislation, while adding national security safeguards—such as a strengthened role for Defense and State—that were not included in the legislative proposals.

Prior to and independent of the shifting of commercial satellite jurisdiction to Commerce, the President in December 1995 issued an Executive Order expanding the right of the Departments of State, Defense, Energy and ACDA to review all dual-use export license applications, including commercial satellites. Previously, these agencies reviewed only certain dual-use applications. The President took this action to ensure that all relevant agencies would have the opportunity to review all license applications for their national security and foreign policy implications.

It is also worth noting that in the case of the 1998 Loral waiver, as in the case of most commercial satellite exports to China, a separate State Department license was still required because the exporter proposed to transfer technology controlled by State regarding the integration of the satellite to the rocket.

It is well know that the State Department initially opposed the transfer of jurisdiction to the Commerce Department. Congress has been briefed on this issue, and the General Accounting Office report on the subject refers to State's initial objections.

However, subsequent to the initial decision by the State Department, a number of measures were developed to deal with the concerns identified by the Defense and State Departments regarding the jurisdictional transfer. These additional measures, approved by the President, formed a basis of subsequent concurrence by the State Department for the transfer of jurisdiction to the Commerce Department for commercial communications satellites.

These measures include:

suspending rules normally available to the Commerce Department which require approval of U.S. licenses based on a similar technology available from other exporting countries ("foreign availability");

requiring that any satellite with U.S. contents be subject to jurisdiction, even if the U.S. content is extremely small (the "de minimis requirement") and;

adding a new control at the Commerce Department which would allow the denial of applications for national security and foreign policy reasons to any foreign destination.

These new controls were notified to Congress and published by the State Department at the time of the transfer of jurisdiction of licensing functions in 1996. When State briefed Congress about the transfer in jurisdiction, it explained its view that the new controls made it possible for State to support the jurisdiction change.

5. Allegation: The 1996 transfer of licensing jurisdiction from State to Commerce created a national security sieve because the Commerce Department has inadequate safeguards to prevent the diversion of dual-use technology

The Facts: The President's decision in March, 1996 to give the Commerce Department jurisdiction over commercial satellite exports did not decontrol or weaken the export of satellites nor allow the transfer of sensitive satellite technology to anyone.

The Department of Defense, the State Department, Energy and ACDA review proposed exports to ensure they are consistent with U.S. national security and foreign policy interests. The same strict safeguards are now required for Commerce-licensed commercial satellites as were required for satellites licensed by the State Department. The safeguards include a detailed plan for shipping the satellite, a detailed operational security plan for the satellite while in China awaiting launch, and approved procedures for the supervised mating of the satellite to the launch vehicle. In addition, the plan includes Defense Department monitoring of technical meetings between the U.S. company and Chinese launch officials, and of the launch itself. The conditions imposed on companies that use Chinese rockets for satellites launches require that there be no improvement in China's missile capabilities.

As previously noted, the President's decision was the culmination of a long inter-agency process in which national security concerns of all agencies were addressed, leading to their concurrence in the final decision. The impetus for the jurisdiction change dated to the Bush Administration and was reflected in repeated votes by Congress to mandate such a change. President Clinton's decision effectuated the change only after procedures were agreed upon to ensure consistency with national security interests.

CAMPAIGN CONTRIBUTIONS

6 Allegation: Loral's campaign contributions influenced the President's decision to grant it export waivers, including the waiver subsequent to the start of the Justice Department investigation, and also influenced the President's decision to transfer licensing jurisdiction from State to Commerce

The Facts: No campaign contributions affected decision-making on U.S. foreign policy or national security.

The policy of licensing U.S. commercial satellites to be launched by Chinese rockets is bipartisan and pre-dates the Clinton Administration. It was instituted by President Reagan and further implemented by the Bush Administration. The Bush Administration approved three waivers over three years for nine U.S. satellites to be launched from China, the Clinton administration has approved ten waivers over five years covering eleven satellite programs.

Each waiver approved by President Clinton was based on a recommendation from the State Department or the Commerce Department. Each license under these waivers was approved after careful interagency review that including State, Defense and ACDA. The decision-making process flows from the bottom up—a request for a license is made by the company to the relevant government agency (State or Commerce), which then solicits the views of the other relevant agencies on the pending license application. Once the interagency review process is completed and the license is ready for approval, a recommendation is made to the White House concerning whether a waiver of Tiananmen sanctions is in the "national interest."

Similarly, as detailed above, the decision to transfer jurisdiction over commercial satellites from State to Commerce was the product of an intensive six month inter-agency review process and was preceded by similar efforts in the Bush Administration and in Congress. During the decision-making process, the satellite industry strongly supported the change in jurisdiction, as it had done for a number of years.

There is absolutely no connection between any campaign contributions and U.S. policy. There is no evidence of such a nexus, nor has it been alleged on the basis of any facts. It simply did not occur.

7. Allegation: Intra-government e-mails and memoranda regarding the 1998 Loral licensing request convey a sense of urgency that was based on Loral's pleas for a quick decision and suggest political pressure.

The Facts: Loral's interest in prompt action on its 1998 licensing request had no effect on the substance of the Administration's licensing process or any effect on national security.

American companies that need U.S. government approvals for business transactions should be able to expect an expeditious response, especially if they are operating under a specific deadline. They are not entitled to a positive response, but to a timely one.

In the case of the 1998 Loral request, the Administration was aware of a deadline with important commercial implications and so tried to be responsive. But the decision whether or not to grant the

waiver was based on the judgments of the agencies involved in reviewing the license and recommending the waiver. In fact, the Administration's decision occurred after the commercial deadlines identified by the company had passed, as government officials continued to gather the information needed to make an informed, judicious decision.

A History of Bipartisan Support for Commercial Satellite Waivers

1. Granting Waivers for U.S. Commercial Satellite Launches On Chinese Rockets Has Been Found To Be "In The National Interest" 20 Times By President's Reagan, Bush and Clinton.

President Reagan: On September 9, 1988, President Reagan approved a plan to allow the export of U.S. made communications satellites to China for launching on Chinese rockets. Reagan's State Department spokesman Charles Redman noted that the plan would *"protect legitimate U.S. national security interests . . ."* [Washington Post, 9/10/98]

President Bush: President Bush, on 3 separate occasions over 4 years, granted waivers to allow the export of a total of 9 separate commercial satellites for launch on Chinese rockets. On each of those occasions the President specifically reported to Congress that the waivers were *"in the national interest."* [Public Papers of the President's, 1989 (Book II, p. 1721); 1991 (Book I, p. 446); 1992 (Book II, p. 1546)]

President Clinton: President Clinton, over 6 years, has granted waivers to allow the export of a total of 11 separate commercial satellites for launch on Chinese rockets. Each and every time, the President has notified the Congress that the waivers were "in the national interest."

As well as

Colin Powell (1988): In an October 20, 1988 letter to then House Foreign Affairs Committee Chairman Dante Fascell, then National Security Adviser Colin Powell wrote: "Legislation may be offered to prohibit or delay issuance of licenses authorizing the export of U.S. satellites . . . for launch on Chinese vehicles. This would be a serious mistake. . . . I request your assistance in forestalling any last minute actions in Congress that could jeopardize the important commercial and national security interests we are seeking to advance in our approach." [House Foreign Affairs Cmte. Hearing on Proposed Sale and Launch of United States Satellites on Chinese Missiles, 9/28/88 (p. 100–101)]

Frank Carlucci (1988): Also in an October 20, 1988 letter to Chairman Fascell, Reagan Defense Secretary Frank Carlucci wrote: "I remain concerned that another attempt may be made to block the export of these satellites. . . . Your support for this important national security issue can make a difference. I strongly urge you to support the administration's initiative to license these satellites to the Chinese." [House Foreign Affairs Cmte. Hearing on Proposed Sale and Launch of United States Satellites on Chinese Missiles, 9/28/88 (p. 122–123)]

Gov. Pete Wilson (1993): In a November 16, 1993 letter to Secretary of State Warren Christopher, Wilson wrote: "I urge you to use your waiver authority under the law to allow the satellite sales

to the PRC to proceed. These sales are important to the California economy and in themselves are no threat to further missile proliferation."

Reps. Rohrabacher, Thomas, Gallegly, Dreier, et al (1993): In an October 27, 1993 letter to Secretary of State Warren Christopher, 30 members of Congress—including 16 Republicans—wrote that while they supported "the objective of controlling missile proliferation" they were concerned that sanctions did not "allow communications satellites to be launched from China"—specifically satellites owned by Hughes Aircraft Company. The letter concludes: "We believe that national policy objectives can be met without placing sanctions on communications satellites, and we ask you to direct that these satellites be excluded from any list of sanctionable items." The letter was signed by 30 Representatives (16 Republicans and 14 Democrats) including Reps. Dana Rohrabacher, William Thomas, Elton Gallegly, David Dreier. [Letter to Warren Christopher, 10/27/93]

2. Transfer Of Authority To Grant Waivers From The State Department To The Commerce Department Was A Policy Decision Supported By Both Democrats And Republicans.

President Bush (1992): In a September 25, 1992 "Message to Congress," President Bush noted "the transfer from the State Department to the Commerce Department of licensing jurisdiction" over certain civil aircraft equipment and added that "this transfer of items formerly included in the State Department's United States Munitions List (USML) to the [Commerce Control List] CCL is ongoing." President Bush also predicted that: *"In the future, certain commercial telecommunications satellites, imaging technologies, and navigational technologies will be removed from the USML and added to the CCL."* [Public Papers of the President's, 1992 (Book II, p. 1651; emphasis added)]

Frm. Congressman Roth (1993–1996): Former Rep. Toby Roth (R–WI) served as the ranking member and Chairman (1995–96) of the House Foreign Affairs Committee's Subcommittee on Economic Policy, Trade and Environment. Roth was an adamant proponent of shifting jurisdiction for commercial satellite exports from the State Department to the Commerce Department. Roth sponsored a 1995 bill (HR. 316) which—in its original form—included language stating that *"the export of commercial communications satellites . . . may be regulated only by the Secretary of Commerce."* Roth also co-authored a July 18, 1994 New York Times op-ed with Rep. Gejdensen which was critical of "prohibit[ing] American companies from selling communications satellites to China . . ." [HR 361, 104th Congress, 1/11/95 (version 1)]

Congressman Gallegly (1994): On May 17, 1994, Rep. Elton Gallegly (R–CA) signed up as a cosponsor on HR 4276 sponsored by Rep. Jane Harman. The legislation function was "to amend the Arms Export Control Act and Export Administration Act of 1979 to require that the export of certain commercial communications satellites and associated equipment be regulated solely by the Secretary of Commerce . . ." Introducing her bill on April 21, 1994, Harman noted the bill *"completes a process that was initiated by the Bush Administration by shifting jurisdiction over these licenses from the State Department to the Commerce Department."* Other co-

sponsors were Democratic Rep. Berman (CA); Beilenson (CA) and Edwards (CA). [Bill Tracking Report HR. 4276, 103rd Congress (Lexis/Nexis); Congressional Record, 4/21/94 (emphasis added)]

Congressman Gilman, Roth, Burton, Rohrabacher, et al: In 1994, the House Foreign Affairs Committee (May 18th) and its Subcommittee on Economic Policy, Trade, and Environment (March 10th) both *passed by voice vote* Legislation stating that) *"the export of commercial communications satellites . . . may be regulated only by the Secretary of Commerce."* Members of the Subcommittee at the time of the March 10, 1994 voice vote included: Reps. Toby Roth, Dana Rohrabacher, Don Manzullo, Doug Bereuter, Jan Myers, and Cass Ballenger. And, in addition to those listed above, the members of the full committee at the time of May 18, 1994 voice vote included: Reps. Ben Gilman, Dan Burton, James Leach, Elton Gallegly, Chris Smith and eight other Republications. [103rd Congress, House Rep. 103–531, 5/25/94]

3. Both President Bush And President Clinton Granted Waivers For Chinese Launch Of Loral Made Commercial Satellites. National Security Was The Controlling Factor In Both Decisions.

President Bush: In a letter informing Congress of his decision to grant a waiver to Loral for its Intelsat VIIA project, Bush wrote that *"it is in the national interest* of the United States to waive the restrictions" on exporting to China. ["Message to the Congress on trade with China," Public Papers of the Presidents: George Bush, Book II, p. 1546]

President Clinton: On February 6, 1996 and February 18, 1998, President Clinton also told Congress that *"it is in the national interest* of the United States to waive" restrictions on exporting to China for Loral's Mubuhay and Chinasat 8 projects. ["Message to Congress on Satellite Exports to China," Public Paper of the Presidents: Bill Clinton, Book I, p. 177; Congressional Record, 2/24/98, p. H573]

Note: The satellite launched as a result of President Bush's 1992 waiver exploded at launch in 1996—leading to the controversial "industry review" and subsequent Justice Department investigation.

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