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NATIONAL SECURITY COUNCIL
WASHINGTON, D.O. 20506

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January 5, 1993

1993 JAN -5 AM 6:51
SECRETARY OF DEFENSE

MEMORANDUM FOR MR. KARL JACKSON
Assistant to the Vice President for National
Security Affairs
Office of the Vice President

MR. W. ROBERT PEARSON
Executive Secretary
Department of State

COL MICHAEL B. SHERFIELD
Executive Secretary
Department of Defense

MR. DANIEL LEVIN
Associate Deputy Attorney General
Department of Justice

MS. BARBARA J. GOLDKAMP
Director, Executive Secretariat
Department of Commerce

MS. VICKERS B. BRYAN
Director, Executive Secretariat
Department of Transportation

MR. DANIEL F. LEAHY
Executive Secretary
U.S. Trade Representative

MR. JAMES OLIVER
Executive Secretary
Central Intelligence Agency

CAPTAIN H. L. SHEFFIELD
Secretary
Joint Chiefs of Staff

MS. BARBARA STARR
Executive Secretary
Arms Control and Disarmament Agency

MS. DARLEEN DRUYUN
Chief of Staff
National Aeronautics and Space Administration

MR. BRIAN DAILEY
Executive Secretary
National Space Council

SUBJECT: Deputies Committee Meeting (U)

14-M-028A

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The Deputies Committee will meet on Friday, January 8, 1993, at 3:00 p.m. in the White House Situation Room to discuss export licensing issues related to missile proliferation and space-launch vehicles. The agenda is attached at Tab A. A discussion paper will be circulated separately. Attendance will be principals only. Names and dates of birth should be telephoned to 202-456-6534 by noon, Thursday, January 7. (S)

William F. Sittmann

William F. Sittmann
Executive Secretary

Attachment
Tab A Agenda

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Authority: EO 13526
Chief, Records & Declass Div, WHS
Date: JUN 06 2019

Office of the Secretary of Defense
Chief, RDD, ESD, WIIS
Date: 06 Jun 2019 Authority: EO 13526 + 5 U.S.C. § 652
Declassify: _____ Deny in Full: _____
Declassify in Part: X
Reason: 3.3(b)(1)(v) + 3.3(h) SO X1, SO X6
MDR: 14 -M- 0284

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DEPUTIES COMMITTEE MEETING

DATE: January 8, 1993
LOCATION: White House Situation Room
TIME: 3:00 P.M.

AGENDA

- I. Introduction Admiral Howe
- II. Licenses to MTCR Partners. All participants
- III. Licenses to Russian Entities All participants
- IV. Effect of Missile Sanctions on
"Is-Informed" Notifications All participants
- V. Summary. Admiral Howe

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NATIONAL SECURITY COUNCIL
WASHINGTON, D.C. 20508

MEMORANDUM FOR FRANK WISNER
Department of State

JIM LILLEY
Department of Defense

DAN LEVIN
Department of Justice

JOAN MCENTEE
Department of Commerce

ARTHUR ROTHKOPF
Department of Transportation

MICHAEL MOSCOW
U.S. Trade Representative

GORDON OEHLER
Nonproliferation Center

BARRY MCCAFFREY
Joint Chiefs of Staff

BRAD GORDON
Arms Control and Disarmament Center

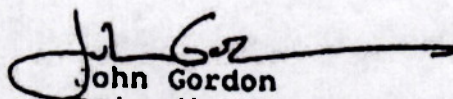
DAN GOLDIN
National Aeronautics and Space Administration

BRIAN DAILEY
National Space Council

SUBJECT: Discussion Paper for January 8 Deputies Committee Meeting (U)

Attached please find a draft discussion paper for the Deputies Committee scheduled for Friday, January 8, 1993, at 3:00 p.m.
(S)

Please phone (202-395-5697) or washfax any technical corrections to Dan Poneman NLT noon, January 6. (U)



John Gordon
Brigadier General, USAF
Special Assistant to the President
and Senior Director for Defense
Policy and Arms Control

Attachment

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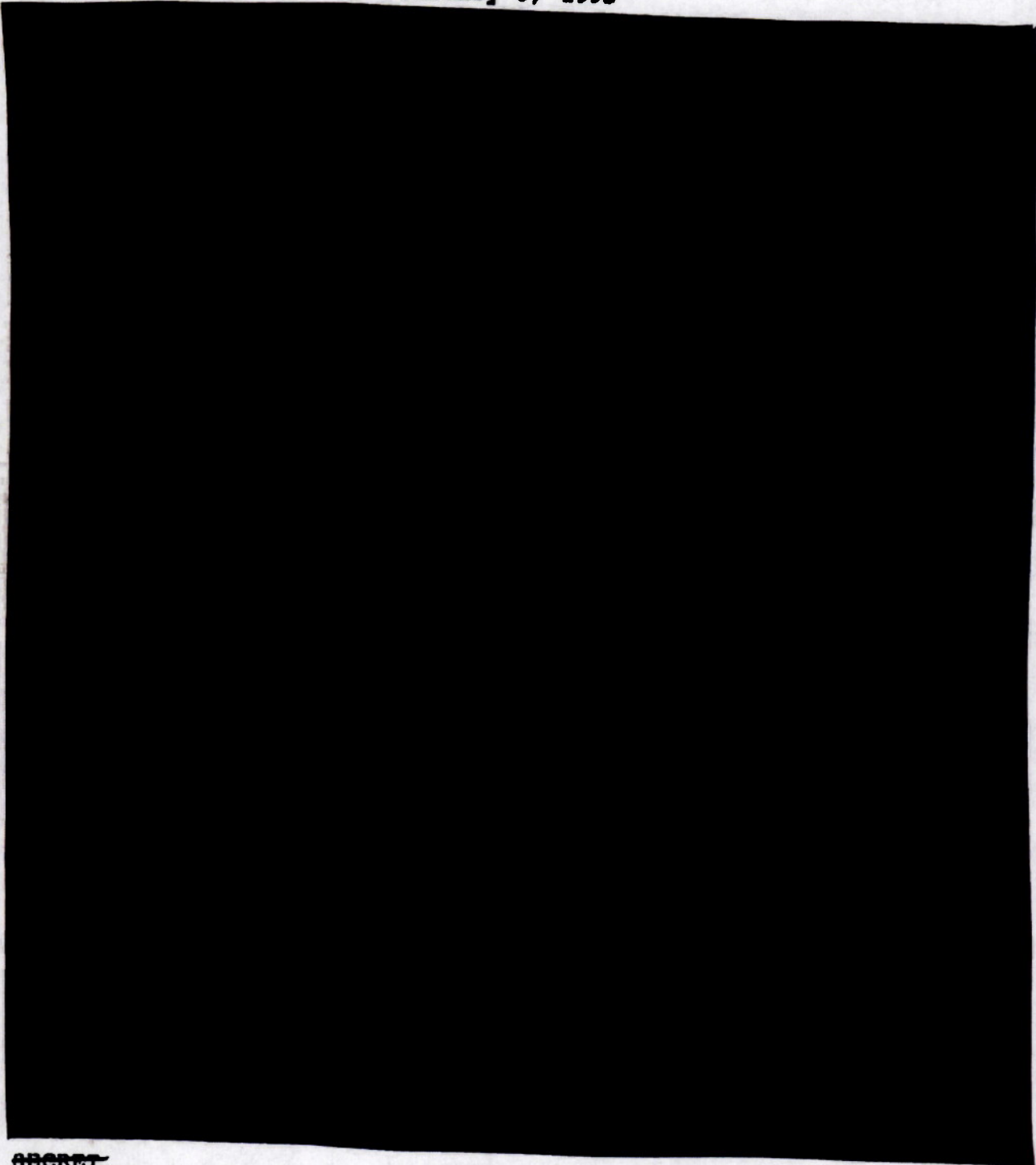
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Draft 1/5/93

Discussion Paper for
Deputies Committee Meeting
January 8, 1993



JS 3.3(b)(6)
NSC 3.3(h) SO X 6
OSD 3.3(b)(6)

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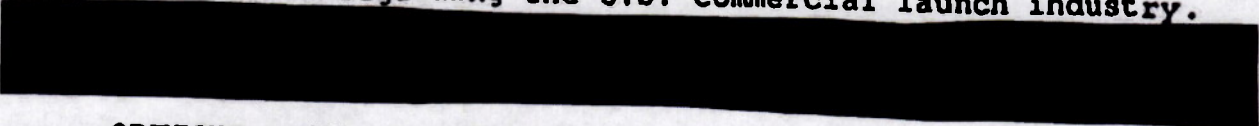
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Date: JUN 06 2019

JS 3.3(b)(6)
NSC 3.3(h) SO X 1
OSD 3.3(b)(1)(6)

Issue 2. Licenses to Russian Entities. Motorola applied to the State Department for a license to export technical data to Khrunichev Enterprise, and Lockheed and Westinghouse sought advisory opinions from State supporting their possible discussion of arrangements in obtaining launch services from Khrunichev. Lockheed has voiced an intent to begin funding the cooperative venture with \$5 million if the advisory opinion is positive. Under Secretary Wisner chaired an Executive Committee meeting of the Non-Proliferation PCC to consider these licenses on December 21. At that meeting, OSD, Commerce, Transportation, and National Space Council objected to approving these licenses. On December 23, Under Secretary Wisner approved license for Motorola to export technical data and provided advisory opinions expressing "no objection, in principle" to the Lockheed and Westinghouse proposals.

State favored granting these licenses and favorable opinions to obtain leverage to induce better Russian nonproliferation behavior; and to support democratic reforms in Russia generally. State rejected concerns about potential adverse effects upon the U.S. commercial launch industry as premature, since the licenses in issue comprise preliminary approvals to exchange data and pursue commercial opportunities, not approvals to transfer or launch satellites. Procedurally, State argued that it had the delegated Presidential authority to approve these licenses upon interagency consultation, and that it had duly consulted with the concerned agencies.

OSD urged deferral of consideration until after the INMARSAT talks and the missile nonproliferation bilaterals to be held with Russia in January. OSD argued that to do otherwise would undercut NSC guidance that the INMARSAT license approval was a one-time exception to NSPD 2 until an agreement on trade is concluded and would weaken our leverage in the nonproliferation bilaterals. Transportation argued that the decision to approve these licenses should not be made until issues -- including but not confined to nonproliferation -- are addressed by an interagency group. That group should include all agencies with responsibilities regarding the U.S. commercial launch industry.



- OPTIONS:**
- (1) Rescind licenses;
 - (2) Suspend licenses pending interagency review;
 - (3) Leave approvals in place.

Issue 3. Effect of Missile Sanctions on "Is Informed" Notifications. The 1991 regulations under the Enhanced

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Proliferation Control Initiative (EPCI) provide that an exporter must obtain an individual validated license (IVL) for a proposed export if it "is informed" by the Department of Commerce that the export could materially contribute to a proliferation-related activity. This provides the government an opportunity to refuse a license or to prosecute an exporter who disregards such notification. Commerce believes such notifications must extend to exports of all items -- including items not otherwise requiring a license (i.e. general destination, or G-DEST, items) -- to the end user of the proposed export, through a published notice in the Federal Register.

The missile proliferation sanctions of the National Defense Authorization Act (NDAA) for FY 1991 include the denial of licenses for the transfer to a sanctioned entity of items controlled by the Export Administration Act. State interprets "licenses" to apply only to IVLs, not G-DEST licenses.

State believes that two outcomes are permissible under the NDAA for sanctioned entities that have been subject to EPCI "is informed" notifications. First, Commerce may deny all licenses to the sanctioned entity; that denial would extend beyond items normally subject to an IVL requirement to those items normally exported under a G-DEST license (e.g., paper clips). Second, Commerce could promulgate a new regulation requiring exporters to notify Commerce before any export of an otherwise-uncontrolled (i.e. G-DEST) item to a sanctioned entity. If Commerce (following interagency consultation) did not inform the exporter within two weeks that the proposed license required an IVL, the export could proceed.

Commerce argues that EPCI-triggered licenses to sanctioned entities should be treated like any other EPCI license: they should be reviewed case-by-case and denied if they make a "material contribution" to missile proliferation. Commerce opposes State's proposal for a new regulation as administratively cumbersome and confusing to exporters. Commerce believes that State construes the NDAA too narrowly and contrary to the intention of the drafters. If Congress had intended to impose a blanket embargo against sanctioned entities, it could easily have done so. Two sponsors of the NDAA provided a letter supporting Commerce's view on this matter.

An NSC-chaired lawyers committee, including lawyers from State, Commerce, and Justice, concluded that the NDAA was vague enough that, under well-established precedent, the implementing agency should be accorded discretion in interpreting the interaction of EPCI and the NDAA. Thus, the State and Commerce proposals were all permissible under the NDAA.

State and Commerce have discussed a compromise that would defer resolution of the broader issue of interpreting the interaction of the NDAA and the EPCI regulations, but would simply seek to resolve the narrower issue of proposed exports to ISRO. Commerce has already "informed" some exporters that exports to ISRO require an IVL, but has yet to publish notice of that fact in the

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Federal Register. State and Commerce have discussed the option of rescinding these "is informed" notices in whole or in part, in order to permit exports of no proliferation concern to be exported to ISRO. This compromise would be based on the premise that, despite ISRO's past sanctionable activities, ISRO does not present a material risk of future diversion to proliferation-related activities. The compromise would not prejudice determination of the broader issues involved in interpreting EPCI and NDAA.

- Options:
- (1) Deny across the board;
 - (2) Propose new "notify and proceed" regulation;
 - (3) Approve case-by-case review of these cases;
 - (4) Rescind "is informed" notifications in whole or in part to ISRO.

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LOCKHEED AND MOTOROLA EXPORT LICENSE APPLICATIONS

- U.S. policy that we not allow U.S. satellites or satellites with U.S. components to be launched by Russian space launch vehicles is still in effect. (Ref: NSPD-2, 5 Sep 90)
 - "U.S. support for acceptance of the Russian bid to launch an INMARSAT satellite is a onetime exception to our policy of prohibiting licenses for such launches. (Ref: NSC memo, 9 Jun 92)
- State's claim that the licenses for the first phases of the Lockheed and Motorola programs will not prejudice future policy considerations is simply not the case.
- Work on the first phases of these programs would make no sense unless there was a presumption of approval of future phases; however, our policy still is to deny Russian launches of U.S. satellites.
- Several issues must be resolved before the U.S. can consider changing that basic policy:
 - "It is our intention to conclude [not begin to negotiate] a satisfactory agreement [with Russia] on competition in the launch of commercial satellites." (Ref: same NSC memo)
 - We should await satisfactory negotiation of a technology security safeguards agreement for the INMARSAT launch to assure ourselves that this issue will not be a major problem for future launches.
 - Even the Russian launch of a single INMARSAT satellite may be in jeopardy because of: (1) [REDACTED] (2) the price of the Russian INMARSAT launch may call into question the Russian assurance that the terms and conditions of their proposal, including its price, are consistent with those of the international market.
 - U.S. concerns regarding Russian nonproliferation behavior must be resolved satisfactorily; [REDACTED]
- Our negotiations with the Russians on both nonproliferation and trade in commercial space launch services would be undercut by approval of these licenses.
- We should not change our policy until the issues raised by these export license cases are resolved satisfactorily; therefore, we should not approve either of the licenses at this time.

OSD 3.3(b)(1)(6)
NSC 3.3(h)50 X 1, 50 X 6

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Date: JUN 06 2019

THE WHITE HOUSE

Office of the Press Secretary

For Immediate Release

January 8, 1993

STATEMENT BY THE PRESS SECRETARY

We continue to keep the situation in Iraq under close scrutiny. We have observed no penetrations by Iraqi aircraft of the No-Fly Zone below 32 degrees north latitude since Wednesday's coalition warning. The disposition of surface-to-air missiles specified in the January 6 warning is less clear. There has been a good deal of movement involving these missiles, but we are still in the process of determining whether Iraq is in compliance with the terms of the coalition demarche.

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Page determined to be Unclassified
Reviewed Chief, RDD, WHS
IAW EO 13526, Section 3.5
Date: JUN 06 2019