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General Government Division

B-285298

September 29, 2000

The Honorable Frank R. Wolf
House of Representatives

The Honorable Dan Burton
Chairman, Committee on
Government Reform
House of Representatives

Subject: Federal Lobbying: China Permanent Normal Trade Relations (PNTR) Lobbying Activities and Costs

In response to your request, we have reviewed the efforts of the White House China Trade Relations Working Group (Working Group) and selected agencies to garner support for permanent normal trade relations (PNTR) for China. You were particularly concerned whether such efforts violated the antilobbying provisions of 18 U.S.C. 1913 or any applicable appropriations statutes. You also wanted to ascertain how much the administration has spent on its efforts to garner support for China PNTR.

We previously provided you with two updates on our review. Our May 8, 2000, letter to you described the types of information we had requested from the White House and selected federal agencies and presented preliminary information related to staff resources for the Working Group and travel by Working Group members in support of PNTR.¹ On May 22, 2000, we reported that we had identified one e-mail authored by a Working Group member that, on its face, constituted a violation of the applicable antilobbying appropriation provision. That violation involved a minimal expenditure of appropriated funds and did not warrant further action on our part or a referral to the Justice Department. Enclosure I contains a copy of our May 22 letter. This letter provides our final response to you on the administration's efforts to garner support for the China PNTR legislation (H.R. 4444) that passed in the House of Representatives on May 24, 2000, and in the U.S. Senate on September 19, 2000.

The stated role of the Working Group, which was established on February 1, 2000, pursuant to the President's request, was to coordinate interagency activities associated with the

¹ Federal Lobbying: China Permanent Normal Trade Relations (PNTR) Lobbying Activities (GAO/GGD-00-130R, May 8, 2000).

passage of PNTR for China. Its activities were to include outreach efforts to business, labor, environmental, and other groups and continued development of U.S. economic policy towards China. In addition to the White House, agencies involved in the effort included the Departments of Agriculture, Commerce, State, and the Treasury and the Office of the U.S. Trade Representative. The White House and the five agencies provided thousands of documents to us for this review related to the administration's efforts to garner support for the passage of PNTR for China.

Results

After reviewing the documents that the White House and agencies represented on the Working Group provided to us through August 31, 2000, we have not found any further violations of the antilobbying restrictions, aside from the one violation we already reported to you. The documents we reviewed showed that the administration carried out extensive outreach and coordination efforts with outside groups, such as public corporations and trade coalitions, to garner support for China PNTR.

Although the exact costs of these efforts cannot be calculated, the administration spent at least an estimated \$1.6 million on its China PNTR efforts through about May 24, 2000, when the House of Representatives voted on China PNTR. We computed this amount on the basis of estimates that the White House and agencies associated with the Working Group provided to us. These estimates included the cost of personnel working full-time or part-time on China PNTR; trips associated with the PNTR effort; developing the Working Group's Internet Web site; and printing charts, booklets, and other documents. Generally, the cost estimate has several important limitations, including that (1) agencies' or employees' estimates of the amount of time spent working on PNTR for China were not based on documentary records; (2) as discussed below, agencies did not provide some cost data we requested; (3) the time periods covered by estimates varied; and (4) the costs for certain events, such as trips, included expenditures that were not made exclusively for the China PNTR effort. In addition, these costs generally do not represent sums that would have been saved absent the China PNTR effort; for instance, officials' salaries would have been paid regardless of whether the PNTR effort was undertaken.

Most—\$1.3 million—of the estimated \$1.6 million was for personnel costs. A number of different federal organizations provided personnel for the China PNTR effort. The White House reported that 10 principals were associated with the Working Group. Five were presidential advisers; and the remaining five were the Secretaries of Commerce, Agriculture, the Treasury, and State and the U.S. Trade Representative. Nine employees from the Departments of Agriculture, Commerce, and State and the U.S. Trade Representative were assigned to the Working Group. Ten White House staff members assisted the Working Group staff, according to the White House. In addition, 196 employees at Commerce, Agriculture, Treasury, State, and the U.S. Trade Representative contributed to the China PNTR effort through May 24, 2000, when the House passed H.R. 4444. These individuals, according to the White House and the respective agencies, spent differing amounts of time over several months working on China PNTR, ranging from a little of their time to all of their time. The White House did not provide us with personnel costs for any of the 10 principals associated with the Working Group because it believes that there is a strong interest in protecting the

confidentiality of how the President's senior advisors spend their time. However, for two of the principals, the Secretaries of Commerce and the Treasury, associated personnel costs were provided by their agencies. Treasury could not provide us with cost estimates for 3 of 30 employees because, according to a Treasury official, the agency does not track time spent by employees on individual projects they work on, and these employees no longer work at the agency.

The time period covered by the White House and two agencies' personnel costs included the period from the Working Group's establishment on February 1, 2000, through May 24, 2000, when the House voted on H.R. 4444. For three agencies, the time period was slightly different; all three began January 1 and individually ended on April 7, May 3, and 31.

The White House and 4 agencies reported 21 trips within the United States and to China at an estimated cost of about \$299,000. The travel cost estimate does not include the cost of military airfare for a trip to China sponsored by the Department of Agriculture, which was paid for by the Department of State. One agency, the State Department, has not provided travel data. A limitation to the travel cost data is that the trips were not always exclusively devoted to China PNTR. According to agency officials, a large number of trips were related to the specific agency's mission and were planned prior to the emphasis on China PNTR.

Other costs related to the China PNTR effort, such as printing and the "China Trade Relations Working Group" Web site, totaled about \$61,000. All of the reported costs were borne by the Department of Commerce. The bulk of the costs, about \$58,000, was for the printing of such items as booklets, briefing books, and state reports. The design and development of the Web site cost \$3,000.

Agency Comments

We requested the White House's comments on a draft of this letter from the Assistant to the President and Director of Management and Administration. On September 22, 2000, an Associate Counsel to the President said the White House had no comments.

Approach

To determine whether the efforts by the Working Group and selected agencies to garner support for China PNTR may have been in violation of the antilobbying provisions of 18 U.S.C. 1913 or any applicable appropriations statutes, we submitted a detailed information request to the White House on April 11, 2000, and to selected agencies on April 13, 2000. The detailed request also asked for cost-related information. These agencies included the Departments of Agriculture, State, Labor, and the Treasury and the Office of the U.S. Trade Representative. Subsequently, the Department of Labor said the Secretary was not a principal of the Working Group, and it had no employees assigned to the China PNTR effort.

In our information requests to the White House and the agencies, we asked for a variety of information, including

- information pertaining to the staffing of the China Trade Relations Working Group, including both those employees assigned to the Working Group and those supporting it;
- documents identifying travel costs associated with the China PNTR effort;
- copies of all China PNTR-related speeches and press releases;
- copies of all China PNTR-related communications, e.g., letters and e-mail, between the Working Group and executive branch agencies or between any executive branch participant in China PNTR activities and parties outside the executive branch;
- copies of any information packets, e.g., kits, pamphlets, or media communications, and the cost of such information packets;
- copies of various other documents, such as mailing lists, lists of private groups contacted, planning documents, and reports or summaries of the China PNTR effort; and
- copies of all laws and guidance on lobbying restrictions applying to either the White House or any of the participating agencies and an explanation of the steps taken to ensure that the restrictions were followed.

We met with officials of the White House and the other agencies between April 18, 2000, and May 3, 2000, to answer questions about our information request. We instructed them to provide the requested documents on a continual, rolling basis, and they have done so. As we reviewed the documents, we had follow-up questions, which we directed to appropriate officials. The officials responded to those questions.

On September 25, 2000, a White House official informed us that their automated search for e-mails relevant to the China PNTR effort may not have been complete or accurate from April 15, 2000, to April 30, 2000, because of a problem associated with their system's automated e-mail search function. According to the White House official, the problem as understood at this point may have affected about 1 percent of the e-mails during the 16-day period. The White House official noted that there is no way to identify which e-mails were affected. According to the White House official, they are working with the contractor to resolve this problem, but they do not yet have a timetable to resolve the matter. The official also noted that in responding to our request for e-mails, the automated search was conducted in addition to staff searching their paper and e-mail files manually. The official said that e-mails from the manual and automated searches were provided to us. Although we cannot be sure that we received all relevant e-mails for the 16-day period, we did receive a number of e-mails from that time frame.

We did our work in Washington, D.C., between April 2000 and September 2000 in accordance with generally accepted government auditing standards.

As agreed with your offices, unless you announce the contents of this letter earlier, we plan no further distribution until 30 days after the date of the letter. At that time, we will send copies of this letter to Mr. Mark F. Lindsay, Assistant to the President and Director for Management and Administration, The White House; the Honorable Daniel R. Glickman, Secretary of Agriculture; the Honorable Norman Y. Mineta, Secretary of Commerce; the Honorable Alexis M. Herman, Secretary of Labor; the Honorable Madeleine K. Albright, Secretary of State; the Honorable Lawrence H. Summers, Secretary of the Treasury; and the Honorable Charlene Barshefsky, U.S. Trade Representative. We will make copies available to others on request.

Please contact me on (202) 512-8676 if you or your staff have questions. Key contributors to this letter are listed in enclosure II.



Michael Brostek
Associate Director, Federal Management
and Workforce Issues

May 22 Letter to Representative Frank R. Wolf

Note: A separate letter was sent to Representative Dan Burton, Chairman, House Committee on Government Reform, on the same date.



United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

B-285298

May 22, 2000

The Honorable Frank R. Wolf
House of Representatives

Dear Mr. Wolf:

As you requested, this letter provides a further update on our review of the efforts of the White House China Trade Relations Working Group and selected agencies to gain support for pending legislation, which would, if enacted, provide for the establishment of permanent normal trade relations (PNTR) for China.¹ You asked us to determine whether any of these efforts have violated the anti-lobbying provisions of 18 U.S.C. § 1913 or any applicable appropriations statutes.

In connection with our review, we sent information requests to the White House and the agencies which are represented on the Working Group. In response to these information requests, hundreds of documents have been provided to us by the White House and the Departments of Commerce, Agriculture, State, the Treasury and the Office of the U.S. Trade Representative.² Based on our ongoing review of the documentation we have received to date, we have identified one instance, involving an e-mail authored by an agency representative assigned to the Working Group, which on its face constitutes a violation of the applicable anti-lobbying appropriation provision, although it involves a minimal expenditure of appropriated funds. We have discussed this e-mail with the White House Counsel's Office.

BACKGROUND

¹ See H.R. 4444 and S. 2277. We provided an earlier status report on our review of the Administration's efforts to garner support for this legislation on May 8, 2000 (GAO/GGD-00-130R).

² In doing our review we have relied on the agencies to furnish us with complete and accurate documentation. Our conclusions are based on the facts as presented in the documentation provided to us.

The China Trade Relations Working Group was established on February 1, 2000, by the Secretary of Commerce, pursuant to the President's request. The White House reported to us that there are 10 principals associated with the Working Group. Five of these are White House presidential advisers, while the remaining five are department or agency heads – the Secretary of State, the U.S. Trade Representative, the Secretary of Commerce, the Secretary of Agriculture, and the Secretary of the Treasury. The White House also reported to us that there are nine employees from various federal departments and agencies acting as agency representatives to the Working Group. They include five representatives from the Department of Commerce, two from the U.S. Trade Representative, and one each from the Departments of Agriculture and State.

The stated role of the Working Group is to coordinate interagency activities associated with the passage of PNTR for China, including outreach efforts to business, labor, environmental, and other groups and to continue the development of U.S. economic policy toward China. The documents we have received to date - including speeches, talking points, fact sheets, and e-mail messages - show extensive outreach and communication by the Administration with private sector groups such as public corporations and trade and business coalitions. In particular, there are a large number of e-mail messages between the Working Group agency representatives and employees of these organizations in the materials provided to us.

FACTS

Generally, the e-mail communications we have reviewed can be characterized as representing information-sharing between the outside organizations and the agency representatives to the Working Group. However, one of the e-mails, from the Agriculture Working Group representative to several of these outside organizations, in effect requests that they and their members contact a Member of the House of Representatives concerning the China PNTR legislation.

That e-mail was the result of an earlier e-mail dated April 13, 2000, from a Commerce Working Group representative to the Agriculture Working Group representative, in which the Commerce representative reported on a meeting between a Member of the House of Representatives and the Deputy Secretary of the Treasury. Specifically, her message reported the following:

“Yesterday, during a meeting with Treasury Dep Sec Eizenstat, [the Member] indicated that the labor unions where [sic] walking around with an article from the March 15 Hill [newspaper] that said that Ag does not benefit from trade with China. [The Member] also said that he hasn't heard from any of the farmers in his district about the agreement. Can you help identify what we have that could be helpful for Treasury to send up to [the Member]...?”

Within minutes after receiving this e-mail, the Agriculture representative forwarded it to several addressees including two farmers' organizations. The forwarding message

said: "We need to work on this ASAP. [The Member] needs to hear from the farmers in his district."

The farmers' organizations to which this message was addressed were the National Pork Producers Council, representing 85,000 producer members in 44 affiliated state associations, and the Farmland Cooperative System, a coalition of 1,700 local cooperatives owned by more than 600,000 independent family farmers. Information contained on the web sites of both organizations indicates that they actively support permanent normal trade relations for China and are encouraging their members to contact Congress in support of the legislation.

APPLICABLE STATUTORY PROVISIONS

Anti-lobbying restrictions are contained in a criminal statute found at 18 U.S.C. § 1913 and in appropriations laws. The criminal prohibition in 18 U.S.C. § 1913 provides that no appropriated funds may be used "directly or indirectly to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, to favor or oppose, by vote or otherwise, any legislation or appropriation by Congress, whether before or after the introduction of any bill or resolution proposing such legislation or appropriation...."

The Justice Department, which is responsible for the enforcement of 18 U.S.C. § 1913, has interpreted this provision as prohibiting the expenditure of appropriated funds for "substantial 'grass roots' lobbying campaigns of telegrams, letters and other private forms of communication designed to encourage members of the public to pressure members of Congress to support Administration or Department legislative or appropriations proposals."³ The Justice Department has stated that a "substantial" grass-roots lobbying campaign is one which involves the expenditure of \$50,000 or more.

The applicable appropriation provision that prohibits lobbying government-wide is found at section 627 of the Treasury and General Government Appropriations Act for fiscal year 2000. Section 627 provides that no appropriated funds are to be used by an agency of the executive branch, "other than for normal and recognized executive-legislative relationships, for publicity or propaganda purposes, and for the preparation, distribution or use of any kit, pamphlet, booklet, publication, radio, television or film presentation designed to support or defeat legislation pending before the Congress, except in presentation to the Congress itself."

³ Memorandum for Dick Thornburg, Attorney General, from William P. Barr, Assistant Attorney General, Office of Legal Counsel, September 28, 1989.

Statutory provisions like section 627 apply primarily to indirect or grass-roots lobbying, and not to direct contact with or appeals to Members of Congress. Thus, this type of statutory language prohibits agency appeals to members of the public that they contact their elected representatives to indicate support of or opposition to pending legislation. See 60 Comp. Gen. 423, 428 (1981) and B-270875, July 5, 1996.

ANALYSIS

In our view, the e-mail described above involves the type of grass-roots appeal which section 627 prohibits. The Agriculture representative's e-mail to the farmers' organizations, on its face, is an appeal to these organizations and the farmers they represent to contact a Member of Congress in support of the PNTR legislation. While this e-mail involves a grass-roots appeal in violation of the anti-lobbying provision,⁴ we recognize, as previously stated, that the expenditure of appropriated funds associated with this violation was minimal and does not warrant further action on our part or a referral to the Justice Department under 18 U.S.C. § 1913.

After we identified this e-mail as an apparent violation of the anti-lobbying statute, we contacted the White House Counsel's Office to solicit its views regarding this matter. The official we spoke with requested that if we concluded the e-mail violated the statute, we recognize that it was the only violation we found and furthermore, that it involved a negligible amount of money. He also argued that the e-mail should not be viewed as a violation because (1) it was possible that the Member was asking the Working Group for assistance in obtaining the views of his constituents and (2) the Member was already planning to support the PNTR legislation.

We recognize that this e-mail constitutes the only violation identified to date of the anti-lobbying appropriations provision and involves a minimal expenditure of appropriated funds. Nevertheless, because the e-mail on its face directly appeals to large farm organizations to contact a Member of Congress to support the PNTR legislation, it clearly constitutes grass-roots lobbying in "support of ... legislation pending before the Congress," irrespective of the genesis of the e-mail. Furthermore, the determination of whether the anti-lobbying appropriations provision has been violated does not depend on whether the lobbying contacts are likely to affect the Member's vote.

As stated previously, based on our review to date of the documents and information provided to us, this is the only instance in which we have determined that a violation

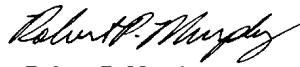
⁴ According to the applicable Department of Agriculture guidance regarding the anti-lobbying laws, which the Department provided to us in response to our information request, "Improper expenditure of any amount of appropriated funds in any form - salary, equipment, supplies, etc. - constitutes a violation of the anti-lobbying statutes."

Enclosure I
May 22 Letter to Representative Frank R. Wolf

of section 627 occurred. We are continuing our review of the Administration's activities in support of the China PNTR legislation, and will notify you if we find any additional violations of the applicable statutory provisions.

We are sending a separate letter to Chairman Burton, your co-requester for our review, regarding this matter.

Sincerely yours,



Robert P. Murphy
General Counsel

GAO Contacts and Staff Acknowledgments

GAO Contacts

Michael Brostek (202) 512-8676
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Acknowledgments

In addition to the individuals named above, Alan N. Belkin, Ronald J. Cormier, and Jessica A. Botsford made key contributions to this letter.

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