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May 16, 2006

The Honorable George W. Bush
President of the United States
1600 Pennsylvania Avenue, N.W.
Washington, D.C.

Dear Mr. President:

According to press reports, three European Union countries (Great Britain, France, and Germany) are considering offering Iran a light water reactor as part of a deal aimed at curbing Iranian efforts to acquire a domestic uranium enrichment capability. I am writing to express my concern about whether nor not such activities would be consistent with the requirements of Sections 632 and 635 of the Energy Policy Act of 2005 (EPACT), which I co-authored along with former Representative Chris Cox (R-CA).

While I support efforts to negotiate a peaceful resolution of the crisis over Iran's violations of its commitments as a signatory to the Nuclear Nonproliferation Treaty (NPT), and its obligations under its International Atomic Energy Agency (IAEA) safeguards agreement, providing light water reactor technology, nuclear materials, or dual-use nuclear items to Iran would violate the aforementioned provisions of law if they: 1) involve any transfer or retransfer of U.S.-origin nuclear materials or nuclear-related technologies or technical data; or, 2) involve any direct or indirect indemnification by the United States of any entity for any liability associated with any nuclear accident in Iran.

Section 632 of EPACT added a new subsection b. to Section 129 of the Atomic Energy Act of 1954, which provides in part that:

> *"Notwithstanding any other provision of law...no nuclear materials and equipment or sensitive nuclear technology, including items and assistance authorized by Section 57b. of this Act and regulated under part 810 of title 10, Code of Federal Regulations, and nuclear-related items on the Commerce Control List maintained under part 774 of title 15 of the Code of Federal Regulations, shall be exported or reexported, or transferred or retransferred, whether directly or indirectly, and no Federal agency shall issue any license, approval, or authorization for the export or reexport, or transfer, or retransfer, whether directly or indirectly, of these items or assistance (as defined by the paragraph) to any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which has been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1), or section 40(d) of the Arms Export Control Act (22*

U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism).

Section 635 of EPACT further provides that:

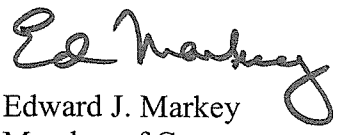
> *"Notwithstanding any other provision of law, no officer of the United States or of any department agency, or instrumentality of the United States Government may enter into any contract or other arrangement, or into any amendment or modification of a contract or other arrangement, the purpose or effect of which would be to directly or indirectly impose liability on the United States Government, or any department, agency, or instrumentality of the United States Government, or to otherwise directly or indirectly require an indemnity by the United States Government for nuclear accidents occurring in connection with the design, construction, or operation of a production facility or utilization facility in any country whose government has been identified by the Secretary of State as engaged in state sponsorship of terrorist activities (specifically including any country the government of which, as of September 11, 2001, had been determined by the Secretary of State under section 620A(a) of the Foreign Assistance Act of 1961 (22 U.S.C. 2371(a), section 6(j)(1) of the Export Administration Act of 1979 (50 U.S.C. App. 2405(j)(1), or section 40(d) of the Arms Export Control Act (22 U.S.C. 2780(d)) to have repeatedly provided support for acts of international terrorism)."*

It is my understanding that the Islamic Republic of Iran is on the aforementioned list of state sponsors of terrorism. As such, Iran would therefore be ineligible to receive any U.S.-origin nuclear materials, technology, or other nuclear-related items (including dual-use technology). At the same time, no direct or indirect indemnification can be provided to any entity doing business in Iran.

While press reports have indicated that the U.S. is opposed to the reported proposal to transfer light water react technology to Iran, it is unclear whether the Europeans are fully aware of the requirements of U.S. law, in particular, the newly enacted EPACT provisions. It is also unclear whether any U.S.-origin materials or technology would be part of such a LWR transfer. I therefore respectfully request what actions the Administration has or is taking to make our European allies aware of these legal requirements and what steps the Administration is taking to ensure that the aforementioned countries are fully complying with these legal requirements.

Thank you for your assistance and cooperation in this matter.

Sincerely,



Edward J. Markey
Member of Congress