

days after the Subcommittee's assessment has been completed.

*Special Consultations.* The United States and the PRC have also undertaken to consult within thirty (30) days of a request by either party regarding any matter of particular concern relating to the operation of the Agreement. The Agreement contemplates three particular circumstances that would be the basis for such special consultations.

First, the United States may believe that the PRC has not upheld its commitment to price "on a par" with Western launch service providers in either the GEO or LEO markets. With respect to pricing in competitions for launches to GEO, a request for special consultations could be made in those instances in which the differential between the PRC price and Western price is greater than 15 percent and after preliminary analysis takes into account the pricing comparability factors set out in Annex II of the agreement (see discussion of "Price Compliance" below.)

Second, the United States may believe that there is an absence of launch availability from a Western supplier for a satellite to GEO. The purpose for this provision is to avoid a situation in which the Agreement would deny to a satellite manufacturer/user the alternative of a PRC launch vehicle and service for a launch to GEO even though no Western alternative exists. Without the flexibility to respond to this situation in a timely manner, the balance in the Agreement for all segments of U.S. industry involved in space could be disrupted.

The third circumstance explicitly provided for in the Agreement involves PRC participation in providing services for launches to LEO. In the Agreement, the PRC has committed that its participation in the LEO market will be consistent with the overall provisions of the Agreement (*inter alia*, with respect to pricing, government inducements, subsidies and nondiscrimination) and with significant U.S. participation in the development of the LEO market, and the PRC has agreed to take steps to ensure that such participation will be proportionate and non-disruptive. The U.S. may request special consultations if it believes that the PRC is participating, or may participate, in the LEO market in a manner inconsistent with these commitments.

*Comprehensive Review.* The Subcommittee will meet at least six months in advance of the comprehensive review required by Article VII of the Agreement to begin preparations for the review. Among its

key tasks, the Subcommittee will carefully monitor the implementation of the Agreement to ensure that it contributes to, rather than detracts from, the balanced development of the GEO and LEO market segments and other segments of the market. In this regard, the Subcommittee will consider adjustments to the quantitative and bunching restrictions in Articles II(B)(ii) and II(B)(vi) to avoid distortive effects on various market segments in light of the development of a commercially viable project for satellite services that fundamentally changes demand for launch services or the emergence of higher than anticipated demand for GEO launches as provided for in Article IV(3)(a). The U.S. Government will seek to conclude the comprehensive review with the PRC in October 1998 to coincide with the semi-annual review to be held at that time.

### 3. Lack of Western Launch Availability

Article IV(2) of the Agreement provides that the United States may increase the quantitative limitation established under Article II(b)(ii) or relax the bunching provision set out in Article II(b)(vi): (i) If the United States is satisfied that there is an absence of Western launch availability due to full manifests or launch failures during the required launch period (generally within three months before and after the preferred launch date), and (ii) if the PRC has reached the limitation set out in Article II(b)(ii), or if the bunching provisions established in Article II(b)(vi) would apply to prevent the launch of a satellite.

In administering Article IV(2), the Subcommittee will follow the procedures described in Sections A and B below.

(A) In support of a request that the United States increase the quantitative limitation established under Article II(b)(ii) or relax the bunching provision set out in Article II(b)(vi) due to the lack of Western launch availability, a U.S. satellite manufacturer or U.S. international customer (either of which constitutes a "certifying entity") shall provide a properly executed written certification to USTR. The written certification must contain the following elements:

(1) A statement by the certifying entity that, in the course of negotiating with a prospective international customer for the sale of a commercial satellite or with a launch provider for the launch of a satellite, the certifying entity or an international customer of the certifying entity has contacted all launch service providers with a technically compatible vehicle,

including all such domestic launch service providers;

(2) A statement that the certifying entity or an international customer of the certifying entity has contacted a launch vehicle provider in the PRC regarding the availability of launch services by a PRC provider and that space for the proposed satellite is available on the PRC launch service provider's launch manifest;

(3) A statement that the PRC launch service provider is the only launch service provider that is available during the required launch period as defined in Article IV(2); and

(4) A statement that the certifying official is an official of the certifying entity and is familiar with and responsible for the negotiations regarding the proposed launch based upon information and belief.

The above certification must be signed and dated by the certifying official of the certifying entity. It must be accompanied by supporting documents, including copies of the written requests made to each launch service provider and a copy of the written response, if any was received, from each provider regarding its unavailability to provide the launch in the required launch period as defined in Article IV(2). If no written response from a particular provider was received, the certification should indicate the nature of the response.

USTR will exempt from public disclosure confidential business information contained in any supporting documents in accordance with the Freedom of Information Act, 5 U.S.C. § 552, and any other applicable law. Confidential business information submitted to USTR must be clearly marked "Business Confidential" at the top of each cover page or letter and each succeeding page containing such information.

Upon receipt of a certification, USTR will review the certification to ensure that it was executed properly and will review the supporting documents to ensure that they provide satisfactory evidence of the facts alleged in the certification.

(B) Within ten working days of the date of receipt of the certification and supporting documents, USTR will indicate to the certifying entity whether additional information will be required to satisfy USTR that the facts as described in the certification are correct. As soon as such information has been received which provides such assurance, USTR will, within an additional ten working days, determine that one of the conditions listed in Article IV(5) of the Agreement has been