

POLICY ISSUE
(Notation Vote)

February 14, 2003

SECY-03-0022

FOR: The Commissioners

FROM: Janice Dunn Lee, Director
Office of International Programs /RA/

SUBJECT: PROPOSED EXPORT OF DEPLETED URANIUM TO JAPAN
(XSOU8790)

PURPOSE:

To request Commission review of the proposed issuance of a license to Transport Logistics International Inc. (TLI), for the export of 25,983.0 kilograms of depleted uranium to Japan for use as test material for the test operation of the Rokkasho Nuclear Fuel Reprocessing Plant (XSOU8790, Attachment 1). This request is being referred to the Commission in accordance with 10 CFR 110.40(a) as it involves assistance to end uses related to chemical reprocessing.

URGENCY

TLI has requested approval of this application by February 19, 2003, if possible, in order to meet a scheduled shipping date from a West coast port at the end of February 2003.

BACKGROUND:

The TLI application has been the subject of Congressional (Representative Markey) and public comment letters (Green Action, Greenpeace, and Nuclear Control Institute) urging denial of a license on the grounds of the adequacy of safeguards at the Rokkasho facility, Japan's utilization of plutonium, and the security issues involved in the transport of nuclear material in the post 9/11/2001 environment. We deferred to the Department of State on addressing the policy concerns.

This is not the first application requesting approval for an export to Rokkasho. In August 2001, NRC issued a license authorizing the export of coulometers (XCOM1142) to that facility in accordance with the requirements of Section 109 (b) of the AEA, as amended. No comments were received on that case.

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DISCUSSION:

On October 17, 2002, TLI applied for a license requesting authority to export 25,983.0 kilograms of depleted uranium to Japan (Attachment B to Attachment 1) to be used as the test material for the test operation of the Rokkasho Nuclear Fuel reprocessing Plant currently under construction by Japan Nuclear Fuel Ltd. in Rokkasho-Mura, Aomori, Japan. The uranium test is to be performed using depleted uranium solution, which is less radioactive but with similar properties to irradiated uranium fuel, to confirm the design parameters being met in the actual equipment before active testing utilizing actual spent fuel. U.S. depleted uranium is being used instead of stock already in Japan due to the ready availability of depleted uranium in the U.S. at the purity levels required by the Japanese operator.

In response to NRC's request for views on proposed export XSOU8790, the Executive Branch (EB), in a letter dated December 16, 2002 (Attachment 2), recommended that a license be issued to TLI to export 25,983 kilograms of depleted uranium for test operation of the Rokkasho Nuclear Fuel Reprocessing Plant. The EB addressed the export licensing criteria in 10 CFR110.42, and concluded that the proposed export will not be inimical to the common defense and security of the United States, i.e., the export is consistent with the provisions of the Atomic Energy Act (AEA) of 1954, as amended by the Nuclear Non-proliferation Act of 1978. The export will take place pursuant to the U.S.-Japan AEA Section 123 Agreement for Cooperation, which requires that International Atomic Energy Agency (IAEA) safeguards will be applied to the export and the facility under Japan's full-scope safeguards agreement with the IAEA. As a party to the Non-proliferation Treaty (NPT), Japan has committed to maintain IAEA safeguards on all of their peaceful nuclear activities and has pledged not to produce or otherwise acquire any nuclear explosive device, therefore satisfying criteria (1) and (2) of Section 122 of the Atomic Energy Act, as amended, for exports of source material. Finally, Japan has provided generic assurances which confirm the right of U.S. prior consent to re-transfers of U.S.-origin material.

While these initial EB views addressed, in a general sense, the applicable export licensing criteria, they did not respond directly to the policy concerns raised in letters to NRC from Green Action, Greenpeace, and Nuclear Control Institute (NCI) at Attachment 3. Accordingly, on December 24, 2002, the staff requested additional information from the EB to use in completing its analysis of the proposed export (Attachment 4). On January 8, 2003, the NRC received a letter from Congressman Markey (Attachment 5). The EB response, dated January 22, 2003, addressed thoroughly the Greenpeace, Green Action, NCI and Markey policy concerns (Attachment 6). The EB made clear its position that there is no extreme national security or non-proliferation circumstance which would require suspension of U.S. Government approval of the reprocessing of U.S.-obligated spent fuel at Rokkasho for recovery of plutonium for civilian reactor use. On January 29, 2003, the NRC received another letter from Greenpeace which provided additional information related to their earlier comments (Attachment 7). However, no new issues were raised to warrant a formal response.

The NRC staff has reviewed the EB views of why the export should be approved, agrees with its analysis, and therefore has not prepared a point by point discussion of the issues raised by the public and Congressional comments. The following sets forth the staff's basic conclusions.

Policy Issues to be Addressed

1. Consistency with U.S. Policy

The staff agrees that the proposed export is consistent with current U.S. policy which supports the reprocessing of U.S.-origin spent fuel abroad for civilian end use. The staff further finds no basis for challenging current Executive Branch policy in this area on non-proliferation grounds relevant to the statutory export licensing criteria.

2. Health and Safety

NRC's export/import regulations provide for a non-inimicality finding from a non-proliferation standpoint. The export poses no significant health or safety risk to the U.S. domestically. The NRC has no jurisdiction over health and safety outside the U.S. nor over the regulation of the Japanese program.

3. Security Significance of the Export

The amount of material to be exported does not raise any additional security concerns related to transportation, including the domestic shipping portion of the export, beyond those applicable to other past and current exports of depleted uranium from the U.S. under general or specific NRC export licenses. The licensee is prepared to comply fully with current domestic shipping requirements imposed by NRC. Accordingly, the staff does not believe that security considerations warrant denial of the TLI application.

4. Safeguards and Physical Protection

Under the U.S.-Japan Agreement for Cooperation, Japan is required, prior to the startup of Rokkasho, to provide the U.S. with information on the IAEA safeguards approach to be applied. Rokkasho is currently included in Annex 4 of the U.S.-Japan Agreement as a facility which is planned or under construction. It will be added to Annex 1, the list of operating facilities authorized to use U.S.-origin nuclear material, prior to startup. In regard to interim arrangements for the export, we note the January 22, 2003 EB views which state that "(w)hile the facility attachment for the reprocessing plant is not yet in effect, IAEA safeguards will be applied to the exported depleted uranium under ad hoc arrangements agreed between Japan and the IAEA," and that "(t)he great majority of the safeguards equipment for monitoring the solutions and solids in the facility has already been installed, and is now being tested." NRC (Bruce Moran, NSIR) has been a full participant in extensive U.S. Government discussions with Japan concerning IAEA safeguards at Rokkasho. Most recently, NRC participated in an interagency technical team visit to Japan, February 5-7, 2003, for further discussions on this topic. These discussions will ensure that the IAEA's safeguards measures being developed for Rokkasho will be satisfactory to the U.S. Government.

With regard to physical protection, shipments of depleted uranium are subject to the provisions of INFCIRC/225, Category III, as has been the case for the many shipments of low enriched uranium power reactor fuel which have been sent to Japan before and after the events of 9/11. An interagency physical protection evaluation trip to Japan took place in May 1997. The staff (NSIR) has determined, on the basis of information currently available, that physical protection measures to protect against proliferation of nuclear weapons are in conformance with the current version of INFCIRC/225 (i.e., Rev.4).

Other Information

The staff has reviewed relevant State Department telegrams and other Executive Branch analyses and information pertinent to the proposed export case. No national security or nuclear non-proliferation grounds have been found which could form the basis for Commission objections to issuing the proposed export license to TLI.

CONCLUSION:

The staff concurs with the Executive Branch judgment that the proposed export would not be inimical to the common defense and security of the United States. The Office of the Executive Director for Operations concurs. The Office of the General Counsel has no legal objections.

RECOMMENDATION:

That the Commission should authorize the issuance of the requested license to TLI for a period of two years from date of issue.

Janice Dunn Lee, Director
Office of International Programs

Attachments:

1. TLI Export License Application, dtd 11/20/02
2. Ltr, RJStratford to JDLee, EB Views, dtd 12/16/02
3. Ltrs., Green Action, Greenpeace, and Nuclear Control Institute
4. Ltr, JDLee to RJStratford, Seeking More Information from EB, dtd 12/24/02
5. Ltr, Congressman Markey, dtd 1/8/03
6. Ltr, RJStratford to JDLee, Provides Additional Views, dtd 1/22/03
7. Ltr from Greenpeace, dtd 1/29/03

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* See previous concurrence

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