



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 23, 2008

The Honorable Howard L. Berman  
Chairman  
Committee on Foreign Affairs  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Mr. Chairman:

This letter presents the views of the Department of Justice on H.R. 6646, a bill “[t]o require the Secretary of State, in consultation with the Secretary of Defense, to provide detailed briefings to Congress on any recent discussions conducted between United States Government and the Government of Taiwan and any potential transfer of defense articles or defense services to the Government of Taiwan.” The Department strongly opposes the bill.

H. R. 6646 would purport to require the Secretary of State to provide detailed briefings to Congress on any recent discussions conducted between United States Government and the Authorities on Taiwan and any potential transfer of defense articles or defense services to the Authorities on Taiwan. To the extent that the bill’s requirement for “detailed briefings” contemplates revelation of all major diplomatic or national security related discussions with Taiwan, the requirements in section 2 of the bill would infringe upon the President’s constitutional authority to conduct foreign diplomacy and to supervise and determine the timing and extent of the disclosure of diplomatic and national security information outside of the Executive branch. *See, e.g., Department of the Navy v. Egan*, 484 U.S. 518, 529 (1988); *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304, 319-20 (1936). These concerns are exacerbated by the requirement that the required briefings occur on a specific timetable. Therefore, the Department strongly objects to these provisions on constitutional grounds. In the event that the bill is to be enacted notwithstanding these concerns, the objections would be removed or reduced if the briefings provisions were made precatory or if the phrase “appropriately detailed briefings consistent with national security” were substituted for “detailed briefings.”

The bill’s requirement for specified consultations also should be amended to call only for “appropriate consultations.” As drafted, these provisions entail inappropriate legislative micromanagement of internal Executive branch deliberations, which is objectionable on separation of powers policy grounds.

Finally, we believe the provisions in question are unnecessary. The Administration has briefed, and will continue to brief, the Congress on matters relating to Taiwan, including the transfer of defense articles and defense services pursuant to the Taiwan Relations Act. When the

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transfer of defense articles and defense services pursuant to the Taiwan Relations Act. When the Administration decides to sell a weapons system to Taiwan, it notifies and briefs the Congress.

Thank you for the opportunity to present our views. The Office of Management and Budget has advised us that from the perspective of the Administration's program, there is no objection to submission of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith B. Nelson". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Keith B. Nelson  
Principal Deputy Assistant Attorney General

cc: The Honorable Ileana Ros-Lehtinen  
Ranking Minority Member