June 19, 1980 SECY-80-298

COMMISSIONER ACTION

For: The Commissioners

From: James R. Shea, Director
Office of International Programs

Thru: Acting Executive Director for Operations

Subject: EXECUTIVE BRANCH RESPONSE ON EXPORT APPLICATION XCOM0382. COMPONENT TO REPROCESSING DIVISION OF BHABHA ATOMIC RESEARCH CENTER IN INDIA

Purpose: Commission review of proposed return of subject license application to Rockwell International without action.

Discussion: On March 14, 1980, Rockwell International applied for a license to export one specially-designed valve, valued at $1,600, to India for use in the Fuel Reprocessing Division of the Bhabha Atomic Research Center (Attachment 1).

The license application was forwarded to the Executive Branch for review on March 19, 1980. By memorandum dated May 16, 1980 (Attachment 2), the Executive Branch recommended the application be returned without action, and concluded it was not possible to determine that 1) the requirements of the Atomic Energy Act, as amended by P.L. 95-242, have been met and 2) the proposed export will not be inimical to the common defense and security of the United States. The Executive Branch's judgment was based on the fact that the Bhabha Atomic Research Center is not safeguarded and is not covered by the U.S.-India Agreement for Cooperation; and further, it is not the policy of the United States to provide assistance to foreign reprocessing programs. The staff agrees with these conclusions. Accordingly, attached is a proposed letter to Rockwell International returning the license application without action.

Recently staff recommended denial of a proposed export of SNM to Iran even though the Executive Branch views had recommended that the application be returned without action (See SECY 80-247). Although State had no objection to our denying the Iranian export, State strongly prefers that the application for the proposed export to India be returned without action because of the political differences involved. Staff sees no compelling reason to deny the application, rather than return it without action, since this is permitted by our regulations (Part 110) and the legal effect, with respect to availability of judicial review, is the same. (See also ELD's additional comments on this issue in the coordination paragraph).

Contact: [redacted]mby, IP (27984)

Recommendation: That the Commission approve the dispatch of the attached draft letter to Rockwell International returning without action their license application.

Coordination: ELD notes that the State Department use of the "return without action" solution is apparently based on Department of Commerce practice. However, the Export Administration Act specifically gives Commerce authority to return an export license application "without action" if the application is improperly completed or if additional information is required (50 USC App. §2409(b). Otherwise, the Secretary of Commerce is directed to formally issue or deny the license, (50 USC App. §2409(f). No such authority or direction to the NRC is found in the Atomic Energy Act of 1954, as amended. However, since the proposed course of action would have no legal effect as regards judicial review, and does not appear to be contrary to the Atomic Energy Act or the Administrative Procedure Act, ELD has no legal objection.

James R. Shea, Director JUN 17 1980
Office of International Programs

Attachments:
1. Appli. dtd. 03/14/80
2. Exec. Branch views dtd. 05/16/80
3. Proposed ltr. to Applicant

DISTRIBUTION:
Commissioners
Commission Staff Offices
Acting Exec. Dir. for Opers.
Secretariat

Commissioners' comments should be provided directly to the Office of the Secretary by c.o.b. Friday, June 27, 1980.

Commission Staff Office comments, if any, should be submitted to the Commissioners NLT June 25, 1980, with an information copy to the Office of the Secretary. If the paper is of such a nature that it requires additional time for analytical review and comment, the Commissioners and the Secretariat should be apprised of when comments may be expected.

FORM NRC-7
(5-79)
10 CFR 110

U.S. NUCLEAR REGULATORY COMMISSION

APPROVED BY GAO
B-180225(R0362)

APPLICATION FOR LICENSE TO EXPORT NUCLEAR MATERIAL AND EQUIPMENT *(See Instructions on Reverse)*

1. APPLICANT'S USE	a. DATE OF APPLICATION	b. APPLICANT'S REFERENCE	2. NRC USE	a. DOCKET NO.	b. LICENSE NO.
	3-14-80	2929FE		11001085	XCOM0382

3. APPLICANT'S NAME AND ADDRESS	RIS	4. SUPPLIER'S NAME AND ADDRESS *(Complete if applicant is not supplier of material)*	RIS
a. NAME Rockwell International-Flow Control Division		1980 MAR 17 AM	
b. STREET ADDRESS 400 North Lexington Avenue		a. NAME	
c. CITY / STATE / ZIP CODE Pittsburgh / PA / 15208		b. STREET ADDRESS CONTAINMENT AND	
d. TELEPHONE NUMBER *(Area Code – Number – Extension)* (412) 247-3315		c. CITY / STATE / ZIP CODE	

5. FIRST SHIPMENT SCHEDULED	6. FINAL SHIPMENT SCHEDULED	7. APPLICANT'S CONTRACTUAL DELIVERY DATE	8. PROPOSED LICENSE EXPIRATION DATE	9. U.S. DEPARTMENT OF ENERGY CONTRACT NO. *(If Known)*
April 1981	N/A	April 1981	April 1981	

10. ULTIMATE CONSIGNEE	RIS	11. ULTIMATE END USE *(Include plant or facility name)*
a. NAME Government of India-Dept. of Atomic Energy		For use in Research & Development Units, Fuel Reprocessing Division, Bhabha Atomic Research Center
b. STREET ADDRESS Palton Road		
c. CITY -- STATE -- COUNTRY Bombay 400-001 India		11a. EST. DATE OF FIRST USE

12. INTERMEDIATE CONSIGNEE	RIS	13. INTERMEDIATE END USE
a. NAME None		N/A
b. STREET ADDRESS		
c. CITY – STATE – COUNTRY		13a. EST. DATE OF FIRST USE

14. INTERMEDIATE CONSIGNEE	RIS	15. INTERMEDIATE END USE
a. NAME None		N/A
b. STREET ADDRESS		
c. CITY – STATE – COUNTRY		15a. EST. DATE OF FIRST USE

16. NRC USE	17. DESCRIPTION *(Include chemical and physical form of nuclear material; give dollar value of nuclear equipment and components)*	18. MAX. ELEMENT WEIGHT	19. MAX. WT. %	20. MAX ISOTOPE WT.	21. UNIT
	Rockwell-Edward globe stop valve; metal diaphragm sealed, ASME III, 1521 special class rated, body & bonnet of SA182, Grade F316 stainless steel, manually operated. Total dollar value $1,600.00 F.O.B. Sulphur Springs, Texas factory. 1" fig 15104 F2 *Copy to EDO and ACRS 3-18-80				1 pc.

22. COUNTRY OF ORIGIN.-	23. COUNTRY OF ORIGIN-SNM WHERE ENRICHED OR PRODUCED	24. COUNTRIES WHICH ATTACH SAFEGUARDS *(If Known)*
U.S.A.		

25. ADDITIONAL INFORMATION *(Use separate sheet if necessary)*

000 10
00050 P

Attached catalog V321 Rockwell Edward Forged Steel Valve for Nuclear Applications

26. The applicant certifies that this application is prepared in conformity with Title 10, Code of Federal Regulations, and that all information in this application is correct to the best of his/her knowledge.

27. AUTHORIZED OFFICIAL	a. SIGNATURE	b. TITLE
	Wm. J. Olsanik	Senior Coordinator

ATTACHMENT 1

XCom0382
11001085

DEPARTMENT OF STATE

Washington, D.C. 20520

RECEIVED
U.S. NRC

BUREAU OF OCEANS AND INTERNATIONAL 20 PM 3 3A
ENVIRONMENTAL AND SCIENTIFIC AFFAIRS

EXPORT/IMPORT
AND
INTERNAT'L SFGRDS

MAY 16 1980

Mr. James R. Shea
Director of International Programs
United States Nuclear Regulatory Commission
Room 6714 - MNBB
Bethesda, Maryland

Dear Mr. Shea:

This letter is in response to the letter from your office dated March 19, 1980, requesting Executive Branch views as to whether issuance of an export license in accordance with the application hereinafter described would be inimical to the common defense and security of the United States and whether the proposed export meets the applicable criteria of the Atomic Energy Act of 1954, as amended by the Nuclear Non-Proliferation Act of 1978 (P.L. 95-242):

> NRC No. XCOM0382 -- Application by Rockwell International for authorization to export to India one specially-designed valve for use in R & D Units, Fuel Reprocessing Division, Bhabha Atomic Research Center. Value of the proposed export is $1,600.

The Executive Branch has reviewed this application and concluded it is not possible to determine that the requirements of the Atomic Energy Act, as amended by P.L. 95-242 have been met and that the proposed export will not be inimical to the common defense and security of the United States. This judgment is based on the fact that the Bhabha Atomic Research Center is not safeguarded and is not covered by the U.S.-India Agreement for Cooperation. Moreover, the export is intended for use in the Reprocessing Division of the Bhabha Center and it is not U.S. policy to provide assistance to foreign reprocessing programs.

ATTACHMENT 2

*Copy to PDR and ACC 5-20-80

Shea, Petersen

On the basis of the foregoing, the Executive Branch recommends that the license be returned to the applicant without action.

Sincerely,

Louis V. Nosenzo
Deputy Assistant Secretary

DRAFT

Rockwell International
Flow Control Division
400 North Lexington Avenue
Pittsburgh, Pennsylvania 15208

Attention: William J. Ofsanik

Dear Mr. Ofsanik:

This letter is in reference to your March 14, 1980 application for a license to export one specially designed valve, valued at $1600, to India for use at the Bhabha Atomic Research Center, Fuel Reprocessing Division, (XCOM0382, your reference number 2929FE).

After consultation with the Executive Branch agencies, we have concluded that we are unable to grant a license for the export of this component as the proposed export does not meet the licensing criteria in Section 109b of the Atomic Energy Act of 1954, as amended, for the export of nuclear equipment. The Bhabha facility is not under IAEA safeguards. Further, the proposed export is intended for use in the Reprocessing Division of the Bhabha Center, and it is not U.S. policy to provide assistance to foreign reprocessing programs. We are, therefore, returning your export license application without action.

Sincerely,

James R. Shea, Director
Office of International Programs

DRAFT

Enclosure:
Appli. dtd. 3/14/80
(XCOM0382)

Attachment 3