

# CINTAC

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## Civil Nuclear Trade Advisory Committee

July 13, 2017

The Honorable Wilbur L. Ross  
Secretary  
U.S. Department of Commerce  
1401 Constitution Ave., NW  
Washington, DC 20230

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,



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Gary Wolski, Chairman



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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  
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