

Congress of the United States

House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6301

(202) 225-6371
www.science.house.gov

October 20, 2016

The Honorable John Kerry
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520

Dear Secretary Kerry,

On July 6th, 2016, I sent you a letter requesting the Department of State provide a briefing on current U.S. policy governing the export of U.S. commercial satellites for launch on Indian launch vehicles, provide documentation associated with this policy, and answer a number of questions (see attached).

Despite promises from Department of State in official correspondence dated August 3rd, 2016, to provide this briefing "as soon as possible," the Department of State has failed to provide a briefing as requested, provide any documentation, or answer any of the requested questions (see attached). This is unacceptable. This briefing should be simple to provide since the "policy" is already being implemented.¹ This information is needed to assist the Committee in its oversight responsibilities, under House Rule X(1)(p), X(2)(b)(1)(A), and X(3)(k).

Immediately upon receipt of this letter, please schedule a briefing to House Science, Space, and Technology Committee staff on these issues. As appropriate, House Committee on Science, Space, and Technology members and staff are available to receive a classified briefing on this issue. Additionally, please provide the previously requested records, as they are currently overdue by several months.

If you have any questions related to this inquiry, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.

¹ See DDTC web notice regarding India Launch (August 5th, 2009). Retrieved at https://www.pmdtc.state.gov/licensing/documents/WebNotice_IndiaLaunch-updated.pdf (Last Accessed June 24th, 2016).

Sincerely,



Lamar Smith
Chairman



Brian Babin
Chairman
Subcommittee on Space

cc: Eddie Bernice Johnson
Ranking Member

Donna Edwards
Ranking Member
Subcommittee on Space

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce

The Honorable John Holdren
Director
Office of Science and Technology Policy

Ambassador Michael Froman
United States Trade Representative
Office of the United States Trade Representative

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COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

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July 6, 2016

The Honorable John Kerry
Secretary
U.S. Department of State
2201 C Street, N.W.
Washington, DC 20520

Dear Secretary Kerry,

Recent press reports raise questions about the current U.S. policy governing the export of U.S. commercial satellites for launch on Indian launch vehicles.¹ On October 23, 2015, a senior official at the Office of the United States Trade Representative's (USTR) international trade and development office, was quoted as stating that demand by American companies for commercial launch services had led the office to start a review a policy that has been in place since 2005, and that the policy, implemented through export control licensing, "discourages U.S. commercial satellite operators from purchasing launch services from Indian launch companies."² Another article quoted an industry source who stated "[t]here is a real dysfunction on the government side. On the one hand, you have the policy, which no agency wants to take responsibility for but which remains the policy. On the other, government agencies are practically falling over themselves to grant waivers."³ The Committee is interested in understanding this policy.

In order to assist the Committee in its oversight responsibilities, under House Rule X(1)(p), X(2)(b)(1)(A), and X(3)(k) please address the following:

1. Please provide a written copy of the Administration's policy governing U.S. entity's access to Indian launch services.

¹ See DDTC web notice regarding India Launch (August 5th, 2009). Retrieved at https://www.pmddtc.state.gov/licensing/documents/WebNotice_IndiaLaunch-updated.pdf (Last Accessed June 24th, 2016).

² Jeff Foust, "U.S. Considers Making it Easier to Launch from India" SpaceNews (October 23rd, 2015). Retrieved at <http://spacenews.com/u-s-considers-making-it-easier-to-launch-from-india/> (Last Accessed June 24th, 2016).

³ Peter B. de Selding, "U.S. launch companies lobby to maintain ban on use of Indian rockets," SpaceNews (March 29, 2016). Retrieved at <http://spacenews.com/u-s-space-transport-companies-lobby-to-maintain-ban-on-use-of-indian-rockets/> (Last Accessed June 24, 2016)

2. Please explain when this policy was promulgated, how it was promulgated, and how it is being implemented in accordance with the Administrative Procedures Act.
3. Please provide copies of all export control licenses authorizing the launch of U.S. origin space technology on Indian launch vehicles, from January 1st, 2000, to June 24th, 2016.
4. Please provide copies of all documents (as defined by attachment A) associated with any export control license applications for the launch of U.S. origin space technology on Indian launch vehicles, from January 1st, 2000, to June 24th, 2016.
5. Please provide copies of all Federal Register notices, from January 1st, 2000, to June 24th, 2016, that address either the export of U.S. origin space technologies for launch on Indian launch vehicles or restrictions on U.S. citizens accessing Indian launch services.
6. Please provide the basis for a "presumption of denial" by the Administration when a U.S. company is authorized to export U.S. origin space technologies for launch on Indian launch vehicles.
7. Please describe, in detail, the current inter-agency processes for the implementation and adjudication of the Administration's policy of a "presumption of denial" for commercial use of Indian launch services.
8. Please identify any and all federal agencies, departments, offices, and officers responsible for responding to an export license request for the export of U.S. origin space technologies for launch on Indian launch vehicles.
9. Please explain whether or not, and how, India's entry into the Missile Technology Control Regime impacts the legal and/or policy rationale of existing U.S. policy governing the export of U.S. commercial satellites for launch on Indian launch vehicles.⁴

Please provide a briefing to House Science, Space, and Technology Committee staff on these issues. As appropriate, House Committee on Science, Space, and Technology members and staff are available to receive a classified briefing on this issue.

Please respond to these inquiries by July 20th, 2016. If you have any questions related to this inquiry, please contact Dr. Michael Mineiro, Counsel, Subcommittee on Space, at 202-226-0354.

Sincerely,



Lamar Smith
Chairman



Brian Babin
Chairman
Subcommittee on Space

⁴ See BBC News Report, "India Joins Elite Missile Control Group MTCR" BBC News Online (June 29th, 2016). Retrieved at: <http://www.bbc.com/news/world-asia-india-36648279> (Last Accessed June 29th, 2016).

cc:

Eddie Bernice Johnson
Ranking Member

Donna Edwards
Ranking Member
Subcommittee on Space

The Honorable Penny Pritzker
Secretary
U.S. Department of Commerce

The Honorable John Holdren
Director
Office of Science and Technology Policy

Ambassador Michael Froman
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Office of the United States Trade Representative

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents, in unredacted form, that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), or PDF files.
 - (b) Document numbers in the load file should match document Bates numbers and TIF or PDF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. In complying with this request, be apprised that the U.S. House of Representatives and the Committee on Science, Space, and Technology do not recognize: any of the purported non-disclosure privileges associated with the common law including, but not limited to, the deliberative process privilege, the attorney-client privilege, and attorney work product protections; any purported privileges or protections from disclosure under the Freedom of Information Act; or any purported contractual privileges, such as non-disclosure agreements.
14. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
15. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
16. Unless otherwise specified, the time period covered by this request is from January 1, 2000 to the present.
17. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.
18. All documents shall be Bates-stamped sequentially and produced sequentially.
19. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2321 of the Rayburn House Office Building and the Minority Staff in Room 324 of the Ford House Office Building.
20. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive

documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.
3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term "identify," when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term "referring or relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.