

CHINESE MISSILE PROLIFERATION

HEARING

BEFORE THE

COMMITTEE ON FOREIGN RELATIONS

UNITED STATES SENATE

ONE HUNDRED FIFTH CONGRESS

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THURSDAY, JUNE 11, 1998

U.S. SENATE,
COMMITTEE ON FOREIGN RELATIONS,
Washington, DC.

The committee met, pursuant to notice, at 10:37 a.m. in room SD-419, Dirksen Senate Office Building, Hon. Jesse A. Helms, (chairman of the committee), presiding.

Present: Senators Helms, Coverdell, Hagel, Grams, Frist, Brownback, Biden, Feingold, and Feinstein.

The CHAIRMAN. The committee will come to order. The short delay is because I have a policy of not opening a committee meeting unless both sides are represented. Senator Biden was held up getting here and he suggested that we proceed. We appreciate your being here.

Ladies and gentlemen, both in this hearing room and on television the Foreign Relations Committee today undertakes the first in a series of hearings to examine the Clinton administration's policy of promoting commercial satellite launches from China.

This morning's hearing will focus on an examination of Chinese ballistic and cruise missile proliferation. We also will examine in some detail the extent to which the Clinton administration may have deliberately refused to fulfill its legal obligations to impose sanctions on China for this behavior.

There is no more expert a panel of witnesses possible for this purpose than the two distinguished citizens who have come this morning. Dr. Oehler recently retired as the most senior intelligence officer for nonproliferation affairs, having served as Director of the Central Intelligence Agency's Nonproliferation Center, and Dr. Gary Milhollin is the Director of the Wisconsin Project on Nonproliferation, and someone to whom the committee often turns to for advice and counsel in such matters.

Now, I must say at the outset that I regret the appalling—how to put it? I guess legal hijinks would be the best way to describe it—the legal hijinks of the administration in trying to avoid sanctioning communist China for its missile proliferation. Some may recall that a few weeks ago, the date was April 28, the *New York Times* quoted President Clinton as having declared that, U.S. sanctions, laws have put “enormous pressure on whoever is in the executive branch to fudge an evaluation of the facts of what is going on.” Now, that is a curious statement for the President to make.

But in any event, the fact that the President is on record as saying this, that his administration feels pressured to fudge the facts as a result of U.S. sanction laws, comes as no surprise to a lot of

us. The U.S. Congress and the Senate Foreign Relations Committee in particular, and the latter I speak for, has been on the receiving end of this business of fudging the facts for the past 5 years. While no administration has ever voluntarily imposed sanctions that it believed would be counterproductive, the present administration's rather callous disregard of U.S. law is bouncing around at a new low.

In any event, nowhere has this fudging of the facts been more clearly manifested than with respect to China's missile proliferation and, specifically, in the instance of China's transfer to Pakistan dozens of nuclear-capable M-11 missiles.

Senators may recall that in July 1995 this committee, the Senate Foreign Relations Committee, obtained an advance copy of the Arms Control and Disarmament Agency's annual arms control report which addressed the M-11 transfer. The document, as the *Washington Post* later reported, had been approved for release to Congress by everybody. It had been approved—the Department of Defense had been approved to receive it, the chairman and members of the Joint Chiefs of Staff, the State Department, the Intelligence Committee, everybody except the White House. Now, this committee obtained it just before it was sent to the White House for any final changes that the White House may want to make. The effects of the NSC review are crystal clear, and there is a chart that I asked to be drawn, and I am going to have to ask which one it is because I cannot see it from this side. It is the one to the right of the audience. You are sure? All right. They can vouch for that. I cannot.

The report before the White House changes read, "we remain concerned about possible past transfer of M-11 missiles to Pakistan and are urgently seeking clarification and resolution of this matter."

After the White House changes, look at what happened to the report. "We remain concerned about possible past M-11 related transfers to Pakistan and are continuing to monitor the situation closely." Dear me.

Now, every one of the agencies had signed off on this report—bear that in mind—except the President's political appointees at the National Security Council. Everybody except those. The changes made by those National Security Council representatives of the President were done in spite of a consensus within the U.S. Government regarding the facts of the M-11 transfer, no question about it. It may be that this morning's witnesses will agree that the effects of the administration fudging are, indeed, significant.

China had already been sanctioned for M-11-related transfers to Pakistan, don't you see. They cannot be sanctioned for the same violation twice. But what China has not yet been sanctioned for is the transfer of a complete M-11 missile. Now, bear in mind the distinction. The National Security Council understood full well that it could not let the original text of the ACDA report go to Congress unchanged.

Sanctioning China for such a violation would mean among other things the immediate termination of important licenses held by whom? Guess who? Hughes and Loral, which allowed for the launching of commercial U.S. satellites from China. These sanc-

tions also would affect a large number of Chinese companies, including the Chinese Aerospace Corporation.

I have no doubt that concern over the impact of missile sanctions in this case has fueled the administration's efforts to contradict clear and totally unambiguous evidence that operational M-11 missiles are, in fact, in Pakistan. As we will doubtless hear today, the efforts to dumb down the U.S. intelligence process are ongoing and, of course, the M-11 missile violation is not the only answer to Chinese proliferation that has threatened to derail U.S. satellite launches from China. I submit for the record an internal National Security Council memorandum which was recently declassified and provided to this committee in connection with its ongoing investigation. According to the memo—now, which chart is this one? OK. The outside one.

"It has been"—I am quoting, and you are reading, I hope—"administration practice to permit launches of U.S. satellites to proceed unless missile sanctions are enforced that prohibit the export of a satellite to be launched. No such sanctions are now in force. However, there is the potential for sanctions against the Chinese Government due to China's transfer to Iran of C-802 anti ship cruise missiles which might prohibit the export of technical data related to China sat 8."

But, the C-802 transfer will not be a problem, you see, for the Chinese or for Hughes or Loral. The administration has already taken care of that possibility, despite the fact that the administration admitted in testimony that the C-802's "put commercial shipping in the Gulf at risk," and "pose new direct threats to deployed U.S. forces." The administration, don't you see, nevertheless declared that the transfers thus far "are not of a destabilizing number and type."

I must editorialize just a little bit. That depends on who is evaluating it.

In any event, because of the relevant sanction law the Iran-Iraq Nonproliferation Act is triggered only by destabilization transfers. This fudging of the facts is equivalent to a decision not, not to impose sanctions, purely and simply.

There are numerous other cases for which the administration is refusing to make sanctions determinations, and the chart clearly identifies five categories, count them, five categories of Chinese missile transfers to Iran and Pakistan which are sanctionable, mind you, under various missile proliferation laws, and I will be interested in what our witnesses say today about the specifics of each of these cases.

I know I have run long, but I feel very strongly about this, and I felt the need of saying at the outset how careful we are going to be to assemble all the facts.

In closing I must say that I am deeply concerned that the administration has sought to shield China, and no other face can be put on it, and the U.S. satellite vendors from the effects of U.S. sanctions. The imposition of missile sanctions could potentially derail commercial U.S. satellite exports for launch from China, and I say "could" because with the removal of all satellites from the United States munitions list of 1996 the Clinton administration may have

been attempting to sever all remaining links between these laws and U.S. commercial satellite licenses.

But in any event, this is merely the first in a series of our hearings, and I look forward to the recommendations made here today as to how the committee should focus its investigation into this complicated and, to me, disturbing matter.

Now, I will not proceed with the testimony of the witnesses. Senator Biden is still on his way. But I will say that the moment he gets here, I will offer him the opportunity to make his statement, possibly in rebuttal to some of the things I have said. Dr. Oehler, if you will proceed I will appreciate it.

STATEMENT OF DR. GORDON OEHLER, FORMER SPECIAL ASSISTANT TO THE DIRECTOR OF CENTRAL INTELLIGENCE FOR NONPROLIFERATION, ARLINGTON, VIRGINIA

Dr. OEHLER. Thank you, Mr. Chairman.

The CHAIRMAN. Please pronounce your name. Let me tell the folks, it is spelled O-e-h-l-e-r. How would you pronounce that?

Dr. OEHLER. It is pronounced Oehler, just like Taylor without the T in the front.

The CHAIRMAN. I see.

Dr. OEHLER. It is a German name.

The CHAIRMAN. Well, Dr. Oehler, thank you very much.

Dr. OEHLER. Thank you, Mr. Chairman. In July 1997 the Director of Central Intelligence submitted a report to Congress entitled, "The Acquisition of Technology Relating to Weapons of Mass Destruction in Advanced Conventional Munitions."

In this report, China was singled out as "the most significant supplier of weapons of mass destruction related goods and technology to foreign countries" during the last half of 1996, the duration of this report.

Because I was involved in the production of this report, I have been asked to comment on the reasons for this strong statement. First, let me say that the Chinese have made some progress in their proliferation behavior since the early 1990's, but exports of materials and technologies of concern to Pakistan and Iran have not abated, and some exports to other countries have continued as well.

With regard to Pakistan, China has had a long-term strategic relationship with Pakistan and has regarded Pakistan as a counterbalance to India in the region. China has held back few weapons and technologies from Pakistan in support of this relationship.

For example, Mr. Chairman, it is my view and, I believe, the view of most intelligence officers, that Pakistan could not have tested a nuclear device a few weeks ago without the nuclear materials and technologies supplied by China.

Most of those nuclear transfers took place in the 1980's and the early 1990's. As the recent tests show, the Pakistanis are now self-sufficient in nuclear weapons technologies, but in the early 1990's, the Chinese began an effort to provide Pakistan with nuclear-capable ballistic missile technologies and even complete missiles.

In 1990, the intelligence community detected the transfer to Pakistan of a training M-11 ballistic missile and associated trans-

porter-erector-launcher, indicating that operational missiles were not far behind.

The intelligence community had evidence that the M-11 was covered by the so-called guidelines and parameters of the missile technology control regime, the MTCR. With this information, the U.S. imposed Category Two sanctions against China and Pakistan in 1991.

In December 1991, China provided written assurances to Secretary of State James Baker that it would abide by the "guidelines and parameters" of the MTCR if sanctions were lifted. Sanctions were, in fact, lifted effective 23 March, 1992.

However, in November 1992, less than 8 months later, the Chinese delivered 34 M-11 to Pakistan despite their earlier pledge. This led to a second sanctions action, not for Category One sanctions that would be required for complete missile transfers, but for Category Two M-11-related transfers, a lesser offense.

This, too, was waived after China once again promised to abide by the guidelines and parameters of the missile technology control regime.

Since late 1992, China has not transferred complete MTCR-covered missiles to any country. Instead, it has concentrated on transferring production technologies and components. Production technologies and components are also covered under the MTCR, but they are easier to hide, or can be claimed to be for non-MTCR-related systems.

One can argue, though, that the transfer of missile-related production technologies is a more serious infraction of the intent of the missile technology control regime.

With regard to missile-related transfers to Iran, the primary transfers of concern relate to guidance and control components, their production technologies, and testing jigs.

The 1997 report, in concluding that China was the worst offender during the last half of 1996, also considered Chinese transfers of chemical weapons-related materials and technologies, but that is another story.

In sum, China has been for a long time a major proliferator of weapons of mass destruction materials and technologies. Moreover, the Chinese leaders have shown a very poor record of living up to their commitments to the U.S., and in the name of national sovereignty they resisted U.S. efforts to put in place any means to verify their compliance with bilateral or international agreements.

In my opinion, based on this past record, we need to base any future agreements with China on something more than the word of its leaders and make provisions for an easy out for the United States if they resist verification procedures in the agreement or simply if they choose to disregard their commitments to us. Thank you very much, sir.

STATEMENT OF DR. GARY MILHOLLIN, DIRECTOR OF THE WISCONSIN PROJECT ON NUCLEAR ARMS CONTROL, WASHINGTON, D.C.

Dr. MILHOLLIN. Thank you, Mr. Chairman. I am pleased to be here today.

The CHAIRMAN. We are pleased to have you here.

Dr. MILHOLLIN. I have testified before this committee before, and I have always felt that it was an honor to do so.

Today, I am going to talk about a series of decisions by the administration which, in my view, have in effect given Chinese companies the green light to sell missile technology to countries like Iran and Pakistan.

There have been three decisions that I think are particularly important.

First, the decision that you mentioned already, which was to transfer control over satellite exports from the State Department to the Commerce Department. In my view, after looking at the various laws, I think that this decision, this transfer, effectively pulls the teeth from any future U.S. sanctions against Chinese companies that might be found guilty of missile proliferation. I should say, Chinese aerospace companies.

The second decision by the administration that is important is its suspension of the implementation of our sanctions laws. These laws in my view require the United States to sanction Chinese companies for proliferating missile technology to Iran and Pakistan, but these sanctions actions have not been completed. They have been suspended without any basis in law.

Third, the administration has decided to invite China to join the missile technology control regime. If the Chinese were to accept that invitation, in my view that would give them a future total immunity—I am sorry, would give total immunity in the future to Chinese firms that might be found guilty of missile proliferation, and my testimony will be an elaboration of my reasons for concern about these decisions.

The CHAIRMAN. By the way, all of that will be in the printed record and it is going to be distributed rather widely. Proceed.

Dr. MILHOLLIN. Our sanctions laws, as written by Congress, are based on a simple idea. A foreign company cannot import American missile technology with one hand and proliferate missile technology to dangerous countries with the other. I think that simple idea has now been abandoned by the practice of the current administration, and let me explain why I believe this.

If a Chinese company sells missile-related components to a country like Iran or Pakistan in a program to make nuclear-capable missiles, sanctions apply under the MTCR, but the sanctions are limited in the case of—this gets a little complicated, but in the case where the transfer is, as Mr. Oehler has said, of only components and technology rather than complete missiles, the U.S. export sanctions are limited to what are called missile-related items.

Now, what is a missile-related item? The State Department defines a missile-related item as an item that has been defined by the MTCR as such, regardless of whether it has been embedded in a commercial satellite. According to the State Department, even if an item is embedded in a satellite, it is still missile-related.

The Commerce Department, however, defines missile-related differently. The Commerce Department views a missile-related item as losing its identity once it is incorporated into a satellite. The practical effect is that once you transfer the satellite and all of the items associated with it to the Commerce Department for licensing, U.S. sanctions laws no longer prevent it from being exported.

That is a change, I think, in the way we do things that is very important, but has not been generally recognized by the public or by those who are studying this subject.

The transfer of this authority occurred first in 1996 and then was completed in 1998 when licensing authority over the last of the items associated with satellite launches were transferred to the Commerce Department. The result is that now satellites are insulated from missile sanctions because control over everything associated with launching them has been transferred to the Commerce Department, where sanctions will not be applied.

The next point I would like to make is that the same Chinese companies that launch U.S. satellites also sell missiles to places like Iran and Pakistan. There is an excellent chart here which lays out which companies these are.

We sanctioned, for example, the China Aerospace Corporation for missile technology exports to Pakistan. The China Aerospace Corporation also launches our satellites, satellites made in America.

It is important to realize that a satellite launch is one of the most lucrative things a Chinese aerospace company can get from the United States. Once you remove that from the scope of U.S. export sanctions, you have taken away the major threat that might deter those companies from committing missile export violations. The result of taking satellites out of U.S. sanctions is that the Chinese aerospace companies are free to sell missile technology to Iran and Pakistan without risking their most lucrative source of revenue.

Also in my testimony I cover our failure to apply sanctions laws and the history of applying those sanctions and then waiving them. Mr. Oehler has done an admirable job of summing that up, but I would like to make one additional point, and that is that there have been complete findings of fact by the U.S. Government showing the transfers. These findings have been languishing in the State Department since 1996.

The State Department has simply not completed the administrative process necessary to reach the point where a sanction might be imposed. Also, our government has completed a legal analysis that demonstrates that you do not need to show a missile with, "Made in China" written on the side. A conspiracy to export or an attempt to export missile-related items is sufficient for the imposition of U.S. export sanctions. That legal analysis is also completed and it too has been languishing for even longer than the findings of fact.

The last point I will make here is that if China did join the MTCR, U.S. law is written so that no sanctions would apply to its aerospace companies in the future even if they were to sell whole missiles to Pakistan and Iran. It seems to me that, given China's record of breaking its promises, it is imprudent to make that kind of an offer at this time.

Before we offer China membership in such a—before we invite China into the missile technology control regime, I think we should insist on a fairly long period of good behavior. There has been no such period, and so I think it is premature to make this offer.

These conclusions lead to me to wonder whether we may be asking the right question about the link between satellite exports and

missile proliferation. Whether or not our satellite policy has caused U.S. missile technology to go to China, it has certainly made it easier for Chinese missile technology to go to Pakistan, and India has watched this happen.

India watched China help Pakistan not only make missiles, but nuclear warheads, and it also watched the United States do nothing about it. It seems to me the Indians might have concluded that America was against proliferation as long as it did not cost us anything, and that may have been a factor in India's decision to test.

I think that our failure to do anything about the obvious proliferation by China to Pakistan has seriously undermined our credibility concerning nonproliferation.

[The prepared statement of Dr. Milhollin follows:]

PREPARED STATEMENT OF GARY MILHOLLIN

I am pleased to appear today before this distinguished Committee. I will direct my remarks to U.S. foreign policy toward China, particularly as it concerns transfers of missile technology by China to countries that are trying to make weapons of mass destruction. I will discuss the failure of the United States to sanction China under U.S. law for these exports, and the link between this failure and the current U.S. policy on satellite exports.

We have heard a lot about satellites lately, especially American-made satellites going to China. We have also heard about campaign contributions, about waivers of export prohibitions, and about the transfer of control over satellites from one government agency to another.

What we have not heard, and what I will talk about today, are decisions by our government that have given Chinese companies the green light to sell missile technology to countries like Iran and Pakistan. The Administration has made three crucial decisions in this regard.

First, it has decided to transfer control over satellite exports from the State Department to the Commerce Department, an action that effectively pulls the teeth from any future U.S. sanctions against Chinese companies guilty of missile proliferation.

Second, it has decided to suspend, without any legal basis, the implementation of U.S. statutes that require sanctions to be imposed against Chinese companies for past sales of missile technology to Iran and Pakistan.

Third, it has decided to invite China to join the Missile Technology Control Regime, an invitation that, if accepted, would immunize Chinese firms from any future application of U.S. sanctions laws for missile proliferation.

When we look at the cumulative effect of these decisions, we see something very surprising and very alarming. Our government has enabled Chinese companies to proliferate missile technology with little fear of punishment. More specifically, Chinese companies have been able to sell Pakistan components for nuclear capable missiles without worrying about losing U.S. satellite launch contracts.

SATELLITES

Our sanctions laws, as written by Congress, are based on a simple idea. A foreign company cannot import American missile technology with one hand and proliferate missile technology with the other. If a Chinese company decides to sell Pakistan or Iran a nuclear-capable missile or the means to make one, that company has to forget about importing any missile-related American technology. U.S.-made satellites were originally part of this equation, because they contain missile-related American components.

That simple idea has now been abandoned by the executive branch. When, for example, the Administration transferred licensing authority over satellites from the State Department to the Commerce Department, satellites were effectively removed from the list of U.S. exports subject to missile sanctions.

Let me explain why this is so. Under Section 73 of the Arms Export Control Act, sanctions apply to a Chinese company that sells components to country like Iran or Pakistan for use in a program to make nuclear-capable missiles. The sanctions prevent the guilty company from importing U.S. missile-related items for a period of two years if the company's sale was of something less than a complete rocket system or subsystem. Most sales fall into this category. An example would be a rocket motor casing or a piece of guidance equipment. These are known as "Category II"

items on the Annex of the Missile Technology Control Regime, an agreement among countries that are trying to curb missile proliferation by controlling their exports.

So sanctions bar the guilty company from buying missile-related items from the United States. But what is a "missile-related item"? According to the licensing practice of the State Department, a missile-related item *retains its identity* as a missile item even if it is embedded in a commercial satellite. Thus, if a Chinese company were sanctioned, the export of satellites would be blocked by the State Department because satellites have missile-related items embedded in them. In the view of the Commerce Department, however, a missile-related item *loses its identity* as a missile item if it is incorporated into a commercial satellite. Thus, the export of satellites would not be blocked by the Commerce Department even though the satellites contained items that would be considered missile-related if not embedded. These embedded items are such things as radiation-hardened computer chips, gyroscopes, and accelerometers.

The Administration first moved export controls on satellites from State to Commerce in 1996, and in its implementing regulations, it also moved a number of missile-related items associated with satellites. Then in 1998, the Administration moved the rest of the missile-related items associated with satellite launches, even though the items are not embedded in satellites. These items included ground support equipment, test equipment, replacement parts, and non-embedded kick motors.

The result is that now, satellites are insulated from missile sanctions because control over everything associated with launching them has been transferred to the Commerce Department, where sanctions will not be applied.

It is important to realize that the same Chinese companies that launch U.S. satellites also sell missiles to places like Pakistan. Who are these companies? China Great Wall Industries, China Aerospace International Holdings Ltd. (CASIL, of Hong Kong) and their parent, China Aerospace Industry Corporation. These companies launch satellites on China's Long March rockets. The United States has sanctioned both China Great Wall and China Aerospace Corporation in the past for supplying missile technology to Pakistan.

It is also important to realize that a satellite launch contract is one of the most lucrative things a Chinese aerospace company can get from the United States. Thus, by removing satellites from the threat of sanctions, the Administration has surrendered one of the most important levers America has to stop Chinese missile proliferation. Chinese companies are free to sell missile technology to Iran or Pakistan without risking their most lucrative source of revenue.

FAILURE TO APPLY SANCTIONS LAWS

In October of last year, I testified before this Committee on China's export behavior. I will not repeat that testimony here, except to summarize some points that are especially important to keep in mind.

China's exports remain the most serious proliferation threat in the world. Since 1980, China has supplied billions of dollars worth of nuclear weapon, chemical weapon and missile technology to South Asia, South Africa, South America and the Middle East. It has done so despite U.S. protests, and despite repeated promises to stop. The exports are still going on, and while they do, they make it impossible for the United States and its allies to halt the spread of weapons of mass destruction.

I have attached tables to my testimony that list China's exports of nuclear, chemical and missile technology since 1980. The tables reveal that China has consistently undermined U.S. nonproliferation efforts for nearly two decades and is still doing so today.

In the early 1990s, Chinese companies were caught selling Pakistan M-11 missile components. The M-11 is an accurate, solid-fuel missile that can carry a nuclear warhead about 300 kilometers. In June 1991, the Bush administration sanctioned the two offending Chinese sellers. The sanctions were supposed to last for at least two years, but they were waived less than a year later, in March 1992, when China promised to abide by the guidelines of the Missile Technology Control Regime.

But the sales continued and in August 1993, the Clinton administration applied sanctions again for two years, after determining that China had violated the U.S. missile sanctions law a second time. Then in October 1994, the United States lifted the sanctions early again, when China pledged once more to stop its missile sales and comply with the MTCR.

Since 1994, the stream of missile exports has continued. U.S. officials say that China's missile exports have continued up until the present moment, unabated. These exports include the sale of missile-related guidance and control equipment to Iran.

In fact, our officials have learned that they were duped in 1992 and 1994. China was not promising what we thought it was. Our officials now realize that China interprets its promises in 1992 and 1994 so narrowly as to make them practically meaningless. It is clear that China has not complied with the MTCR in the past, that it is not complying now, and that it probably never will comply unless something happens to change China's attitude on this question.

In its latest venture, China is helping to build a plant to produce M-11 missiles in Pakistan. U.S. officials say that activity at the plant is "very high." If the Chinese continue to help at their present rate, the plant could be ready for missile production within a year.

In the autumn of 1996, the intelligence community had completed an airtight finding of fact on China's missile transfers to Pakistan. There was clear proof that the transfers had happened. All the factual analysis necessary to apply sanctions had been finished. A similar finding on China's missile exports to Iran had also been made.

And roughly one year earlier, an important legal analysis had been completed. The legal analysis established that sanctions could be applied where a foreign person "conspires to or attempts to engage in" the export of any MTCR equipment or technology. Thus, sanctions could be applied without a finding that hardware or technology had actually been exported. A conspiracy or even an attempt to transfer such items would be enough. One did not need a photograph of a missile with "made in China" written on the side.

The findings of fact and the legal analysis showed clearly that China should be sanctioned. Both the findings and the analysis had been circulated to the relevant agencies by the autumn of 1996. Both Pakistan and Iran were covered. The process, however, was short-circuited at that point.

The next step would have been for the National Security Council to call a meeting at which each agency could submit for the record its views on whether sanctions should be imposed. The NSC would then forward these views to the Department of State, which would prepare a decision memorandum for the Under Secretary, who has the legal authority to impose sanctions.

But none of these steps ever happened. The State Department simply chose not to complete the administrative process. Thus, the sanctions law is not being implemented as Congress intended and, in fact, is being circumvented. It is obvious that the law can never take effect unless the administrative process is completed, so the failure to complete it is manifestly illegal. I recommend that Congress take steps to see that the law is enforced.

Now that Pakistan has demonstrated its nuclear weapon capability, and announced that it will mount nuclear warheads on missiles, this matter has become urgent. The Chinese-supplied M-11's will actually carry nuclear weapons. President Clinton has said that the world should try to prevent India and Pakistan from putting warheads on missiles, but his Administration refuses to apply a U.S. law designed to prevent Pakistan from acquiring missiles in the first place.

CHINA IN THE MTCR?

This past March, the Administration invited China to join the Missile Technology Control Regime. In a memorandum dated March 12, White House staff member Gary Samore stated the reasons for making the offer. Sanctions figured prominently among them. If China joined, the memo stated, China could expect "substantial protection from future U.S. missile sanctions."

Mr. Samore could have said "complete protection." Under Section 73 of the Arms Export Control Act, sanctions would not apply to a Chinese company if China joined the MTCR even if the company transferred complete missiles to Iran or Pakistan. Sanctions would be avoided if the sale were legal under Chinese law, or if China took action against the company, or if China found the company to be innocent. In effect, the Administration offered China a complete shield against U.S. sanctions law.

It is difficult to see how such an offer is prudent. China has repeatedly failed to comply with MTCR guidelines since promising to do so in 1992 and 1994. There is no real evidence that China has changed its ways. Thus, the offer seems to be yet another effort to insulate Chinese aerospace companies from U.S. sanctions laws so satellite launches can continue.

CONCLUSION

Our government's export policy on satellites has enabled Chinese companies to sell missile components to Pakistan without fear of punishment. Thus, it may be

that we are asking the wrong question about how our satellite export policy affects missile proliferation.

Whether or not our satellite policy has caused U.S. missile technology to go to China, it has certainly made it easier for Chinese missile technology to go to Pakistan.

India, of course, has watched this happen. India watched China help Pakistan make not only missiles but the nuclear warheads to go on them. India also watched the United States invent every excuse possible not to do anything about it. Uncle Sam asked the Indians to show restraint in nuclear testing, but Uncle Sam was unwilling to put restraints on his own satellite companies by sanctioning China for missile proliferation. The Indians no doubt concluded that Uncle Sam was against the spread of the bomb unless it might cost him something. It should not surprise us if our non-proliferation policy lacks credibility.

THE RISK REPORT

China's Dangerous Exports

ALGERIA

1980–1984

- Secretly agrees to supply a nuclear research reactor

1985–1989

- Trains Algerian scientists and technicians; starts building reactor

1990–1997

- Completes reactor and supplies heavy water and uranium fuel

ARGENTINA

1980–1984

- Sells over 60 tons of heavy water
- Sells Uranium concentrate and low-enriched uranium hexafluoride

1985–1989

- Sells enriched uranium

BRAZIL

1985–1989

- Sells enriched uranium
- Agrees to provide liquid-fuel and guidance technology for missiles in exchange for solid-fuel technology

INDIA

1980–1984

- Sells at least 130–150 tons of heavy water

1990–1997

- Agrees to supply Tarapur reactors with enriched uranium

IRAN

1980–1984

- Sold production capability for the Oghab short range rocket

1985–1989

- Trains Iranian nuclear technicians in China
- Sells Silkworm anti-ship missiles
- Supplies a miniature reactor, a subcritical facility, and tributylphosphate useful in plutonium extraction

1990–1998

- Supplies a calutron and a copper-vapor laser that could be used for uranium enrichment research
- Contracts to sell 25.30 MW research reactor
- Helps prospect for uranium in Iran
- Contracts to sell nuclear reactor and isotope separator

- Supplies a nuclear fusion research facility and scientists and engineers to help install it
- Delivers poison gas ingredients
- Delivers missile guidance systems and computerized machine tools
- Sells virtually complete chemical weapon factories including precursor chemicals and glass-lined vessels
- Hosts Iranian nuclear specialists to study a uranium hexafluoride plant for export to Iran
- Delivers components for missile guidance and ingredients for rocket propellant
- Supplies 400 tons of poison gas ingredients
- Agrees to sell gyroscopes, accelerometers and equipment to build and test missile guidance components
- Supplies two tons of calcium hypochlorate, used in chemical decontamination
- Continues to supply chemical precursors
- Supplies C-801 and C-802 ship-based anti-ship cruise missiles
- Supplies through Hong Kong high-grade seamless steel pipes used to make chemical weapons or explosives
- Contracts to supply hundreds of tons of a key ingredient needed to process natural uranium to nuclear weapon grade

IRAQ

1980-1984

- Nuclear bomb design supplied to Pakistan

1985-1989

- Helps make magnets for centrifuges to enrich uranium
- Sells "Silkworm" anti-ship missiles

1990-1997

- Agrees to sell lithium hydride useful for nerve gas, missiles and nuclear weapons

ISRAEL

1990-1997

- Agrees to fund development of a cruise missile with a range of 400 kilometers

PAKISTAN

1980-1984

- Supplies nuclear bomb design and its fuel
- Helps build Hatf missiles
- Helps with gas centrifuges to enrich uranium

1985-1989

- Agrees to sell tritium gas to boost the yield of fission bombs
- Ships equipment for M-11 nuclear-capable missiles
- Starts building a 300 MW nuclear reactor at Chashma in spite of de facto international supply embargo

1990-1997

- Secretly delivers more M-11 missile components
- Trains Pakistani nuclear technicians in China
- Continues to deliver components for M-11 missiles
- Supplies more than 30 M-11 missiles now in crates at Sargodha Air Force Base near Lahore
- Helps build a secret 50-70 MW plutonium production reactor at Khusab, and a nearby fuel fabrication or reprocessing plant
- Supplies blueprints and equipment for a missile factory near Rawalpindi, now under construction
- Supplies ring magnets used in gas centrifuges to enrich uranium
- Supplies heavy water to Kanupp nuclear reactor
- Sells a high-tech furnace and diagnostic equipment with military applications
- Ships rocket fuel seized en route in Hong Kong
- Agrees to build Chashma-2, a second 300 MW nuclear reactor

SYRIA

- Contracts to sell M-9 nuclear-capable missiles

1990-1997

- Agrees to supply Syria's first nuclear reactor and train nuclear technicians

SAUDI ARABIA

1985-1989

- Sells CSS-2 medium-range, nuclear-capable missiles

SOUTH AFRICA

1980-1984

- Supplies 60 tons of enriched uranium, undercutting U.S. pressure on South Africa

The CHAIRMAN. I thank you, sir. Senator Biden has arrived, and as I mentioned to you, we would proceed with his statement at this point.

Senator BIDEN. Mr. Chairman and my colleagues, I will not take the time to deliver my whole statement. I ask that it be placed in the record, but just let me say that unfortunately, although China has shown some responsiveness to U.S. concerns on exports of finished missiles, which is part of what we just heard, China has been reluctant to restrict the export of dual use items and missile technology.

One of their explanations is, they do not think it is right for us to expect them to be bound by an agreement they did not have an opportunity to shape at its inception. This seems particularly strange to me. If China were to join the MTCR they would have the same right as all members to participate in the formulation of the export control list governed by the agreement.

Perhaps China is simply not yet convinced that such exports might endanger their own national security.

Mr. Chairman, I am not sure how to get beyond this log jam, but I am willing to entertain any creative suggestions from our panel and I am sure I have missed some already.

Mr. Chairman, I am sure that nonproliferation will be high on the President's agenda when he visits Beijing later this month, and I hope that the administration will obtain some significant movement along the lines that I have outlined in the part of my statement I have not spoken to in the context of the upcoming summit.

The world remains a very dangerous place, as we all know, and it will grow more dangerous if great powers do not work together to halt the spread of weapons of mass destruction, so Mr. Chairman, I look forward to our testimony today, and I hope that they will address—and maybe they already have, and again I apologize if you have—the mechanisms available to the United States to advance our nonproliferation interests.

Two questions seem to me to be at the heart of our dilemma. How can we best make China realize that stopping weapons proliferation is as much in their interest as it is in ours, and what bludgeoning—oh, I should not say that. I should rephrase it. What encouragement, or what assistance will it take to make China keep its promise to join in preventing the spread of destabilizing weapons?

I am not sure we yet have the answers to these questions, and I welcome the testimony of our experts today and thank you for your courtesy in allowing me to interrupt them to make a part of my statement.

[The prepared statement of Senator Biden follows:]

PREPARED STATEMENT OF SENATOR JOSEPH R. BIDEN, JR.

Mr. Chairman, I want to thank you for holding this important hearing on Chinese ballistic missile proliferation. This is not the first hearing this committee has held on this issue, and it probably won't be the last.

Halting the spread of weapons of mass destruction and the means to deliver them is vital to our national security. As we have witnessed recently with nuclear tests in India and Pakistan, failure to address this threat successfully could have the gravest consequences for American interests and the security of our people.

GREAT POWER OBLIGATIONS

Two nations, Russia and China, will be critical to the success or failure of global nonproliferation regimes. China is the subject of today's hearing, but we could just as easily be discussing Russia's nonproliferation record.

Indeed, I see that Dr. Gary Milhollin is here to testify today, as he was last October when the committee last looked into this issue. I look forward to his testimony.

CHINESE PROLIFERATION ACTIVITIES

China wants to be accepted as a great power. I welcome that desire, for while obedience to global nonproliferation norms is mandatory for all nations, as far as I'm concerned, great power obligations go beyond this minimum.

China's interest, as well as ours, demands that they take the lead in stemming destabilizing arms proliferation. A great power bears an obligation not to sell dual-use equipment to a country that is known to have a program to develop long-range missiles. A great power bears an obligation not to sell chemical weapons precursors to firms that are fronts for military programs.

Past Chinese Assistance to Pakistan contributed to that nation's ability to detonate a nuclear weapon and, potentially, to deliver it on a ballistic missile. Some people might argue that this was in China's self-interest because of their difficult relations with India. But I would say that recent events prove that no one benefits from the provision of weapons of mass destruction to nations on the subcontinent, or anywhere else.

All of us on this committee are well acquainted with China's troubling nonproliferation record. The real question, it seems to me, is what do we do about it?

We must strive to transform nonproliferation from an issue that has become emblematic of the *difficulties* in Sino-U.S. relations to an example of *cooperation* and trust.

China deserves some credit for improving its official policy on nonproliferation. Since 1992, Beijing has joined the Nuclear Nonproliferation Treaty, ratified the Chemical Weapons Convention, and developed regulations governing chemical exports. In 1996, China began a moratorium on nuclear testing and signed the comprehensive test ban treaty. Last August, China promulgated a list of nuclear technologies prohibited from export.

China has also agreed to be bound by some, *but not all*, of the terms of the Missile Technology Control Regime.

Furthermore, last October, Chinese President Jiang Zemin reportedly provided assurances to President Clinton that China would stop selling C-801 and C-802 cruise missiles to Iran. Mr. Chairman, as you know, these cruise missile exports have been of particular concern to us.

These steps by China are encouraging, but there is much more that needs to be done.

CHINA'S NEXT STEPS

I'd like for China to join with the United States to halt the spread of ballistic missile technology.

There are some modest steps China could take which would demonstrate the sincerity of their commitment to nonproliferation. Specifically, China could:

- establish a comprehensive export controls enforcement mechanism, and demonstrate its effectiveness through the arrest and prosecution of violators; and

- agree to join multilateral bodies committed to comprehensive nonproliferation, including the missile technology control regime and the nuclear suppliers group.

If China took these steps, we would be well on our way to transforming the issue of Chinese ballistic missile proliferation from a sore point in Sino-U.S. relations to a genuine success story.

Unfortunately, although China has shown some responsiveness to U.S. concerns on the export of finished missiles, China has been reluctant to restrict the export of dual-use items and missile technology.

One of their explanations—that they do not think it is right for us to expect them to be bound by an agreement they did not have an opportunity to shape at its inception—seems particularly strange to me. If China were to join the MTCR, they would have the same right of all members to participate in the formulation of the export control lists governed by the agreement.

Perhaps China is simply not yet convinced that such exports might endanger their own national security.

Mr. Chairman, I'm not sure how to get beyond this logjam, but I am willing to entertain creative suggestions from our panel.

SUMMIT HOPES

Mr. Chairman, I am sure that nonproliferation will be high on the President's agenda when he visits Beijing later this month. I hope that the administration will obtain significant movement along the lines I have outlined in the context of the upcoming summit. The world remains a dangerous place, and it will grow more dangerous if great powers don't work together to halt the spread of weapons of mass destruction.

CONCLUSION

I look forward to the testimony of our witnesses today.

I hope they will address the mechanisms available to the United States to advance our nonproliferation interests.

Two questions seem to me to be at the heart of our dilemma:

- How can we best make China realize that stopping weapons proliferation is as much in their interest as it is in ours? and
- What bludgeoning, what encouragement, or what assistance will it take to make China keep its promises to join in preventing the spread of destabilizing weapons?

I'm not sure we yet have the answers to those questions, and I would welcome the expert advice of today's witnesses.

The CHAIRMAN. Thank you, Senator.

Dr. Milhollin, I do not want to be too long-winded, but I need to make a point here.

The administration has adopted what appears to me to be, well, President Bush did it, too. As a matter of fact, today, I think, or yesterday—I believe it was this morning. It has been a long time since I read this morning's *Washington Post*—quoted an NSC official as saying, I see a lot of continuity between the Bush and Clinton approaches toward satellites.

Well, when I was coming along, my mama and daddy did not accept everybody's doing it as an excuse, and I do not accept it, either, and in this case, for starters it ain't even so. George Bush never did what the current President of the United States has done, never. I was here, and I watched it fairly carefully.

Now, President Bush agreed with what I considered to be my own strict interpretation, which I gave. Incidentally, as the author of the Arms Export Control Act missile sanctions, George Bush agreed that all satellites were covered by U.S. missile sanctions laws regardless of how they were licensed.

Accordingly, when Category Two sanctions were imposed on China back in 1992, President Bush refused to allow the export of

any satellites to China. It was only after sanctions were terminated that he issued the waiver.

But I tried to make this point to folks at the administration, including my good friends at the State Department, but President Clinton refused to agree on this point and reversed the Bush policy. Bush did not do it the way Clinton is doing it. Clinton reversed the Bush policy, and I want to be placed in the record two exchanges of letters that I have dated 1993 and 1994, in which President Clinton declares, "after extensive legal analysis we determined that licenses for satellites controlled by the Commerce Department are not covered by the sanctions, and may be processed."

Thus, when President Clinton reimposed Category Two sanctions on China for an M-11 missile violation, he proceeded immediately and deliberately to undercut the effectiveness of his own sanctions, don't you see, by issuing a waiver for the ECHO STAR satellite.

All right. I have here for the record a July 13, 1994 memorandum to the President from Todd Stern—do you know him?—which states with respect to the ECHO STAR satellite, "the waiver would implement your November 1993 decision to the effect that Commerce-controlled satellites are not covered by the missile sanctions law and thus can be exported to China."

[The information referred to follows:]

THE WHITE HOUSE,
WASHINGTON, D.C.,
July 13, 1994.

MR. PRESIDENT:

The attached is a decision memo from Tony Lake and Susan Brophy recommending that you grant a national interest waiver necessary to allow the export to China of an Echo Star satellite system for launch by a Chinese-owned launch vehicle.

The waiver would implement your November 1993 decision to the effect that Commerce-controlled satellites are not covered by the missile sanctions law and can thus be exported to China.

We have sent copies of this memo to the Vice President and Leon.

If you approve, please sign the two waiver messages to Congress.

TODD STERN

The CHAIRMAN. Now, I had to lay a predicate for my question. Now, do you agree that these documents clearly indicate that the President obviously gutted the effect of the MTCR sanctions law with this waiver?

Dr. MILHOLLIN. It seems to me that when we sanction a country for missile proliferation violations we are sending the message that we are prepared to impose punishment, we are prepared to make it cost something to engage in proliferation, and as I said in my testimony, the most valuable thing that Chinese aerospace companies want from us is satellite launch contracts, so if you sanction these Chinese companies but if you remove from the sanctions the thing they want most, then what you do is, you pull the teeth out of the sanctions.

I guess we could use one or more metaphors. You could talk about pulling out teeth or gutting, but obviously it reduces the sanction to virtually nothing. Because of the Tiananmen sanctions the Chinese cannot get much else from us except satellite launches, so although we impose the sanction they do not have much teeth because nothing is being bought.

The CHAIRMAN. We have the 5-minute rule. I am going to enforce it strictly on myself, and I hope other Senators will abide by it.

Senator Biden. I will have a follow up on my question.

Senator BIDEN. If you would like my time, Mr. Chairman, you go ahead.

Gentlemen, we are going to be spending a lot of time here unrelated to your testimony—not here in this committee, but in the Congress—talking about what was done before, should it have been done now, and who started it, and was it different, what this administration did. I am not in any way denigrating the questions that relate to that series of concerns.

But what I would like to do is, instead of looking back, I would like you to look ahead for me. Let us assume that no one is at fault, everyone is at fault, whatever. What do we do from this moment on?

You are President of the United States. I am your National Security Advisor, or vice versa. I do not want to say I am President. That will start a rumor.

Senator Feinstein is President of the United States. You are her National Security Advisor. I am being serious now. What do you tell her? What do you tell her you should do from this moment on relative to using missiles in China to drop satellites made in America on top of to get them into orbit? What do you tell her? Don't do it, stop it, end it?

Because as you know, we made a very basic decision in a previous administration and in this administration that we were not going to spend the money to have the capacity available to launch—and it is not a critical judgment, but we made a concrete judgment that we would not in this Nation have sufficient capacity in terms of, for the listening audience, for missiles to go up in the air and to put payloads, i.e., satellites, commercial satellites up there in space.

We made that conscious decision not to correct what we could have. If we decided to spend the money, we would not have to worry about Loral or Hughes or any other corporation wanting to put their satellites in space. We could do it all on the back of American-made missiles. We made a judgment not to do that.

Now—is that correct? Do you both agree on that?

The second thing we agree on, I think, is there ain't enough missiles in America to put satellites up in space that have commercial application, right? Anybody disagree with that? OK. They both shook their heads that they agreed.

Now, my question is, what do we do now? Do we step back from the commercial competition of American companies putting satellites in space by saying, no more use of missiles that are made in China?

I am being redundant. What the hell do we do?

Dr. MILHOLLIN. I will go first.

I am advising President Feinstein, right?

Senator BIDEN. Right. I am going to be her Vice President. She does not know that yet, but I am going to be her Vice President. East-West thing, you know, big-little, smart, not-so-smart—

Dr. MILHOLLIN. Well, I would say some things are more important than others, and I would say that the spread of nuclear weapons and the missiles to deliver them is real important, and especially now that we seem to have a situation in South Asia that is

getting out of hand, and that we have—the United States has a certain amount of credibility when it comes to trying to stop this spread.

That is a very important national resource. I would tell the President that we should not squander it so that we, some of our companies, can make a short-term profit. Obviously, this is a trade-off.

Senator BIDEN. I am not being critical. I think that is a legitimate end. Would you then say, though, that Madam President, you had better get underway—you had better get up to the Congress, because I think we Congressman and Senators have to face up to reality, OK. There has been no two stauncher critics of the transfer of technology by China to Pakistan than this Senator and this Senator. I actually called for a secret session of the Senate, which rarely occurs, so I share your view.

But what is the second step? I do not think anyone can say we are just going to say America is out of the business, multi-trillion-dollar business of dealing with satellites.

Dr. MILHOLLIN. Senator, if I can add something, I would say that there must be a way to launch a satellite without putting money into the pockets of people who are proliferating missiles. That is what I would say.

Senator BIDEN. There is a way. We can do it.

Dr. MILHOLLIN. I think if we try real hard we can find one.

Senator BIDEN. My time is almost up. I am going to cut you off. Doctor, what do you think? What are you going to tell her?

Dr. OEHLER. As you know, I have spent the last 25 years as an intelligence officer. We are supposed to look at the facts and not the policy.

Senator BIDEN. I am going to ask you to do policy too now.

Dr. OEHLER. If she were President I would do this. You mentioned earlier that great powers ought to get together and work things out. You of course were referring to the United States and China. I think the same statement can be used for the administration and Congress. Those are two great powers.

So one of the things I would say to my National Security Advisor would be let us work with the Congress on this to come up with legislation that meets the best interests of the U.S. Government and most importantly gives a consistent view, a consistent approach to what we are going to do in the future on this.

The problem is not so much to me whether you have a satellite launch here or there, the problem is that policy seems to change from time to time, depending upon the status of the sanctions legislation or whatever, and what our allies really need to see is some consistent position on the part of the United States, and I think they will go along with whatever is reasonable.

The CHAIRMAN. We will follow up on that. That is a good point. Senator Coverdell.

Senator COVERDELL. Dr. Milhollin, I have several written questions. Bear with me. Virtually all major enterprises are State-controlled in China. Can you explain, with reference to the charts supplied to the committee by the Defense Intelligence Agency, the relationship between the entities which (1) supplied the M-11 missiles to Pakistan, (2) are launching U.S. commercial satellites the Sen-

ator from Delaware talked about, and (3) were alleged to funnel funds to the Democratic National Committee? Is there a flow, a connection among these three entities in your mind?

Dr. MILHOLLIN. I must say, with respect to the third question that I am not normally asked about that, but—yes. But I think I can answer all three questions.

First, the companies that launch U.S. satellites are the same companies that sell missiles to Pakistan and Iran, if that is your question.

Senator COVERDELL. They are one and the same?

Dr. MILHOLLIN. They are largely one and the same. The China Great Wall Industries, China Aerospace International Holdings Limited, and their parent, the China Aerospace Industry Corporation, these are companies that launch satellites on China Long March rockets.

The United States has sanctioned both China Great Wall and China Aerospace in the past for supplying missile technology to Pakistan. My impression is that the supplies that are now going on are basically by the same complex of companies. Perhaps Dr. Oehler can comment on that.

Your second question—I guess that answers your first two questions. The third question is whether the—I guess you are referring to press reports about campaign contributions coming into the United States from China, whether they came from these companies, and the reports I have read indicate that they did, that the money came from an officer of China Aerospace, which is the parent of China Great Wall, and which is a key company in launching satellites, U.S. satellites and also, as I said, engaged in missile proliferation.

Senator COVERDELL. May I continue, Mr. Chairman? I still have my green light.

How would sanctions under the Arms Export Control Act and the Export Administration Act affect these companies if a Category One violation for the M-11 transfer were imposed on China?

Dr. MILHOLLIN. The sanction would, as I read the law, cutoff U.S. exports of satellites to those companies if it is a Category One violation. A Category One violation basically cuts off everything and so if the United States were to find that China Aerospace supplied complete missiles to Pakistan, then China Aerospace could not launch U.S. satellites.

Senator COVERDELL. How would sanctions under the Iran-Iraq Nonproliferation Act affect these companies if imposed for the C-802 transfer?

Dr. MILHOLLIN. I feel a little bit like I did when I was a law professor and being asked a question by a brilliant student. I think that in that case the person making the transfer to Pakistan would be sanctioned, including the parent of the person and the subsidiaries of the person doing the transfer.

As I recall the C-802's were transferred by the—I have it here, the China Precision Machinery Import-Export Corporation, I believe. The parent of that company is China Aerospace, so if sanctions had been applied for the C-802's, then China Aerospace would have been denied the right to launch U.S. satellites.

Senator COVERDELL. I appreciate the response. If the Clinton administration had not removed satellites from the U.S. munitions list, how would the AECA and the EAA, which I previously referred to, and the Iran-Iraq Nonproliferation Act sanctions have affected U.S. commercial satellite companies doing business with the China missile launchers?

Dr. MILHOLLIN. Now I do feel like I am back in law school. That is a difficult question. First of all, you asked me with respect to the Arms Export Control Act—moving the satellites, as I said in my testimony, has the result of insulating them from sanctions of the Arms Export Control Act because the missile-related items would not hold them up, as interpreted by the Commerce Department.

Senator COVERDELL. As you explained in your earlier testimony.

Dr. MILHOLLIN. Yes. I think they would be free to go under the Arms Export Control Act because they had been moved. If they had not been moved, they would be blocked under the Arms Export Control Act.

Then you asked me about the Export Administration Act. It would not catch satellites unless it was a Category One violation.

Senator COVERDELL. Back to the previous question.

Dr. MILHOLLIN. Yes. Then the Iran-Iraq Act you asked me about, if they had not been moved. If they had not been moved they would still be munitions under that act, and so if a foreign government made the transfer, as I recall now—if a foreign government made the transfer, the government would be sanctioned, I believe. I think that is right.

The CHAIRMAN. Think about it in the next round.

Senator COVERDELL. I appreciate the response very much.

The CHAIRMAN. Senator Feingold—I would like to have the answer to that, too.

Senator FEINGOLD. Thank you, Mr. Chairman. I want to thank both of the witnesses, and especially express our pride in Wisconsin that Dr. Milhollin is from Wisconsin, and one of the great experts on this subject in the world, and let me also express my strong agreement with his answer to Senator Biden's question. I thought it was a very important statement.

Mr. Chairman, I am going to use my brief time to make a brief statement. Today's hearing is the Foreign Relations Committee's first look at the administration's China commercial satellite licensing decisions, an investigation that is being jointly conducted by several congressional committees.

The issues currently under review by the various committees of the Senate, which cover broad areas of missile proliferation, trade, technology transfer, and the decision-making process of the executive branch, are, indeed, quite serious, and do justify close congressional scrutiny, but this all comes in the context of a debate on the administration's overall China policy. That is troubling, because it tends to complicate each of these issues and causes them not to be considered as distinct items, which I think they deserve.

One part of this mess that I find very disturbing is the allegation that campaign contributions may have influenced the President's judgment on issues of grave national security. As I have mentioned, and as this committee well knows, I have strong and longstanding disagreements with the current U.S. policy toward

China. In particular, I have objected to the President's 1993 decision to delink the issue of human rights from our trading policy. The administration argues that trade issues and human rights are and ought to be separate. They maintain that China's abysmal human rights record should have no impact on other aspects of this bilateral relationship. At the same time, the theory goes, only through constructive engagement in economic matters and dialog on other issues, including human rights, can the United States more effectively influence China's behavior.

Well, Mr. Chairman, we have had several years now to observe the plain fact that this policy has been a failure in effecting real change in China. It is a policy that subordinates principle to practical considerations and, even by that less than lofty standard, the policy has been a flop.

That said, I think it is important to note that for all waivers President Clinton and President Bush before him have granted for the relevant export licenses, and there have been a total of 13 granted, each was supported by a Presidential determination that the action was in the national interest.

Now, national interest is a subjective phrase. It invites varied interpretations. Whatever sales they generate for American businesses, I personally do not think I would find such licenses to be in the national interest. They cost us too much in moral capital. But for an administration that so greatly values our trading relationship with China, perhaps this policy makes sense.

According to a June 5, 1998 White House document, "licensing commercial satellite launches serves our policy of engagement with China." This statement is absolutely correct as far as it goes. My problem is not with the determination but, rather, with the underlying policy of engagement at this time.

This, however, is not the primary subject of today's hearing, so let me move on to my second and more important point. It is no secret that the reason the commercial satellite licensing policies of the administration have attracted such a high level of congressional attention is the allegation that the administration's decisions to grant waivers to Loral was improperly influenced by campaign contributions.

Although this committee will not delve deeply into this part of the inquiry, I must comment on it, Mr. Chairman, because it is so deadly serious. It is truly sad and shocking that we have reached a point where allegations that our foreign policy and, indeed, our national security are for sale to political contributors could be seen as plausible to many Americans.

Why is it plausible? Not because of any evidence of a quid pro quo, but because the tools to do it are all provided by our current campaign finance law. It is very important that these allegations be thoroughly investigated and dealt with, and I hope that the investigation will show that these waiver decisions, as unwise as they may have been, were not influenced by the contributions made to the DNC by the chairman of Loral, Bernard Schwartz.

But I must point out, Mr. Chairman, we have a campaign system that allowed and actually encouraged Mr. Schwartz to contribute over \$1 million in soft money to the Democratic Party since the beginning of 1995. The contributions he made were perfectly legal.

They would be perfectly legal if they were made today. In fact, they are being made today. Mr. Schwartz has given \$55,000 in soft money contributions already this year.

If we still had an adherence only to the hard money limits, this kind of activity at this level would be impossible, so until we enact campaign finance reform and get rid of soft money, we are asking for trouble.

We are playing with fire here. We cannot continue to let corporations and their wealthy executives, or anyone else for that matter, make unlimited contributions to our political parties and expect that those contributions will have no impact on tobacco policy, or foreign policy, or anything else.

We cannot do this hearing and turn a blind eye to this broken campaign finance system and then act surprised and shocked when big contributors seem to benefit from their generosity. Campaign contributors have a great interest in our Government's decisions in every area of policy, and not just foreign policy.

When allegations are raised that our national security may have been compromised by fund raising concerns, it is time for us to sit up and take notice and act. Our citizens will simply not stand for much more of this.

Whether or not the allegations raised regarding these particular contributions have any merit, the integrity of our foreign policy has been questioned and more to the point, Mr. Chairman, even if there is nothing to these charges, the integrity and credibility of our foreign policy has been endangered. I think that is a shame, Mr. Chairman. It is harmful to our reputation and our standing in the world. We all know this, and I think we had better do something about it soon.

Thank you, Mr. Chairman.

The CHAIRMAN. The Senator from Nebraska.

Senator HAGEL. Mr. Chairman, thank you. I will get back to the more mundane issues, like China.

I want to thank our witnesses for your time this morning. Dr. Milhollin, I want to return to a point that you made that is referenced in your statement as well as a comment that you made concerning the missile technology control regime and, if I understood you correctly, I believe you said that we should not allow China to be part of the regime until they have over an extended period of time shown better behavior, I think, in your words.

Dr. MILHOLLIN. That is right, yes.

Senator HAGEL. If that is correct, then what should we do with China?

Dr. MILHOLLIN. I think our policy on China has to be to improve its behavior rather than try to pretend as if it was already behaving satisfactorily.

I get the impression that our Government believes that you can change a country's behavior by letting it into a regime or selling it sensitive commodities, but I believe that you only should let a country into a regime or sell it a sensitive commodity after its behavior has changed already. That is, you should restrict sensitive exchanges to countries that are proved to be reliable.

Senator HAGEL. But is it not a fact that China does have nuclear technology today? Obviously, it has delivery capability for that

technology, so are you saying we should try to roll back what they now have? I am not sure how we deal with this, and I did not really hear a good answer from you, one of you to Senator Biden's question, how do we go forward, but China is a nuclear power.

As a matter of fact, what I found interesting is that it chaired the hearings of the National Security Council last week in Geneva on the Pakistan-India issue. Do you find that a little schizophrenic too, doctor? I do, too, but I want to further develop what we do here. We cannot just hold China, in my opinion, out there and isolate them and say, well, you behave yourselves, and then maybe we will talk to you, or act like they do not have nuclear capability. This is now.

Dr. MILHOLLIN. I would say we should aim for two objectives in China. First, our objective should be that its effort to modernize its military to increase the capability of its long-range missiles, and to miniaturize its nuclear warheads, should not be assisted by U.S. equipment. I think that ought to be a clear policy. My impression is that is not our policy now. We are taking risks with our exports with respect to China.

Second, I think our policy ought to be to discourage China from contributing to the spread of nuclear weapons and ballistic missiles around the world, and poison gas around the world, and our policy ought to be to increase the cost to the Chinese firms that are guilty of this behavior to the point where it does not make sense for them.

Senator HAGEL. How do you do that?

Dr. MILHOLLIN. Well, may will be accused of being a dinosaur, but I think you do it through sanctions, because after all, this is a question of money. The Chinese are making money from these sales. They are not making very much, but they are making a little.

Senator HAGEL. But if the Chinese already have nuclear capability and the delivery systems and other nations who are trading with them and selling to them, for the United States to unilaterally impose sanctions—I am not sure I follow the linkage here as to how that is going to affect not only their behavior, to your point, but stop anything.

Dr. MILHOLLIN. Well, if a Chinese company does the arithmetic and sees that it is going to lose many millions of dollars from a U.S. satellite launch contract if it sells a few million dollars, or even a few hundred thousand dollars worth of equipment to Pakistan, then it does not make sense for the company to make the sale to Pakistan.

Senator HAGEL. And then we essentially remove ourselves from, as Senator Biden said, a multi trillion-dollar market and again, I am not sure the analysis here is realistic, because we already have a current situation with China, and we cannot roll that back, and I know this is difficult. It is complicated. Nobody has the answer, but I am trying to get forward here to see what we do in a realistic practical, achievable way.

Dr. MILHOLLIN. I think it is realistic to expect China to decide that it is more valuable to have good trade relations with us and to receive the benefits of American high technology than it is to make a few dollars here and there proliferating poison gas and missile and nuclear technology.

Senator HAGEL. Poison gas is a little different. That is another element here.

Dr. MILHOLLIN. That is true, but I think we could hope for a rational decision by the Chinese that would be a drastic improvement in their behavior.

Senator BIDEN. Mr. Chairman, may I ask for a clarification about a phrase? The sensitive technology that you are referring to, that is computers you are referring to, right? You are not talking about any of the launch, this thing about—

Dr. MILHOLLIN. No. I am talking about dual use equipment that China is getting that we would consider sensitive, and certainly super computers would be considered sensitive. That is why they are controlled for export.

Senator BIDEN. But what else? Name some for the record.

Dr. MILHOLLIN. Dimensional measuring machines. Special equipment to handle molten fissile material. The only reason I know of that anybody wants to handle molten fissile material is to make nuclear weapons.

That is, if you look at the list of things that China has been getting—faster oscilloscopes. I think it is very likely that China is doing—

Senator BIDEN. Because the press is all going to look at this, and everybody listening, none of that is related in the Loral-Hughes piece of this equipment.

Dr. MILHOLLIN. No, but you asked me a question. I am trying to answer it.

Senator BIDEN. No, I know. I just want to—because I guarantee you everybody would have thought that is who you are talking about.

Dr. MILHOLLIN. No. I was asked, you know, what should our general policy be. I think we should have a very strong policy of not contributing directly to China's militarization or to its weapons of mass destruction programs, and I think our policy has been a little too loose, and that we have contributed.

Senator HAGEL. I might just add, with the time I have left, that I think this is one of the clear cases, clear examples of how sanctions do not work. We have had sanctions on and off of China, as you presented in your testimony, and Dr. Oehler did, and in fact we are where we are today with sanctions on and off of China. In the unilateral world that we apply these, I think we have got to rethink what sanctions do, Mr. Chairman.

Thank you.

The CHAIRMAN. Thank you, sir. Senator Feinstein.

Senator FEINSTEIN. Thank you very much, Mr. Chairman.

I want to follow up where Senator Hagel left off, but I want to say something first. I believe that China has been a proliferator. I believe that China did send 34 M-11's to Pakistan. I also believe that the second shipment did not go. I believe that the C-802's went. I also look at the commercial satellites somewhat differently, and this is what I wanted to ask you about.

One of these commercial satellites, for example, was to carry CNN, and could not be launched from the United States.

Senator BIDEN. I wish we had known that.

Senator FEINSTEIN. As I understand it, the materials are encrypted within the satellite. The satellite is kept under 24-hour guard, and a Chinese rocket launches the satellite.

The problem, I understand, came from a company that may have or may not have, I do not know, provided some classified material to the Chinese when the rocket exploded in one of these satellites.

Your answer, doctor, is, "Well, we should not send these satellites to China," and let us say I am President of the United States and you say that to me, and I say, "I think that is highly principled, we should not, we will not," and we find a month later that Deutsche Aerospace has, in fact, provided an identical satellite to the Chinese, which I believe most probably would have been the case. What would you have then advised me to do, because the market then has been taken over by the Germans in these commercial satellites?

Senator BIDEN. And do not say, dump Biden.

Dr. MILHOLLIN. I would say that that simply is a cost you have to be willing to absorb to have an effective nonproliferation policy. There are lots of things that other countries sell that we do not sell, and we do not sell them because it is really a moral question. It is not simply an economic issue.

For example, the United States regulates the export of torture instruments. Most other countries, I am not sure any other country does that. We make better missiles than the North Koreans or the Russians or the Chinese, but we do not sell them to the countries that those countries sell missiles to.

Senator FEINSTEIN. So if I understand you, if there is sensitive data encrypted in anything we sell, the commercial satellite that carries Voice of America, CNN News to Asia, or a computer that has encryption capability on a high level, we should not then sell it. Is this essentially what you would advise me?

Dr. MILHOLLIN. What I am saying is—no, I am not advising you because of what is embedded in the satellite. I guess my advice would be based on the principle that, if you want to have a credible policy against the spread of the bomb and the spread of the means to deliver it, you have to pay costs from time to time, and one of those costs is giving up a sale that will show that you really do not care.

If you are willing to put money in the pockets of somebody who is guilty of proliferation, then where is your policy, even if somebody else is willing to do it?

Senator FEINSTEIN. Now, if we can, let us continue our conversation. I thank you for that.

My interest is also to have the Chinese change their behavior. I am aware that the Chinese have been proliferators. I am aware that they are a nuclear power. I am aware that they have been outside of these agreements. I am aware that China has a history of isolation from the West for well over 100 years. I am also aware that China is now opening to the West, is receptive to the West.

My policy would be to engage China in a way that it would accept the norms of internationally acceptable behavior when it comes to fissile material transfers, other technological transfers, poison gas, all of the rest of it. This is my goal.

So these sanctions, which again are unilateral, not multilateral, go on and come off, and you are now advising me today, and I say, "Is there any evidence that since May 11, 1996 that China has violated its commitment to no longer provide materials to unsafeguarded Pakistani nuclear facilities, or to provide Pakistan with any missile technology in violation of the MCTR?" and I ask you this question, how would you respond to me?

Dr. MILHOLLIN. The answer is, there is evidence.

There have been attempts to supply nuclear ingredients, and I am told that China's missile and poison gas exports are still going on.

Senator FEINSTEIN. And I would say, could you be precise and tell me, since China made this commitment, exactly what has been going on?

The CHAIRMAN. You are going to have to answer that question in writing, because we have two more Senators, and I would like for you to address it, too, in writing.

Senator Frist.

Let me say one thing first. We have a vote at 12.

Senator FRIST. Really, two things have emerged. One is the transfer of technology from the United States to China, the other is the proliferation from China to other countries. We focused a lot on how we can address Chinese transfers to other countries.

I want at the end of our series of hearings to be able to answer two or three questions. A fundamental question that I want to be able to answer is, why did President Clinton transfer most of the authority over exporting militarily significant satellite technology from the State Department to the Commerce Department? It is going to require focusing on the licensing process, and the waiver authority, in determining whether or not today's policy has compromised our security vis-a-vis China, and whether or not they exacerbate the proliferation of technology to third countries.

It comes down to other questions, where are the holes, where are the leaks today, and effectively safeguarding, according to the discussions and the questions that have been on, but let me go to several questions to help me understand the process, and let me ask both of you—and I ask you to keep your answers fairly brief—other than the 1996 waiver issued to Loral, are either of you personally aware of any instance where a waiver was granted for the transfer of technology to China when the Department of Justice advised that there was an ongoing criminal investigation of the company seeking the waiver? Let me ask both of you to comment on that.

Dr. OEHLER. I am not aware of any other.

I must say that I am not always aware of where the Justice Department has criminal investigations ongoing.

Dr. MILHOLLIN. Other than the Loral case, I know of none.

Senator FRIST. During the Bush administration, we talked about this to some extent, I understand that two-thirds of the commercial satellites were listed on the U.S. State Department's munitions list while about one-third were on the Commerce list. Under the Bush administration policy, no satellite could be on the Commerce list if it contained any of the nine identifiable militarily significant technologies. Any satellite containing militarily significant technology was kept on the State Department's munitions list.

The Clinton administration changed that and moved all commercial satellites over to the Commerce list, and that brings me to my questions.

First, how do you compare the two lists in terms of ease of export? Dr. Milhollin.

Dr. MILHOLLIN. Well, the Commerce Department, of course, has an obligation to promote trade, and to take economics into account when making license decisions, and the history of the Commerce Department has been to be considerably more lax in approving exports than the State Department has been.

Senator FRIST. That is sufficient for me. Dr. Oehler, ease of export, the Commerce Department list or State Department list.

Dr. OEHLER. Let me say something from the intelligence community's standpoint.

Obviously, the intelligence community does not have a vote on which list this is on, but interestingly, the intelligence community gets a lot more review of items from the Commerce Department list than they do from the State munitions list.

We have memorandums of understanding with Commerce where they supply quite a number, on the order of 1,000 licenses a month, that the Central Intelligence Agency looks at for end user checks, basically, and provides information back to Commerce.

The State Department with the munitions list has never felt that it needed to go through a formal mechanism, or at least a regular mechanism for checking with the intelligence community. They would do that every once in a while, but not on a regular basis, so in one sense we were a little happy to see some of these things moved to the Commerce Department, where we would at least have a chance of review of them.

Senator FRIST. The intelligence community commented on that.

Second, why would the Clinton administration move all export control authority to the Commerce Department?

Dr. OEHLER. My guess is—and I do not know the answer to it. My guess is that they are viewing these satellites as much more commercial commodities than military items, and certainly in the past satellites were primarily for military purposes, but with the imaging systems that are being built by Space Imaging and other companies now, things that were sensitive at one time may not be viewed as sensitive.

Senator FRIST. Are you saying the definition of militarily significant technology has changed?

Dr. OEHLER. I would imagine that would be the reason that would be given.

Senator FRIST. Dr. Milhollin, why would they move them from the State Department to the Commerce Department?

Dr. MILHOLLIN. I think it is always hard to assign motives, but certainly the effect of moving them is to insulate them from sanctions, so if that were an objective it would have been achieved by the transfer.

Senator FRIST. It is my understanding that Secretary Christopher wanted to keep the satellites on the munitions list. Can you imagine why the President would overrule his Secretary of State and give export control over satellites already found to contain militarily significant technology to the Commerce Department?

Dr. Milhollin.

Dr. MILHOLLIN. Well, again I was not present at the meeting, but I would imagine that the arguments of the Secretary of Commerce were more persuasive than the arguments of the Secretary of State.

Senator FRIST. Dr. Oehler, comment on that.

Dr. OEHLER. I agree with that. I do not have any first-hand information.

Senator FRIST. The fourth question. As I understand it, Loral has been accused of sharing missile guidance technology with the Chinese. Is there a risk that, in turn, China could share this technology with its client States, Pakistan or Iran?

Dr. OEHLER. I, for one, do not know what was transferred, so it is very hard to say whether it is significant, and it is also harder to say what that would mean if it were retransferred.

But I do want to say that the Chinese have significant technologies of their own, way ahead of what the Pakistanis have, and if they wanted to transfer, as they do occasionally, some of these technologies, they would not need U.S. technology to greatly improve Pakistani programs.

Senator FRIST. Dr. Milhollin, that last question. Loral has been accused of sharing missile guidance technology with the Chinese. Is there a risk that in turn China could share this technology with Pakistan and Iran?

Dr. MILHOLLIN. I think that Mr. Oehler has given an excellent answer, and I agree with it.

Senator FRIST. Can I ask one quick—I know I have used my 15 seconds I lost before. Are there sufficient nonproliferation checks by allowing Commerce and not State to oversee the licensing process in your mind? Dr. Milhollin.

Dr. MILHOLLIN. When you say nonproliferation checks, if you mean sanctions, then I do not think there are sufficient checks.

Senator FRIST. I mean an effective set of safeguards.

Dr. MILHOLLIN. You mean licensing criteria and so forth?

Senator FRIST. Yes.

Dr. MILHOLLIN. I have not looked at that thoroughly enough to be able to answer the question.

Senator FRIST. Thank you.

The CHAIRMAN. Senator Brownback.

Senator BROWNBACK. Thank you, Mr. Chairman, and I thank the witnesses.

Just one quick question along that line. Do either of you know Secretary Christopher's opinion of the transfers that took place then under the Department of Commerce when they transferred these technologies, what he thought about these transfers?

Dr. OEHLER. I do not know.

Dr. MILHOLLIN. I do not know.

Senator BROWNBACK. Mr. Chairman, I would submit that at some time we ought to have then-Secretary Christopher up to testify what he thought about the transfer of this technology. I think that would be very valuable information to know.

The CHAIRMAN. Good suggestion.

Senator BROWNBACK. I want to ask particularly Dr. Oehler along the line of questioning about the standard of proof that the Clinton

administration was requiring before they would implement sanctions on these M-11 technology transfer and what their burden of proof was.

Dr. Oehler, or Mr. Oehler, when the intelligence community gathered evidence which suggested the transfer of complete M-11 missiles to Pakistan, what was the judgment of the intelligence community? What did they reach?

Dr. OEHLER. The intelligence community knew that M-11's were going to be transferred sometime. At least they had evidence to that.

When the transfers took place, the evidence was quite strong at the time, and most agencies in the intelligence community agreed right away that actual transfer of missiles had taken place, but it was not until accumulating evidence came in over the next year or two that finally got the unanimous view of the intelligence community, including the State Department's Bureau of Intelligence and Research that, in fact, there was a high likelihood that the missiles themselves were transferred.

Senator BROWNBAC. Did the intelligence community brief the policy community immediately upon receiving this information?

Dr. OEHLER. The policy community was informed every step of the way, from the very beginning.

Senator BROWNBAC. What was the reaction from the National Security Council staff when they were briefed of this information?

Dr. OEHLER. All along, they were very concerned about this reporting.

Senator BROWNBAC. When the policy decision was reached that the evidence was not sufficient to reach a judgment that M-11 missiles were transferred, what was the reaction of the professional analysts in the intelligence community to that judgment?

Dr. OEHLER. Let me describe it in two ways. First, the senior intelligence officials knew why the administration took the position that they did, that the imposition of sanctions, Category One sanctions would have a very great impact on its relationship with China and any measure, almost any measure needed to be found to continue their negotiating flexibility rather than automatically impose sanctions, and one of the easier outs on this is to say that the intelligence information does not quite meet their high standards.

I must say that the intelligence analysts in the community were very concerned about this. These are the people who struggle day-to-day to put together the intelligence judgments, the collection of profiles and everything, and they were very discouraged to see that fairly regularly their work was in their view summarily dismissed by the policy community with the statement that it is not good enough. It is not good enough.

Senator BROWNBAC. In your expert opinion, did a preponderance of evidence indicate that M-11 missiles had been transferred by China?

Dr. OEHLER. There is no question in my mind whatsoever about this.

Senator BROWNBAC. That there was clear, convincing, absolute evidence?

Dr. OEHLER. That the missiles were transferred. The evidence comes from many sources, very good sources.

Senator BROWNBAC. Did you believe at the time, and were others aware of your belief that the evidence available to the intelligence community proved the M-11 transfers had occurred, beyond even a reasonable doubt?

Dr. OEHLER. Well, proved beyond a reasonable doubt, I do not know that we ever use those words. I think that all of the intelligence agencies felt, as I mentioned, very quickly that in fact the transfers had taken place. As I mentioned, the State Department Bureau of Intelligence and Research took a little longer to come to the judgment that there was a high likelihood, or whatever the exact phrase was.

Senator BROWNBAC. I guess the question that it leads me to is, if the intelligence community is saying that this occurred, by every standard of your professional opinion this transfer occurred, and yet the policy community is saying no it did not, or send us more information, did the policy community put the standard of proof, or the burden of proof so high that sanctions could never be issued in this case?

Dr. OEHLER. In my view, watching this process, no administration likes automatic sanctions legislation, because it limits their flexibility in negotiating the settlement to try to get what they believe is a satisfactory solution out of this.

Senator Helms talked about the statement that the President made regarding fudging the data, and the reason that the President gave was to allow them additional opportunities to work this. Certainly this administration is not any different in that.

With that in mind, then, they are going to try to find whatever way they can to carry out the policy that they think is best, and one of the loopholes in this is that the President must certify that this transfer has taken place. This certification has been passed down to an Under Secretary of State, but then it is up to that person to decide whether the level of evidence is sufficient to impose these, in their view, drastic or draconian sanctions.

Because of their interest in wanting to preserve their negotiating flexibility, in my view there was going to be little likelihood that the evidence would ever be high enough to do that.

Now, when I say that, you could ask, well, what would it take? Obviously, if the Pakistanis were foolish enough to parade these missiles in Karachi, or fire some of these missiles, or test them, or do something like that, then that would force their hand, but short of that I think that they are going to want to continue to maintain their negotiating flexibility.

Senator BROWNBAC. So really, if I am hearing what you are saying correctly, you do not believe the intelligence community could ever provide the level of proof that the policy community would require before they would put these sanctions in place.

Dr. OEHLER. Well, ever is a strong word.

Senator BROWNBAC. Hardly ever?

Dr. OEHLER. I think that it is going to be a long while before—in the first place, the evidence that has been acquired is very, very strong.

Senator BROWNBAC. And the policy community would not put the sanctions—

Dr. OEHLER. The policy community has not put the sanctions in place, Category One sanctions, so it is a question of whether some little more information might go over some mythical bar, or whether an administration changes its level of the bar, but it is already up there very high.

Senator BROWNBAC. So if I am clear with what you are saying, in your professional opinion, absolutely this transfer took place. This was presented to the policy community. The policy community rejected the evidence so that they would have maximum flexibility in making what they deemed to be the right policy decision.

Dr. OEHLER. Well, the intelligence community view did not say absolutely. It said virtually certain that this transfer had taken place.

Senator BROWNBAC. And that that was presented to the policy community.

Dr. OEHLER. Sure.

Senator BROWNBAC. And the policy community said, we are not going to certify this because we want to keep what policy options we think would be best to do.

Dr. OEHLER. Because of the impact of the sanctions, they needed to set the level of evidence very high.

Senator BROWNBAC. That you could hardly ever reach that level of evidence.

Dr. OEHLER. That we were not able to reach.

Senator BROWNBAC. You might, but in a very difficult case.

Dr. OEHLER. Again, I do not believe so, unless the missiles themselves are taken out, and keep in mind, it has to be more than one, because as I mentioned in my prepared remarks, they received a dummy training missile in 1990, which the original sanctions were for, so you have to see at least two before one could really claim—before one might argue that a violation had occurred.

Senator BROWNBAC. Thank you very much, Mr. Chairman.

The CHAIRMAN. Gentlemen, thank you very much.

Senator BIDEN. Mr. Chairman, could we have part of a second round here to ask or qualify two points that have been raised?

The CHAIRMAN. We have a roll call vote on the floor, but you proceed, sir.

Senator BIDEN. All right. On two points, one is on the policy question, because you have expressed my frustration and the frustration of the Chairman—I do not speak for him, but others—because for three administrations there has been great difficulty in convincing folks that we should take the sanctions route relative to China which some of us thought should be taken, and that bar is inordinately high, but let me make sure I have this in context.

Every—well, I will not say every. Let us just talk about this White House. The NASA security staff considered the Chinese launches of U.S. missiles to be one incentive the United States could offer in return for Chinese cooperation on other issues.

The administration does not view this, and the last one did not, in the context of just this technology. They view it in terms of peace in Korea, China's involvement there, they view it in terms of the civil war in Cambodia, they view it in terms of now India

and Pakistan, they view it in terms of a whole range of other larger issues, so it is not merely they are making a purely commercial decision on this, either, in terms of sanctions. At least, that is the argument the administrations have made to us.

And the satellite launches were viewed by this outfit, at least, to be the only incentive available to the United States, but is it not fair to consider the potential benefit the United States may have gotten in other areas, even though some of us might say the national security concern outweighed the proliferation concern, outweighs the benefits.

China has cooperated in Korea. China has cooperated in the civil war in Cambodia. China has cooperated in other areas we have tried to get them to cooperate. Is that not correct?

Dr. OEHLER. Certainly, even in the proliferation area, they have modified their previous practices in the last 7 or 8 years.

Senator BIDEN. Since my time is going to be up real quickly, the second point is about Warren Christopher, because it bothered me a great deal why Christopher would be overruled, and why would this go to Commerce, even though the previous administration wanted to go to Commerce, too, although they never did it.

And in Warren Christopher's own words, he gives an explanation. He wrote a piece for the Los Angeles Times dated June 8, 1998 I would ask to be submitted for the record, Mr. Chairman. I will ready from an appropriate—from one section, and according to him, in 1995 the President said, let us move this to Commerce.

Christopher says, no, no, I want to keep control in the State Department.

[The information referred to follows:]

Los Angeles Times, Monday, June 8, 1998

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

The Commerce Department objected by 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 the 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 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.

Warren Christopher was Secretary of State from 1993–97.

Senator BIDEN. In 1995, the President changes his original request to move it all to Commerce by strengthening the review process that Commerce has to undergo to make this decision, because is it not true that even under the new satellite export procedure—that is not 5 minutes.

Even under the new satellite export procedure, with most licensing by Commerce, State still keeps some of satellite technology transfer totally to itself, but even with the new policy, State Department licenses all technology assistance agreements and defense approves the technology control plan?

It cannot go—Commerce just cannot sign off, flat out. Defense has to sign off—now, right now while it is in Commerce, Defense has to sign off, and State has to sign off now. It does not make it a veto, but it guarantees it then goes, if they do not sign off—Commerce cannot do it unless it takes it to the President.

Is that not correct?

Dr. MILHOLLIN. That is my understanding, but it is important to keep in mind the distinction between licensing and sanctions.

Senator BIDEN. I got that. I am just focusing now on licensing, because one of the issues here is, why would licensing be transferred to Commerce? That was the question you were asked.

Dr. MILHOLLIN. I can comment on that, if you would like.

Senator BIDEN. I think you already have. I just want to make sure if you can comment on, since my time is up, comment on whether or not licensing cannot go forward, even now, just by Commerce's signature. It has to have Defense and State sign off, and if they do not, or if they object, then it goes to the next level, it goes to the President. Is that correct?

Dr. MILHOLLIN. In practice—I may get in trouble for saying this, but in practice I think there is an understanding that at the higher levels the Pentagon is unlikely to object.

The CHAIRMAN. In any case, this is almost irrelevant, Senator. This was not a hearing on the wisdom of unilateral sanctions legislation. These two gentlemen were here because they are experts in nonproliferation issues, and you are asking—we invited Warren Christopher to come.

Senator BIDEN. Mr. Chairman, I am just trying to clarify the point that was made by the Senator from Tennessee. That is all.

The CHAIRMAN. Well, excuse me. I love you, but you are confusing the point.

Senator BIDEN. I probably am. I have just lost my vice presidency and my friendship with the Chairman all in one day.

The CHAIRMAN. No, you have not. We cannot assess this matter. We have got in a deep hole right at the last minute, and we have got to keep our eyes focused on what we intended this hearing to be about, and it has been largely—we had two or three exercises in futility about reform and that sort of thing, and that was the Senator's prerogative, and I do not regret his doing it.

But you came here to help this committee assess the extent to which the Clinton administration may have been shielding China from U.S. sanctions for fear of the impact that those sanctions would have on the satellite trade, is that not correct? OK.

Senator BIDEN. Mr. Chairman, I withdraw the question.

The CHAIRMAN. All right. Now, we are going to keep the record open. Senators who were at other committee meetings will want to file some written questions, and perhaps other Senators.

I appreciate your coming. Your testimony has been excellent, and there being no further business to come before the committee, we stand in recess.

[Whereupon, at 12:11 p.m., the committee adjourned, subject to the call of the Chair.]