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October 11, 2005

The Honorable Carlos Gutierrez
Secretary
U.S. Department of Commerce
1401 Constitution Ave., NW
Washington, DC 20230

Dear Secretary Gutierrez:

I am writing to express my concern regarding the decision of the Department of Commerce to amend federal regulations to permit certain nuclear exports and re-exports from the United States to India. The amended regulations, effective August 30, 2005, allow items controlled unilaterally by the United States for nonproliferation reasons to be exported or re-exported to India without a license. The new regulations also remove six Indian nuclear entities from the Entity List, permitting U.S. nuclear exports to be utilized at those entities without a license.

I am disappointed that the Department adopted these revised regulations without providing any notice or opportunity for public comment. The new regulations implement a dramatic shift in U.S. nonproliferation policy that poses great risks for the future security of the nation and the world. At the very least, the public should have the opportunity to be heard before measures with such serious implications take effect.

As you know, the amended regulations were adopted pursuant to the agreement announced July 18, 2005, in which the United States pledged to restore "full civil nuclear cooperation" with India. India developed nuclear weapons outside of the Nuclear Nonproliferation Treaty (NPT), under which non-nuclear weapons states agree to forgo development of nuclear weapons in exchange for assistance from the nuclear powers for civilian nuclear energy programs. The NPT has effectively limited the spread of nuclear weapons over the past several decades. India, however, is one of the few nations that never signed the NPT. By rewarding India with civilian nuclear assistance, the United States seriously undermines the NPT and makes it less likely other nations will respect it. The result will be more nuclear-armed states and a less secure world.

The U.S.-India nuclear agreement also damages U.S. credibility as a champion of nonproliferation. For example, Russia will ask why it should heed our demand to halt

assistance to Iran's supposedly "civilian" nuclear program when Iran, unlike India, has signed the NPT and never tested a nuclear weapon. The agreement also places the United States in the awkward position of loosening its own nuclear export control laws at the same time it is calling on other nations to strengthen their own controls on nuclear exports.

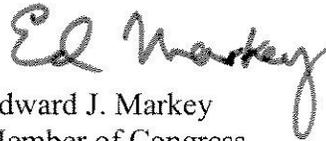
In light of the serious consequences of altering federal regulations to permit certain nuclear exports to India, I ask for your prompt responses to the following questions:

- What nuclear items are controlled unilaterally by the United States for nonproliferation reasons and therefore may now be exported to India without a license under the new regulations? What items are subject to the Nuclear Suppliers Group guidelines and therefore still cannot be exported to India? In light of the new policy outlined by the President and the Indian Prime Minister, will the Department be seeking approval either from the Congress or the Suppliers Group to transfer such items or technologies to India?
- Are there plans to permit any additional nations that are not parties to the NPT to have the same access to nuclear exports as the Administration proposes to provide to India?
- For each item that the revised regulations now permit to be exported to India, what military or nuclear weapons purpose could the item be used for?
- What guarantees and safeguards are in place to ensure that India will not use items exported under the new regulations to advance its nuclear weapons program?
- Given the fact that India is not a party to the NPT and has not accepted full-scope safeguards over all of its nuclear facilities, how do you intend to ensure that nuclear items exported to civilian nuclear entities in India are not transferred to entities engaged in military activities?
- What actions will the United States take if India transfers or diverts nuclear or dual-use items exported by the U.S. to its nuclear weapons program?
- Do you believe loosening U.S. regulations to permit India access to nuclear items unilaterally controlled by the United States will lead other nations to weaken their laws controlling nuclear exports? If not, why?
- Please provide a complete copy of the analysis that led you to conclude that the amended regulations will not contribute to the proliferation of nuclear weapons. If no such analysis has been or will be performed, why not?
- Please provide a complete copy of the legal analysis that led you to conclude that the amended regulations are fully consistent with U.S. law and international agreements to which the U.S. is a party. If no such analysis has been or will be performed, why not?

- Although the Administration has stated public notice and comment were not required under the Administrative Procedure Act, why did you not voluntarily provide the public the opportunity to review and comment on these important regulations before they became final?

Thank you for your assistance and cooperation in this matter. Please contact Dr. Nicole Gasparini or Mr. Jeff Duncan of my staff at 202-225-2836 if you have any questions about this request.

Sincerely,

A handwritten signature in black ink that reads "Ed Markey". The signature is written in a cursive style with a large, looped "E" and "M".

Edward J. Markey
Member of Congress