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

Subject: Lobbying Activity in Support of China Permanent Normal Trade Relations

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.

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[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.

BACKGROUND

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."

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[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

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[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."

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