

C. Summary of Violations

The charging letter filed by BIS included a total of four charges. Specifically, the charging letter alleged that from on or about April 1, 2000, through on or about August 31, 2001, Rao conspired with others, known and unknown, to export from the United States to the Indira Gandhi Centre for Atomic Research ("IGCAR") a thermal mechanical fatigue test system ("fatigue test system") and a universal testing machine, both items subject to the Regulations, without a BIS export license as required by Section 744.11 of the Regulations. *See* Gov't Ex. 3. At all relevant times, IGCAR was an organization listed on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations ("Entity List").³ In furtherance of the conspiracy, false documentation was submitted to the United States exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States.

The charging letter further alleged that on or about June 13, 2000, in connection with the export of the fatigue test system and attempted export of the universal testing machine, Rao took actions to evade the Regulations. Specifically, Rao, with others, known and unknown, developed and employed a scheme by which the company with which Rao was affiliated, Technology Options (India) Pvt. Ltd. ("Technology Options"), would receive the export of the fatigue test system from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulation.

The charging letter also alleged that on or about August 16, 2001, through on or about April 8, 2002, in connection with the export of the fatigue test system references above, Rao made false statements to the U.S. Government regarding its knowledge of an involvement in the export. Specifically, Rao made misleading and false statements to U.S. Foreign Commercial Service officers regarding the end user of the fatigue test system.

Pursuant to the default procedures set forth in Section 766.7 of the Regulations, I find the facts to be as alleged in the charging letter, and hereby determine that those facts establish that Rao committed one violation of Section 764.2(d), one violation of Section 764(g), and two violations of 764.2(h) of the regulations.

³ The persons on the Entity List are end-users who have been determined to present an unacceptable risk of diversion to the development of weapons of mass destruction or the missiles used to delivery such weapons.

Section 764.3 of the Regulations establishes the sanctions that BIS may seek for the violations charged in this proceeding. The applicable sanctions are a civil monetary penalty, suspension from practice before the Department of Commerce, and a denial of export privileges under the Regulations. *See* 15 CFR Part 764.3 (2004).

Because Rao violated the Regulations by conspiring and engaging in transactions to evade the Regulations, BIS requests that I recommend to the Under Secretary of Commerce for Industry and Security⁴ that Rao's export privileges be denied for fifteen (15) years. BIS has suggested this sanction because Rao has demonstrated a severe disregard for U.S. export control laws. Further, BIS believes that imposition of a civil penalty in this case may be ineffective, given the difficulty of collecting payment against a party outside of the United States. In light of these circumstances, BIS believes that the denial of Rao's export privileges for fifteen (15) years is an appropriate sanction.

Given the foregoing, I concur with BIS and recommend that the Under Secretary enter an Order denying Rao's export privileges for a period of fifteen (15) years.

The terms of the denial of export privileges against Rao should be consistent with the standard language used by BIS in such order. The language is:

[Portions of this Recommended Decision have been REDACTED]

Accordingly, I am referring this Recommended Decision and Order to the Under Secretary for review and final action for the agency, without further notice to the Respondent, as provided in Section 766.7 of the Regulations.

Within 30 days after receipt of this Recommended Decision and Order, the Under Secretary shall issue a written order affirming, modifying, or vacating the Recommended Decision and Order. *See* 15 CFR 766.22(c).

Done and dated this 27th of October at Baltimore, MD.

Joseph N. Ingolia,
Chief Administrative Law Judge.

Certificate of Service

I hereby certify that I served the Recommended Decision and Order by Federal Express to the following person:

⁴ Pursuant to Section 13(c)(1) of the Act and Section 766.17(b)(2) of the Regulations, in export control enforcement cases, the Administrative Law Judge makes recommended findings of fact and conclusions of law that the Under Secretary must affirm, modify or vacate. The Under Secretary's actions is the final decision for the agency.

Shivram Rao, Technology Options (India) Pvt. Ltd., Pilot #168, Behind Maria Mansion, CST Road, Kalina, Mumbai 400 098, India.

Done and dated this 28th day of October 2004, at Baltimore, Maryland.

Alyssa L. Paladino,

Law Clerk, ALJ Docketing Center, U.S. Coast Guard.

[FR Doc. 04-27059 Filed 12-8-04; 8:45 am]

BILLING CODE 3510-33-M

DEPARTMENT OF COMMERCE

International Trade Administration

U.S. Microelectronics Trade Mission

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Notice to U.S. Microelectronics Trade Mission to Shanghai, China, March 14-17, 2005.

SUMMARY: The United States Department of Commerce, International Trade Administration, U.S. Commercial Service, Office of Global Trade Programs is organizing a microelectronics trade mission to China, March 14-17, 2005. This trade mission will take place during the renowned annual Shanghai exhibition Electronica and Productronica China 2005—co-located with SEMICON China. Participating firms will not only have pre-arranged one-on-one meetings scheduled for them by the U.S. Commercial Service in Shanghai, but will also have the opportunity to make additional business contacts at the exhibition. A similar microelectronics mission took place in March 2004.

FOR FURTHER INFORMATION CONTACT: Office of Global Trade Programs; Room 2012; Department of Commerce; Washington, DC 20230; Tel: (202) 482-4457; Fax: (202) 482-0178.

SUPPLEMENTARY INFORMATION: U.S. Microelectronics Trade Mission, Shanghai, China, March 14-17, 2005.

Mission Statement

I. Description Of The Mission

The United States Department of Commerce, International Trade Administration, U.S. Commercial Service, Office of Global Trade Programs is organizing a microelectronics trade mission to China, March 14-17, 2005. This trade mission will take place during the renowned annual Shanghai exhibition Electronica and Productronica China 2005—co-located with SEMICON China. Participating firms will not only have pre-arranged one-on-one meetings scheduled for

them by the U.S. Commercial Service in Shanghai, but will also have the opportunity to make additional business contacts at the exhibition. A similar microelectronics mission took place in March 2004.

Trade mission participants will include representatives from U.S. firms specializing in microelectronics design, manufacturing, and distribution, including semiconductor devices, integrated circuit design services, semiconductor manufacturing equipment, clean room equipment, and electronics packaging/interconnects.

II. Commercial Setting for the Mission

Microelectronics design, manufacturing, and distribution make the foundation for the rapid growth of e-commerce, web-enabled technologies, and wireless technologies that will be the major business prospects in the 21st century in Asia. Representing one of the largest and fastest growing information technology (IT) markets in the world, China's electronics sector and IT industry are expected to grow at an annual rate of 25 percent. The Chinese Government is strongly committed to the development of a domestic microelectronics industry to enable the adoption of IT nationwide and to improve economic productivity. China's tenth Five-Year Plan (2001–2005) addresses the development of the country's information industry (including microelectronics). These development trends indicate that China is emerging as a new and strong production base for electronic and IT products in Asia. With this rapid growth in the IT sector, China is forced to build its strong microelectronics industry primarily on imports and investment from foreign suppliers. Shanghai, Beijing, and Hong Kong are among the cities that lead China's IT industry growth.

III. Goals for the Mission

The goal is to assist U.S. microelectronics industry's small- to medium-sized enterprises (SMEs) in attaining their export business objectives in the Chinese market through participation in this trade mission, which will be centered around a major exhibition. Mission participants will gain first-hand market exposure; meet with government decision makers and potential agents, distributors, and business partners from the private sector; and obtain information that will help them position themselves to take advantage of the strong business opportunities in China's microelectronics market.

IV. Scenario for the Mission

The mission will focus primarily on Shanghai. The schedule includes site visits, and briefings by the U.S. and Chinese governments. The purpose of the site visits will be to provide a broad vision of the Chinese electronics/semiconductor industry, which will help the participants to better understand the Chinese market. China government briefings will bring the participants into the government's presence and acquaint them with trade opportunities available to them from the Chinese government's perspective. A SEMICON forum, which all of the participants will be invited to attend, will also be on the agenda. The dates of the trade exhibition are March 15–17. The U.S. Commercial Service in Shanghai will set aside time for pre-arranged individual business meetings for the mission participants. In addition, the participants will have the opportunity to conduct business with exhibitors at the show, as well as display company literature in a booth at the exhibition. No other types of exhibition items may be displayed. A hospitality reception for the participants will be held the evening of March 17.

Timetable

Saturday, March 12—Arrive Shanghai (optional); activities open
 Sunday, March 13—Arrive Shanghai (optional); activities open
 Monday, March 14—Breakfast briefing for participants with Commercial Service Shanghai staff; High-tech industry park meetings and/or site tours
 Tuesday, March 15—SEMI association market briefing in morning; Attend exhibition in afternoon
 Wednesday, March 16—Meeting with Shanghai government authorities and/or site visits in morning; Attend exhibition in afternoon
 Thursday, March 17—Individual one-on-one meetings; Hospitality reception in evening
 Friday, March 18—Participants may wish to have follow-up business visits/appointments, or depart for the U.S.
 Saturday, March 19—Participants will depart for the United States

V. Criteria for Participant Selection

- Relevance of the company's business line to mission's scope and goals;
- Potential for business in the China market;
- Timeliness of the company's signed and completed application and participation agreement, and payment of

the mission participation fee of \$2,250 for the first company representative, and \$500 each for additional representatives;

- Provision of adequate information on the company's products and/or services and communication of the company's primary objectives to facilitate appropriate matching with potential business partners;
- Certification that the company meets Departmental guidelines for participation, including certification that the company's products and/or services are manufactured or produced in the United States or if manufactured/produced outside the of the United States, the product/services must be marketed under the name of the U.S. firm and have U.S. content of at least fifty-one percent of the value of the finished good or service.

A minimum of eight and a maximum of twenty participating companies will be recruited in an open and public manner, including publication in the **Federal Register**; posting on the Internet; press releases to general and trade media; direct mail and broadcast fax; and notices by industry trade associations and other multiplier groups, and at industry meetings, symposiums, conferences, and trade shows.

Any partisan political activities (including political contributions) of an applicant are entirely irrelevant to the selection process. The \$2,250 trade mission participation fee does not include the cost of travel, lodging and meals. Recruitment will begin immediately and will close on January 21, 2005.

Contact

Ms. Marlene Ruffin, Global Trade Programs, U.S. & Foreign Commercial Service, Room 2107, U.S. Department of Commerce, Washington, DC 20230, Phone: (202) 482-0570; Fax: (202) 482-0115; e-mail: Marlene.Ruffin@mail.doc.gov.

Dated: December 2, 2004.

Nancy Hesser,

Industry Sector Manager, Office of Trade Event Programs.

[FR Doc. E4-3588 Filed 12-8-04; 8:45 am]

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