Congress of the United States
Washington, DC 20515

January 8, 2003

Dr. Richard Meserve
Chairman
Nuclear Regulatory Commission
Washington, DC 20555

Dear Dr. Meserve:

I am writing to express my opposition to export 13 tons of depleted uranium to Japan for use at the Rokkasho Nuclear Fuel Reprocessing Plant as detailed in the Application for License to Export Nuclear Material and Equipment by Transport Logistics International, Inc. (application number XSOU8790). Allowing such a shipment sends the wrong message about U.S. commitment to nuclear nonproliferation, since it could lead to a large stockpile of weapons-grade plutonium. Our treaty obligations require us to decrease, not increase, the amount of available weapons-grade plutonium, and to provide for the safekeeping of both highly-enriched uranium and weapons-grade plutonium. Allowing this shipment to take place would do neither.

Inspectors from the International Atomic Energy Agency are currently stationed at nuclear facilities throughout Japan, including at Rokkasho. Rokkasho is a multipurpose facility that serves to extract plutonium from spent uranium fuel, fabricate mixed oxide fuel (MOX) and store spent fuel. Given that the plutonium produced at Rokkasho would be of weapons-quality, it must be properly safeguarded to ensure it is never used in nuclear weapons, lost, or stolen. No indications of the nature and adequacy of safeguards and physical security at the Rokkasho facility are mentioned in the application, which should be a prerequisite for any license to ship sensitive nuclear materials to another country.

As you may know, after several recent nuclear-related accidents, some with fatal consequences, Japanese politicians and citizens are becoming increasingly opposed to the use of nuclear power in their country. This has led to a new Ministry of Economy, Trade and Industry policy that forbids the use of MOX fuel in local civilian reactors. As a result, MOX fuel produced at Rokkasho would simply be stockpiled onsite for the foreseeable future. Experts predict the eventual production of 100 tons of plutonium and 110 tons of MOX at this site. Since neither of those materials can be used in Japanese nuclear reactors, they will simply pile up at Rokkasho, increasing the Japanese stockpile. While the license states this material will be used to test the new reprocessing facility at Rokkasho, it is likely that there is equivalent material already in Japan.

The license application makes the statement that the "Japanese customer has certified that the material … is of United States origin and was not processed in any other country prior to entering the United States." The U.S. facilities, United States Enrichment Corporation plants in

PRINTED ON RECYCLED PAPER

Portsmouth, Ohio and Paducah, Kentucky, from which the material originates, process uranium from several different countries. How do we know whether the fuel that is proposed to be exported is purely from U.S. sources? The application provides no documentation that would clearly and convincingly substantiate this claim. Furthermore, Box 24 on the application ("Countries Which Attach Safeguards") of the license application is left blank. Since the United States and Japan both attach safeguards, this omission is quite curious.

The application also makes no mention of any safety precautions to be taken during shipment. Uranium hexafluoride is quite toxic and any release into the environment would be extremely dangerous. Further, the material is quite radioactive and could be used in a dirty bomb. Transport Logistics International provides no details of how it will protect the material during shipment. Again, given recent statements from Al Qaeda members regarding their desire to acquire nuclear materials, it would be folly to allow radioactive material to be shipped without detailed and extensive safety and security precautions. The Commission has a responsibility to ensure there are such measures in place before approving the application.

As you know, Section 3 of Article 2 of the 1998 US-Japan Agreement for Cooperation Concerning Peaceful Uses of Nuclear Energy, states that "prior to the notified transfer of such items, the supplying party shall obtain from the receiving party a written confirmation that the transferred item will be held subject to this Agreement." Section 2 of Article 8 states that "material … transferred pursuant to this Agreement … shall not be used for any military purpose." Annex B of that Agreement states that transportation of any material under the Agreement requires strict precautions and safeguards. The application for transfer does not contain a confirmation from Japan that the material will be held to the terms of the Agreement, does not contain assurances that this material—or the facility it will be used to test—will be not be used for military purposes or later sold to a country that has a military program, and does not contain any mention of security and safeguards during or after transport.

Finally, granting the application would be inconsistent with the *National Strategy to Combat Weapons of Mass Destruction* recently released by President Bush, which states that "the United States will continue to discourage the worldwide accumulation of separated plutonium and to minimize the use of highly-enriched uranium." Since this shipment will result in the Japanese accumulation of plutonium, I believe that the Commission should not grant this license.

In addition, in order to perform my ongoing oversight and legislative responsibilities with respect to the Commission's operations, I would appreciate your assistance and cooperation in providing answers to the following questions regarding the pending license application:

1. What is the timeframe for the decision to issue or deny the application?
2. What studies have been or will be done regarding the safety and security needs of such a shipment as required by Annex B of the 1998 US-Japan Agreement? What safeguards will be imposed to protect against theft or diversion of nuclear material from this facility?
3. Please provide documentation demonstrating that that uranium is, indeed, of solely U.S. origin, and please explain why Box 24 ("Countries Which Attach Safeguards") on the license application was left blank.

4. What studies have been or will be done regarding the nonproliferation implications of such a shipment? Please provide copies. If no such studies will be done, why not?
5. Has the NRC requested or received any comments on the application from the Executive Branch regarding nonproliferation impacts or consequences? If so, please provide copies. If not, why not?
6. If and when the NRC takes action on the application, I request that I be promptly provided with a copy of any letter, statement or other document setting forth the rationale for the Commission's decision in this matter.

Thank you very much for your prompt attention to this important matter. Please provide your responses to questions 1-5 by close of business February 1, 2003. Should you have any questions or concerns, please have your staff contact Dr. Benn Tannenbaum of my staff at (202) 225-2836.

There are many reasons to deny, and no reasons to permit, the shipment of depleted uranium to Japan. I urge you to deny this application.

Sincerely,

Edward J. Markey

Edward J. Markey
Member of Congress