

FEB - 2 2004



UNITED STATES DEPARTMENT OF COMMERCE
Bureau of Industry and Security
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

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

Dear Mr. Rao:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that you, Shivram Rao, Managing Director of Technology Options, in your individual capacity (referred to as "Rao" in the charges below) committed four violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that you committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) – Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization)

From on or about April 1, 2000 through on or about August 31, 2001, Rao, acting in his capacity as Managing Director of Technology Options (India) Pvt. Ltd. ("Technology Options"),

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The Regulations define the violations that BIS has charged and establish the procedures that apply to this matter.

² 50 U.S.C. app. 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



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. 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”). In furtherance of the conspiracy, false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States. By conspiring to bring about an act in violation of the Regulations, Rao committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about June 13, 2000, in connection with the export of the fatigue test system to IGCAR, Rao took actions to evade the Regulations. Specifically, Rao, with others, known and unknown, developed and employed a scheme by which 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 Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a BIS license was required for the export. In engaging in this transaction, Rao committed one violation of Section 764.2(h) of the Regulations.

Charge 3 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about December 21, 2000, in connection with the attempted export of a universal testing machine to IGCAR, Rao took actions to evade the Regulations. Specifically, Rao, with others, known and unknown, developed and employed a scheme by which Technology Options would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a license was required for the export. In engaging in this transaction, Rao committed one violation of Section 764.2(h) of the Regulations.

Charge 4 (15 C.F.R. §764.2(g) - False Statements in the Course of an Investigation Subject to the Regulations)

On or about August 16, 2001 through on or about April 8, 2002, in connection with the export of the fatigue test system referenced above, Rao made false statements to the U.S. Government regarding his knowledge of and involvement in the export. Specifically, Rao made inconsistent

Mr. Shivram Rao
Charging Letter
Page 3

and false statements to U.S. Foreign Commercial Service Officers regarding the end user of the fatigue test system. In doing so, Rao committed one violation of Section 764.2(g) of the Regulations.

Accordingly, you are hereby notified that an administrative proceeding is instituted against you pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If you fail to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If you default, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to you. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

You are further notified that you are entitled to an agency hearing on the record if you file a written demand for one with your answer. (Regulations, Section 766.6). You are also entitled to be represented by counsel or other authorized representative who has power of attorney to represent you. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should you have a proposal to settle this case, you or your representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, your answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

³ See 15 C.F.R. §6.4(a)(2).

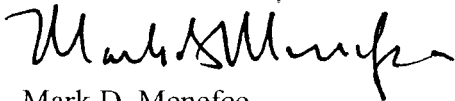
Mr. Shivram Rao
Charging Letter
Page 4

In addition, a copy of your answer must be served on BIS at the following address:

Office of Chief Counsel for Industry and Security
Attention: Glenn Kaminsky
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Glenn Kaminsky is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301, by facsimile at (202) 482-0085, or by email at gkaminsk@bis.doc.gov.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

FEB - 2 2004



UNITED STATES DEPARTMENT OF COMMERCE
Under Secretary for Industry and Security
Washington, D.C. 20230

REGISTERED MAIL - RETURN RECEIPT REQUESTED

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

ATTENTION: *President or Chief Executive Officer*

Dear Sir or Madam:

The Bureau of Industry and Security, United States Department of Commerce ("BIS"), has reason to believe that Technology Options (India) Pvt. Ltd. ("Technology Options") committed four violations of the Export Administration Regulations (the "Regulations"),¹ which are issued under the authority of the Export Administration Act of 1979 (the "Act").² Specifically, BIS charges that Technology Options committed the following violations:

Charge 1 (15 C.F.R. §764.2(d) – Conspiracy to Export Items Subject to the Regulations to a Person Listed on the Entity List Without BIS Authorization)

From on or about April 1, 2000 through on or about August 31, 2001, Technology Options conspired with others, known and unknown, to export from the United States to the Indira

¹ The Regulations are currently codified in the Code of Federal Regulations at 15 C.F.R. Parts 730-774 (2003). The charged violations occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The Regulations define the violations that BIS has charged and establish the procedures that apply to this matter.

² 50 U.S.C. app. 2401- 2420 (2000). From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) ("IEEPA"). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp. p. 783 (2002)), as extended by the Notice of August 7, 2003 (68 *Fed. Reg.* 47833, August 11, 2003)), has continued the Regulations in effect under IEEPA. The Act and Regulations are available on the Government Printing Office website at: <http://w3.access.gpo.gov/bis/>.



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. 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”). In furtherance of the conspiracy, false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the items to be exported from the United States. By conspiring to bring about an act in violation of the Regulations, Technology Options committed one violation of Section 764.2(d) of the Regulations.

Charge 2 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about June 13, 2000, in connection with the export of the fatigue test system to IGCAR, Technology Options took actions to evade the Regulations. Specifically, Technology Options, with others, known and unknown, developed and employed a scheme by which 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 Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a BIS license was required for the export. In engaging in this transaction, Technology Options committed one violation of Section 764.2(h) of the Regulations.

Charge 3 (15 C.F.R. §764.2(h) - Engaging in a Transaction with Intent to Evade the Regulations)

On or about December 21, 2000, in connection with the attempted export of a universal testing machine to IGCAR, Technology Options took actions to evade the Regulations. Specifically, Technology Options, with others, known and unknown, developed and employed a scheme by which Technology Options would receive the export of the universal testing machine from the United States without a BIS license and then divert it to the true ultimate consignee, IGCAR, in violation of the Regulations. At all relevant times, IGCAR was an organization listed on the Entity List and a license was required for the export. In engaging in this transaction, Technology Options committed one violation of Section 764.2(h) of the Regulations.

Charge 4 (15 C.F.R. §764.2(g) - False Statements in the Course of an Investigation Subject to the Regulations)

On or about August 16, 2001 through on or about April 8, 2002, in connection with the export of the fatigue test system referenced above, Technology Options made false statements to the U.S. Government regarding its knowledge of and involvement in the export. Specifically, Technology

Technology Options
Charging Letter
Page 3

Options made inconsistent and false statements to U.S. Foreign Commercial Service Officers regarding the end user of the fatigue test system. In doing so, Technology Options committed one violation of Section 764.2(g) of the Regulations.

Accordingly, Technology Options is hereby notified that an administrative proceeding is instituted against it pursuant to Section 13(c) of the Act and Part 766 of the Regulations for the purpose of obtaining an order imposing administrative sanctions, including any or all of the following:

The maximum civil penalty allowed by law of \$11,000 per violation;³

Denial of export privileges; and/or

Exclusion from practice before BIS.

If Technology Options fails to answer the charges contained in this letter within 30 days after being served with notice of issuance of this letter, that failure will be treated as a default. (Regulations, Sections 766.6 and 766.7). If Technology Options defaults, the Administrative Law Judge may find the charges alleged in this letter are true without hearing or further notice to it. The Under Secretary of Commerce for Industry and Security may then impose up to the maximum penalty on each of the charges in this letter.

Technology Options is further notified that it is entitled to an agency hearing on the record if it files a written demand for one with its answer. (Regulations, Section 766.6). Technology Options is also entitled to be represented by counsel or other authorized representative who has power of attorney to represent it. (Regulations, Sections 766.3(a) and 766.4).

The Regulations provide for settlement without a hearing. (Regulations, Section 766.18). Should Technology Options have a proposal to settle this case, it or its representative should transmit it to me through the attorney representing BIS named below.

The U.S. Coast Guard is providing administrative law judge services in connection with the matters set forth in this letter. Accordingly, Technology Options' answer must be filed in accordance with the instructions in Section 766.5(a) of the Regulations with:

U.S. Coast Guard ALJ Docketing Center
40 S. Gay Street
Baltimore, Maryland 21202-4022

³ See 15 C.F.R. §6.4(a)(2).

Technology Options
Charging Letter
Page 4

In addition, a copy of Technology Options' answer must be served on BIS at the following address:

Office of Chief Counsel for Industry and Security
Attention: Glenn Kaminsky
Room H-3839
United States Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, D.C. 20230

Glenn Kaminsky is the attorney representing BIS in this case; any communications that you may wish to have concerning this matter should occur through him. He may be contacted by telephone at (202) 482-5301, by facsimile at (202) 482-0085, or by email at gkaminsk@bis.doc.gov.

Sincerely,



Mark D. Menefee
Director
Office of Export Enforcement

UNITED STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:)
) Docket No. 04-BIS-02
Technology Options (India) Pvt. Ltd.)
Pilot #168, Behind Maria Mansion)
CST Road)
Kalina)
Mumbai 400 098)
India)
)
)
)
Respondent.)

RECOMMENDED DECISION AND ORDER
ON MOTION FOR DEFAULT ORDER

On February 2, 2004, the Bureau of Industry and Security, United States Department of Commerce (BIS), issued a charging letter initiating this administrative enforcement proceeding against Technology Options (India) Pvt. Ltd. (“Technology Options”). The charging letter alleged that Technology Options committed one violation of Section 764.2(d), one violation of Section 764.2(g), and two violations of Section 764.2(h) of the Export Administration Regulations (currently codified at 15 C.F.R. Parts 730-774 (2004)) (the “Regulations”)¹, issued under the Export Administration Act of 1979, as amended (50 USC app. §§ 2401-2420 (2000)) (the “Act”).² In accordance with Section 766.7 of the Regulations, BIS moved for the issuance

¹ The violations charged occurred in 2000 and 2001. The Regulations governing the violations at issue are found in the 2000 and 2001 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2001)). The 2004 Regulations establish the procedures that apply to this matter.

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701 - 1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized and

of an Order of Default against Technology Options, because Technology Options has not answered or otherwise responded to the charging letter as required by the Regulations.

A. Legal Basis for Issuing an Order of Default

Section 766.7 of the Regulations state that BIS may file a Motion for an Order of Default if a respondent fails to file a timely Answer to a charging letter. That section, entitled “Default,” provides in pertinent part:

Failure of the respondent to file an answer within the time provided constitutes a waiver of the respondent's right to appear and contest the allegations in the charging letter. In such event, the administrative law judge, on BIS's motion and without further notice to the respondent, shall find the facts to be as alleged in the charging letter and render an initial or recommended decision containing findings of fact and appropriate conclusions of law and issue or recommend an order imposing appropriate sanctions.

15 C.F.R. Part 766.7 (2004).

Pursuant to Section 766.7 of the Regulations, a respondent must file an Answer to the charging letter “within 30 days after being served with notice of the issuance of the charging letter” initiating the proceeding.

it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 6, 2004 (69 Fed. Reg. 48763, August 10, 2004), has continued the Regulations in effect under IEEPA.

B. Service of the Charging Letter

Section 766.3(b)(1) of the Regulations provides that notice of issuance of a charging letter shall be served on a respondent by mailing a copy via registered or certified mail addressed to the respondent at the respondent's last known address. In accordance with that section, as previously mentioned, on February 2, 2004, BIS sent a notice of issuance of the charging letter by registered mail to Respondent Technology Options, at its last known address: Technology Options (India) Pvt. Ltd., Plot #168, Behind Maria Mansion, CST Road, Kalina, Mumbai 400 098, India. BIS submitted evidence establishing that on February 16, 2004, Technology Options received the notice of issuance of a charging letter. These actions constitute service under the Regulations.

Section 766.6(a) of the Regulations provides, in pertinent part, that “[t]he respondent must answer the charging letter within 30 days after being served with notice of issuance of the charging letter[.]” Since service was effectuated on February 16, 2004, Technology Options’ Answer to the charging letter was due no later than March 16, 2004. Technology Options did not file an Answer to the Charging letter nor did Technology Options request an extension of time to answer the Charging letter under Section 766.16(b)(2). Accordingly, because Technology Options failed to answer or otherwise respond to the charging letter within thirty days from the date he received the notice of issuance of the charging letter, as required by Section 766.6 of the Regulations, Technology Options is in default.

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, Technology Options 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, Technology Options took actions to evade the Regulations. Specifically, Technology Options, with others, known and unknown, developed and employed a scheme by which the company with which Technology Options 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,

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.

Technology Options made false statements to the U.S. Government regarding its knowledge of and involvement in the export. Specifically, Technology Options 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 Technology Options committed one violations of Section 764.2(d), one violation of Section 764(g), and two violations of 764.2(h) of the Regulations.

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 C.F.R. Part 764.3 (2004).

Because Technology Options 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 Technology Options' export privileges be denied for fifteen (15) years. BIS has suggested this sanction because Technology Options 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 Technology Options' export privileges for fifteen (15) years is an appropriate sanction.

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.

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

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

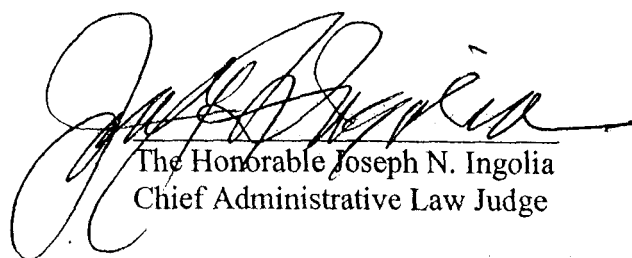
[Portions of pages 6-8 REDACTED]

[Portions of pages 6-8 REDACTED]

[Portions of pages 6-8 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 C.F.R. § 766.22(c).



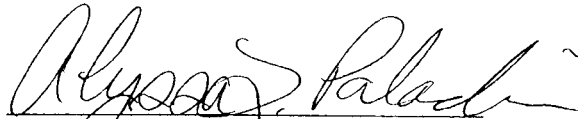
The Honorable Joseph N. Ingolia
Chief Administrative Law Judge

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

CERTIFICATE OF SERVICE

I hereby certify that I served the RECOMMENDED DECISION AND ORDER
by Federal Express to the following person:

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



Alyssa L. Paladino
Law Clerk
ALJ Docketing Center
United States Coast Guard
40 S. Gay Street, Room 412
Baltimore, MD 21202
Phone: (410) 962-7434
Facsimile: (410) 962-1742

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

UNITED STATES DEPARTMENT OF COMMERCE
UNDER SECRETARY FOR INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matters of:)	
)	
Technology Options (India) Pvt. Ltd.)	Docket No. 04-BIS-02
Pilot #168, Behind Maria Mansion)	
CST Road)	
Kalina)	
Mumbai 400 098 India)	
)	
and)	
)	
Shivram Rao)	Docket No. 04-BIS-03
of Technology Options (India) Pvt. Ltd.)	
Pilot #168, Behind Maria Mansion)	
CST Road)	
Kalina)	
Mumbai 400 098 India,)	
)	
Respondents)	

DECISION AND ORDER

On February 2, 2004, the Bureau of Industry and Security (“BIS”) issued separate charging letters against the respondents, Technology Options (India) Pvt. Ltd. (Technology Options) and Shivram Rao (Rao), that alleged four violations each of the Export Administration Regulations (Regulations).¹ The charging letters alleged that the respondents each committed one violation of Section 764.2(d), two violations of Section 764.2(h), and one

¹ The violations charged occurred between 2000 and 2002. The Regulations governing the violations at issue are found in the 2000, 2001, and 2002 versions of the Code of Federal Regulations (15 C.F.R. Parts 730-774 (2000-2002)). The 2004 Regulations establish the procedures that apply to this matter.

violation of Section 764.2(g) of the Regulations, issued under the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420 (2000)) (“Act”).²

Specifically, the charging letters alleged that, on or about April 1, 2000 through on or about August 31, 2001, Technology Options and Shivram Rao, acting in his capacity as Managing Director of Technology Options, 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 and a universal testing machine, both items subject to the Regulations, without the required export licenses from BIS as provided in Section 744.1(c) of the Regulations. At all relevant times, IGCAR was an organization on the Entity List set forth at Supplement No. 4 to Part 744 of the Regulations. In furtherance of the conspiracy, BIS alleged that false documentation was submitted to the U.S. exporter that provided that a party other than IGCAR was the ultimate consignee for the export from the United States of the items at issue. By conspiring to bring about an act in violation of the Regulations, BIS charged that the respondents committed one violation each of Section 764.2(d) of the Regulations.

The charging letters further alleged that, in connection with the export of the fatigue test system and universal testing machine to IGCAR, on or about June 13, 2000 and on or about December 21, 2000, the respondents took actions to evade the Regulations, including developing

² From August 21, 1994 through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, the last of which was August 3, 2000 (3 C.F.R., 2000 Comp. 397 (2001)), continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (2000)) (IEEPA). On November 13, 2000, the Act was reauthorized and it remained in effect through August 20, 2001. Executive Order 13222 of August 17, 2001 (3 C.F.R., 2001 Comp., p. 783 (2002)), which has been extended by successive Presidential Notices, the most recent being that of August 7, 2003 (68 FR 47833, August 11, 2003), continues the Regulations in effect under IEEPA.

and employing a scheme by which Technology Options would receive the export of the items at issue from the United States without a BIS export license and then divert them to the true ultimate consignee, IGCAR, in violation of the Regulations. BIS alleged that, by engaging in such transactions, the respondents committed two violations each of Section 764.2(h) of the Regulations.

Finally, the charging letters 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 referenced above, the respondents made false statements to the U.S. Government regarding their knowledge of and involvement in the export. Specifically, BIS alleged that the respondents made inconsistent and false statements to U.S. Foreign Commercial Service Officers regarding the end user of the fatigue test equipment. In doing so, BIS charged that the respondents committed one violation each of Section 764.2(g) of the Regulations.

On the basis of the factual record before the Administrative Law Judge (ALJ), he found that the respondents failed to file an answer to BIS's charging letter within the time required by the Regulations. Indeed, service of the notice of issuance of a charging letter on the respondents was properly effected on February 16, 2004, a response to the charging letter was due no later than March 17, 2004, and the record does not include any such response from the respondents. The ALJ therefore held Technology Options and Rao in default.

Under the default procedures set forth in Section 766.7(a) of the Regulations, “[f]ailure of the respondent to file an answer within the time provided constitutes a waiver of the respondent’s right to appear,” and “on BIS’s motion and without further notice to the respondent, [the ALJ] shall find the facts to be as alleged in the charging letter.” Accordingly, on October 28, 2004, the ALJ issued a Recommended Decision and Order, in which he found that the facts alleged in the

charging letter constitute the findings of fact in this matter and, thereby, establish that the respondents committed one violation of Section 764.2(d), two violations of Section 764.2(h), and one violation of Section 764.2(g) of the Regulations. The ALJ also recommended a penalty of a 15-year denial of the respondents' export privileges.

Pursuant to Section 766.22 of the Regulations, the ALJ's Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that the record supports the ALJ's findings of fact and conclusions of law regarding each of the above-referenced charges. I also find that the penalty recommended by the ALJ is appropriate given the nature and scope of the violations, the disregard of the Regulations demonstrated by the respondents, and the lack of any mitigating factors.

Specifically, the respondents engaged in transactions to evade the Regulations and conspired to export items useful in the development or production of nuclear weapons to an organization on the Entity List. BIS charged that Technology Options acted as a front company for the purpose of diverting U.S.-origin items to IGCAR without the necessary authorization. BIS also charged that the respondents did not cooperate with the investigation or participate in this proceeding. Indeed, the respondents made false statements to U.S. officials during the course of the investigation about the true location of the items that had been exported to IGCAR. There are no mitigating factors on the record that would justify a reduction in the denial order. Further, the imposition of a civil penalty in this case may not be effective, given the difficulty of collecting payment against a party outside the United States. In light of these circumstances, I affirm the findings of fact and conclusions of law of the ALJ's Recommended Decision and Order.

IT IS HEREBY ORDERED,

FIRST, that, for a period of 10 years from the date on which this Order takes effect, Technology Options (India) Pvt. Ltd. (Technology Options) and Shivram Rao, of Technology Options (both located at Pilot #168, Behind Maria Mansion, CST Road, Kalina, Mumbai 400 098, India), and all of their successors or assigns, and, when acting for or on behalf of Technology Options, its officers, representatives, agents, and employees (individually referred to as “a Denied Person”), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as “item”) exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations, including, but not limited to:

- A. Applying for, obtaining, or using any license, License Exception, or export control document;
- B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in any other activity subject to the Regulations; or
- C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the Regulations, or in connection with any other activity subject to the Regulations.

SECOND, that no person may, directly or indirectly, do any of the following:

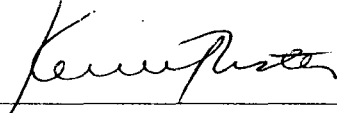
- A. Export or reexport to or on behalf of a Denied Person any item subject to the Regulations;
- B. Take any action that facilitates the acquisition or attempted acquisition by a Denied Person of the ownership, possession, or control of any item subject to the Regulations that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby a Denied Person acquires or attempts to acquire such ownership, possession, or control;
- C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from a Denied Person of any item subject to the Regulations that has been exported from the United States;
- D. Obtain from a Denied Person in the United States any item subject to the Regulations with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or
- E. Engage in any transaction to service any item subject to the Regulations that has been or will be exported from the United States and that is owned, possessed, or controlled by a Denied Person, or service any item, of whatever origin, that is owned, possessed, or controlled by a Denied Person if such service involves the use of any item subject to the Regulations that has been or will be exported from the United States. For purposes of this paragraph, “servicing” means installation, maintenance, repair, modification, or testing.

THIRD, that after notice and opportunity for comment as provided in Section 766.23 of the Regulations, any person, firm, corporation, or business organization related to a Denied

Person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related services may also be made subject to the provisions of this Order.

FOURTH, that this Order shall be served on the Denied Persons and on BIS, and shall be published in the Federal Register. In addition, the ALJ's Recommended Decision and Order, except for the section with the heading "Recommended Order," shall be published in the Federal Register.

This Order, which constitutes the final agency action in this matter, is effective upon publication in the *Federal Register*.



Kenneth I. Juster

Under Secretary of Commerce
for Industry and Security

Dated: November 24, 2004