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Congress of the United States
House of Representatives
Committee on Appropriations
Washington, DC 20515-6015

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May 11, 2011

CLERK AND STAFF DIRECTOR
WILLIAM B. INGLEE

TELEPHONE:
(202) 225-2771

The Honorable Gene L. Dodaro
Comptroller General
441 G Street, NW
Washington, DC 20548

Dear Comptroller General Dodaro:

I am writing to ask that you assess the actions of the Office of Science and Technology Policy (OSTP) with regard to the attached bill language from section 1340 of the Department of Defense and Full Year Continuing Appropriations Act, 2011 (P.L. 112-10). I seek your legal opinion as to whether OSTP has appropriately complied with the terms of section 1340.

As you can see, the language prohibits OSTP from engaging in bilateral activities with China or a Chinese-owned company unless specifically authorized by subsequent legislation. At a hearing of the Subcommittee on Commerce, Justice, Science and Related Agencies on May 4, however, OSTP Director John Holdren testified that this provision may not be read to prohibit activities that fall within the President's constitutional authority to conduct foreign relations. His testimony was based on a legal determination made by OSTP counsel in consultation with the Department of Justice. Pursuant to this determination, OSTP both led and participated in bilateral meetings with Chinese government officials as part of the U.S.-China Strategic and Economic Dialogue that took place in Washington, DC between May 6 and May 10, 2011. Relevant passages of testimony from Dr. Holdren's appearance before the Subcommittee are attached, as well as a copy of Dr. Holdren's notification to the Subcommittee of his intention to participate in the Strategic and Economic Dialogue.

OSTP freely admits that it is engaging in activities designated as prohibited by section 1340. Since this fact is not in dispute, my question centers on whether the justification Dr. Holdren has advanced for ignoring the prohibition is legally sufficient. I believe strongly that it is not. The foreign relations powers of the Executive Branch are not absolute, and it is a well established principle of constitutional law that Congress may impose restrictions on government activity through its "power of the purse." For these reasons, I believe that OSTP is unacceptably violating section 1340. In addition, to the extent to which appropriated funds were used to support an activity for which there was no spending authority, I believe that OSTP is also in violation of the Antideficiency Act (31 U.S.C. 1341(a)).

If OSTP is, indeed, in violation of the bill language from P.L. 112-10, its activities must stop immediately; if OSTP is also in violation of the Antideficiency Act, all remedies available under that statute must be pursued. I ask that you put a high priority on this matter and bring it to conclusion as soon as possible.

Thank you for your consideration. I look forward to your reply.

Sincerely,

Frank R. Wolf
Chairman
House Subcommittee on Commerce,
Justice, Science and Related Agencies

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