Dear Mr. Secretary:

The Civil Nuclear Trade Advisory Committee (CINTAC), as an advisor to you on the promotion of nuclear energy exports, wishes to bring to your attention a recent court decision that makes it more vital for the U.S. Government (U.S.G.) to actively promote adherence by more countries to the Convention on Supplementary Compensation for Nuclear Damage (CSC).

On June 22, 2017, the U.S. Court of Appeals for the Ninth Circuit affirmed the San Diego District Court’s denial of the motion of Tokyo Electric Power Company (TEPCO) to dismiss the Cooper v. TEPCO et al. lawsuit brought in 2012 by U.S. sailors participating in relief efforts following the Fukushima Nuclear Power Plant accident. The appellate decision appears to have been largely influenced by the brief filed by the U.S.G. in December 2016. The U.S.G.’s position was signaled by the title of its response to the Ninth Circuit’s request for the U.S.G.’s views after the Government of Japan filed an amicus brief expressing Japan’s interest in centralizing claims in Japan: "Brief for the United States in Support of Neither Party and in Support of Affirmance of the Order Below.”

The Court of Appeals held that the provision in Article XIII of the CSC for exclusive jurisdiction in the courts of the accident country did not strip U.S. courts of jurisdiction over claims arising out of nuclear incidents that occurred prior to the CSC’s entry into force on April 15, 2015. The Ninth Circuit further held the District Court did not abuse its discretion when it did not dismiss the lawsuit on grounds of forum non conveniens or international comity, even though it recognized that Japanese courts would provide an adequate alternative forum and that approximately 2.4 million Fukushima claims then had been resolved in Japan with total payments equivalent to more than US$58 billion. The Cooper case has been sent back to the U.S. District Court in San Diego for further proceedings, which could include discovery and a trial with TEPCO and the four supplier defendants (General Electric, Hitachi, Toshiba and EBASCO).

The Ninth Circuit’s opinion and the U.S.G.’s December brief against the positions of TEPCO and the Government of Japan highlight the risk for U.S. suppliers to assume that lawsuits brought in U.S. courts following a foreign nuclear accident generally will be dismissed where the foreign country is not in treaty relations with the United States under the CSC or on the basis of forum non conveniens or international comity. If the CSC had been in force between the United
States and Japan at the time of the 2011 Fukushima accident, U.S. courts would not have jurisdiction.

CINTAC urges you to work with your colleagues in the Administration to ensure that joining the CSC (with consistent legislation) is a top priority in discussions with other countries, especially including China, Mexico and South Korea.

We thank you for your support of CINTAC, and we look forward to working with you and your team on this subject and other issues of mutual concern.

Sincerely and on behalf of the members of the CINTAC,

[Signatures]

Gary Wolski, Chairman

Chris Colbert, Vice Chairman

Cc: U.S. Secretary of State
    U.S. Secretary of Energy
    National Security Advisor
    Chairman, U.S. Nuclear Regulatory Commission
    Director, National Economic Council
CINTAC Members
Gary Wolski, CINTAC Chair, & Vice President, Nuclear Division, Curtiss-Wright
Christopher Colbert, CINTAC Vice Chair, & Chief Strategy Officer, NuScale Power
Larry Sanders, President, Accelerant Technologies
H.M Hashemian, President and CEO, Analysis and Measurement Services Corporation
Craig Piercy, ANS Washington Representative, American Nuclear Society
John Bendo, Nuclear Energy Business Manager, American Society of Mechanical Engineers
Colleen Deegan, Vice President, Bechtel Corporation
Ken Camplin, Vice President and Chief Business Development Officer, BWX Technologies
Michael Whitehurst, Director, Business Development, Centrus Energy
Omer Brown, II, Attorney-at-Law and Legal Counsel to Contractors International Group on Nuclear Liability
Russell Neely, Chief Operating Officer, Edlow International Company
Colin Austin, Vice President of International Business, EnergySolutions
Robert Kalantari, President and CEO, Engineering, Planning and Management
Donald Hoffman, President & CEO, Excel Services Corporation
Ralph Hunter, Vice President, Exelon Generation Company, LLC and Chief Operating Officer, Exelon Nuclear Partners, LLC, Exelon Corporation
Woody Lawman, Director of Sales, Navy and Nuclear Products, Flowserve Limitorque
David Jonas, Partner, Fluet, Huber + Hoang
Brad Porlier, Vice President, Sales and Nuclear Power, Fluor Enterprises
Jarret Adams, CEO, Full On Communications
David Sledzik, Senior Vice President, Sales & Commercial Operations, Nuclear Plant Projects, GE Hitachi Nuclear Energy
Paul Murphy, Managing Director, Murphy Energy & Infrastructure Consulting
Bill Woodward, Senior Vice President, International Projects, Holtec International
Vijay Sazawal, Global Civil Nuclear Trade Consultant, International Atomic Energy Consulting
Seth Grae, President & CEO, Lightbridge Corporation
Stephen Burdick, Partner, Morgan, Lewis & Bockius
Dan Lipman, Vice President, Suppliers and International Programs, Nuclear Energy Institute
Lee Peddicord, Director, Nuclear Power Institute, Texas A&M University
Neil Numark, President, NUMARK Associates
Scott Singer, Vice President, Chief Security and Information Officer, PAR Systems
Jeffrey Merrifield, Partner and Energy Section Leader, Pillsbury Winthrop Shaw Pittman
Mimi Limbach, Managing Partner and President, Potomac Communications Group
Eddie Guerra, Director of Structural Engineering, Rizzo Associates
Eric Rasmussen, Director of Engineering and Asia Sales, RSCC Wire and Cable
Kevan Weaver, Director, Technology Integration, TerraPower, LLC
David Blee, Executive Director, U.S. Nuclear Infrastructure Council
Thomas Dolan, Adjunct Professor, University of Illinois at Urbana-Champaign
Graham Cable, Vice President, Global Market Development, New Plants & Major Projects, Westinghouse Electric Company
Tyson Smith, Partner, Winston & Strawn LLP
Jeffrey Harper, Vice President, Strategy and Business Development, X Energy