

ARTICLE

United Technologies Corp.'s \$79 Million Settlement for Export Violations Highlights Need for Compliance Programs, Due Diligence, Accurate Voluntary Disclosures

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United Technologies Corporation (UTC) will pay more than \$75 million to the Departments of State and Justice to settle charges that alleged illegal arms exports to China, false and late disclosures to the U.S. government about such exports, and other export violations. In addition to UTC, the "global settlement" involves UTC's Canadian subsidiary Pratt & Whitney Canada Corp (PWC) and U.S. subsidiary Hamilton Soundstrand Corporation (HSC). The settlement illustrates the U.S. government's determination to prevent and prosecute illegal exports of sensitive technology to China and elsewhere. Companies that deal with regulated items and services should ensure they have a robust compliance program, that includes creating policies to prevent, identify, and remedy violations, training employees on export restrictions, and performing due diligence regarding re-exports and end-users of U.S.-origin articles.

UTC and its subsidiaries were charged with providing U.S.-origin software to aid China with the development of the Chinese military attack helicopter, the Z-10. PWC supplied the Z-10's engines beginning in the 1990s, and continuing into the early 2000s, while HSC developed and modified the Z-10's electronic engine controls software, which was exported to PWC in Canada and then re-exported to China. These exports allegedly violated the International Traffic in Arms Regulations (ITAR) and a standing U.S. arms embargo prohibiting the export of any defense related articles or services to China. HSC stopped providing software to PWC in 2004 over ITAR concerns, but PWC continued modifying and exporting the electronic

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engine controls until at least 2005. The State Department held that despite HSC's concerns, UTC, HSC and PWC failed to disclose their activity to State until prompted by questions from potential investors in 2006. Voluntary disclosures in 2006 and thereafter allegedly contained false statements and promises of future corrective action. The State Department charged UTC, HSC and PWC with conducting additional illegal exports and re-exports following each disclosure. This settlement highlights the necessity of honest, complete and timely disclosures to the U.S. government's regulatory agencies. The State Department noted that the 222 disclosures filed since 2006 played a role in preventing a complete administrative debarment of UTC, HSC and PWC.

The Department of Justice filed criminal charges alleging that PWC knew the Z-10 was a military attack helicopter, despite the fact that the Chinese government stated it would serve civilian purposes only. The Department of State alleged 576 violations of the Arms Export Control Act (AECA) and the ITAR, including:

- Misclassification of ITAR-controlled items;
- Unauthorized access to ITAR-controlled technology by non-U.S. persons;
- Use of expired or unexecuted agreements, including manufacturing license agreements, technical assistance agreements (TAA's) and Warehouse Distribution Agreements;
- Failure to timely file voluntary disclosures, sales reports and revised disclosures; and
- Providing false statements in voluntary disclosures.

The State Department will receive \$55 million of the settlement, up to \$20 million of which can be suspended if properly applied to compliance programs; the Justice Department will receive \$20.7 million to resolve the criminal charges. The settlement is the second largest in State Department history, behind BAE Systems's \$79 million settlement in 2011.