

## PROPOSED CHARGING LETTER

Mr. Charles D. Gill  
Senior Vice President & General Counsel  
United Technologies Corporation  
One Financial Plaza  
Hartford, CT 06101

Re: Potential Violations of the Arms Export Control Act and the International Traffic in Arms Regulations by United Technologies Corporation.

Dear Mr. Gill:

The Department of State (“Department”) charges United Technologies Corporation (“UTC” or “Respondent”) with violations of the Arms Export Control Act (“AECA”) (22 U.S.C. §§ 2778-2780) and the International Traffic in Arms Regulations (“ITAR”) (22 C.F.R. Parts 120-130) in connection with the unauthorized export and transfer of defense articles, to include technical data, and the unauthorized provision of defense services to various countries, including proscribed destinations. A total of five hundred and seventy six (576) charges are alleged at this time.

The essential facts constituting the alleged violations are described herein. The Department reserves the right to amend this proposed charging letter, including through a revision to incorporate additional charges stemming from the same misconduct of the Respondent in these matters. Please be advised that this proposed charging letter, pursuant to 22 C.F.R. § 128.3, provides notice of our intent to impose debarment or civil penalties or both in accordance with 22 C.F.R. §127.7 and 127.10. Some of the conduct underlying the alleged violations has been the subject of criminal investigation by U.S. federal law enforcement authorities.

The Department considered Respondent's voluntary disclosures and remedial compliance measures as significant mitigating factors when determining the charges to pursue in this matter. However, given the harm to national security and the systemic, longstanding and repeated nature of certain violations the Department has decided to charge Respondent with five hundred and seventy six (576) violations at this time. The Department estimated the number of certain types of violations, due in part to the summary nature of several key voluntary disclosures by the Respondent. Had the Department not taken into consideration Respondent's voluntary disclosures and remedial compliance measures as significant mitigating factors, the Department would have charged Respondent with many additional violations and imposed a more severe penalty.

### JURISDICTION

Respondent is a corporation organized under the laws of the State of Delaware.

Respondent is a U.S. person within the meaning of the AECA and the ITAR, and is subject to the jurisdiction of the United States.

During the period covered by the violations set forth herein, Respondent was engaged in the manufacture and export of defense articles and defense services, and was registered as a manufacturer and exporter with the Department of State, Directorate of Defense Trade Controls ("DDTC") in accordance with Section 38 of the AECA and section 122.1 of the ITAR.

Hamilton Sundstrand Corporation ("HSC"), Sikorsky Aircraft Corporation ("Sikorsky"), Derco Aerospace, Inc. ("Derco"), Kidde Technologies, Inc. ("KTI") and Pratt & Whitney Rocketdyne ("Rocketdyne") are U.S. subsidiaries of Respondent; Pratt & Whitney U.S. ("P&W U.S.") is an unincorporated division of Respondent; and Pratt & Whitney Canada ("P&W Canada") is a Canadian subsidiary of Respondent.

The defense articles and defense services associated with the violations set forth herein are designated as controlled under various categories of the U.S. Munitions List ("USML"), §121.1 of the ITAR. Some of the relevant defense articles are further defined as significant military equipment ("SME"), requiring a DSP-83 (Nontransfer and Use Certificate) for re-transfers and re-exports.

## BACKGROUND

Respondent's Canadian subsidiary, P&W Canada, manufactures aircraft engines predominately for the civil aircraft market. P&W Canada has modified several of its civil engines using U.S. origin, ITAR-controlled defense articles and technical data. P&W Canada exports these engines for military end-users and end-users. These modified engines are ITAR-controlled.<sup>1</sup>

Respondent's U.S. subsidiary, HSC, designs and manufactures aerospace systems for civil and military aircraft. HSC's products include auxiliary power units, environmental controls, electronic engine controls ("EECs"), and EEC software for both the civil and military markets.

Respondent's P&W U.S. division designs, manufactures, and services civil and military aircraft engines and industrial gas turbines.

Respondent's U.S. subsidiary, Sikorsky, designs, manufactures and services civil and military helicopters and fixed-wing aircraft.

Respondent's U.S. subsidiary, Derco, provides aircraft spares, services, and solutions.

Respondent's U.S. subsidiary, KTI, designs, manufactures and services commercial and military fire protection systems.

Respondent's U.S. subsidiary, Rocketdyne, develops rocket engines, including for the U.S. space program.

## VIOLATIONS

The ITAR violations included in this proposed charging letter are derived from a number of voluntary disclosures, out of many, provided over a period of six years by several subsidiaries of Respondent. Several key disclosures only summarized hundreds of violations, precluding complete review without additional information. The violations fall into three broad categories: 1) unauthorized

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<sup>1</sup> Some examples of P&W Canada's ITAR-controlled engines are the JT15D-5C, PT6A-62, PT6A-68, 68B, and 68C.

exports and re-exports, resulting from the failure to properly establish jurisdiction over defense articles and technical data; 2) unauthorized exports, resulting from the failure to exercise internal controls over technical data; and 3) failure to properly manage Department-authorized agreements. Respondent's subsidiaries repeatedly discovered and disclosed violations to the Department, in some cases finding that reported remedial measures failed to prevent or detect additional similar violations. In other cases, Respondent's self-initiated internal compliance reviews identified additional violations of the same nature, prompting further disclosures and assurances of remediation.

Also included in this proposed charging letter are two charges based on violations that do not fall into the three categories referenced above, but which reveal past problems with Respondent's internal processes for evaluating and addressing ITAR violations. On behalf of its operating unit KTI, HSC disclosed to the Department in April 2012 that two ITAR-controlled aircraft parts were exported in June 2011 from KTI to Singapore and then re-exported by the recipient in Singapore to commercial airline customers in the People's Republic of China ("PRC") and Republic of Korea, before being recovered several months later. The unauthorized exports occurred after a KTI employee selected the wrong items from a storage bin containing commingled and similar looking commercial and ITAR-controlled parts (though labeled accordingly), and then two additional KTI employees failed to properly verify the shipment.

In its disclosure, HSC noted that a previous unauthorized export from KTI of ITAR-controlled parts (involving the same KTI employee, the same root causes, and the same recipient in Singapore) occurred in May 2009. The earlier violation was not previously disclosed to the Department because Respondent granted an internal request by HSC for a "waiver" from Respondent's mandatory compliance disclosure policy. Respondent's procedures required that a waiver request include the results of a comprehensive investigation to determine the facts and circumstances of the discovered violation, root cause(s), and appropriate corrective actions. HSC sought a waiver for the May 2009 violation at the end of 2010, effectively precluding the option for Respondent to deny the request and submit a timely voluntary disclosure in accordance with §127.12 of the ITAR. Furthermore, HSC represented to Respondent that KTI had implemented extensive corrective measures after the May 2009 violation, including segregation of ITAR-controlled and commercial parts in separate and clearly marked bins. Despite these representations, KTI failed to implement fully those corrective measures. Without the opportunity for Department review and oversight which would have followed a voluntary disclosure, Respondent and HSC relied primarily on KTI's

representations and did not verify independently KTI's implementation of the claimed remedial measures. Similar ITAR violations occurred at KTI in June 2011 and subsequently. Respondent has since acknowledged a need to strengthen tracking and validation of corrective actions, agreed to review corrective actions associated with past waiver decisions, and eliminated the waiver option from its compliance program.

Although UTC operating units and subsidiaries continue to carry out multiple, wide-ranging compliance reviews, the results of which have yet to be reported, the Department determined that a proposed charging letter and administrative settlement was necessary at this time. The violations demonstrate a systemic, corporate-wide failure to maintain effective ITAR controls and require immediate, comprehensive, effective remedial action across Respondent's many operating units and subsidiaries.

I. Failures by Respondent and Subsidiaries to Properly Establish Jurisdiction on Defense Articles and Technical Data, Resulting in Unauthorized Exports and Re-exports

*Modified Electronic Engine Control Software to the People's Republic of China*

In March of 2000, the China Aviation Industry Corporation II (China AVIC II) of the People's Republic of China (PRC), and its subunits, the China Helicopter Research and Development Institute and Changhe Aircraft Industries Group Co., Ltd. (Changhe), entered into discussions with P&W Canada to develop and sell PT6C-67C<sup>2</sup> engines for certain Chinese helicopters. According to Respondent's disclosure, the discussions involved both civil and military variants of a Z-10 helicopter referred to as the Chinese Medium Helicopter (Z-10 CMH).

The Chinese entities specified the civil version of the Z-10 CMH as a 6 ton helicopter with a 12-14 passenger cabin capability. However, an internal P&W Canada document dated August 29, 2000, referred to discussions with the above Chinese entities on the use of the PT6C-67C engine for the Chinese Z-10 military attack helicopter. Another internal document dated November 13, 2000, referred to the sudden appearance of the civil variant of the Z-10 helicopter and speculation

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<sup>2</sup> Respondent stated that the PT6C-67C engine contains no ITAR technology or hardware.

by P&W Canada that the civil program may have been put together to aid in the approval of export licenses for the PT6C-67C.<sup>3</sup>

In January of 2001, P&W Canada, China AVIC II and Changhe entered into a contract for P&W Canada to develop ten (10) PT6C-67C engines for use in the civil variant of the Chinese Z-10 helicopter. In November of 2001, P&W Canada exported two (2) of the PT6C-67C engines to the PRC under Canadian export authorization. Then, between December of 2001 and February of 2002, P&W Canada exported the remaining eight (8) PT6C-67C engines to the PRC.

Between March of 2001 and July of 2002, HSC exported from the U.S. to P&W Canada ten (10) electronic engine controls (“EECs”) manufactured by HSC. P&W Canada then exported to the PRC these ten (10) EECs, as well as two (2) additional EECs from its own inventory. The export and re-export of these EECs did not require ITAR authorization. Also during this time period, P&W Canada issued a purchase order to HSC for HSC to modify the basic EEC software for use on the Chinese Z-10 CMH engines.

Each PT6C-67C engine required an EEC with an associated operating software program. The basic EEC software was modified during the aircraft development phase to fine-tune the engine’s performance for the Z-10 helicopter into which the engine was installed. When such modifications were made for a military application, the EEC software became ITAR-controlled.

Between January 2002 and March 2003, HSC exported to P&W Canada various modified test versions of the EEC software for the Chinese Z-10 helicopter. HSC exported without authorization this modified EEC software electronically to Canada on eleven (11) occasions, and then P&W Canada without authorization re-exported it to the PRC on six (6) occasions. During this period, P&W Canada staff travelled to the PRC to participate in engine installation and software modification tests. At the time, they only performed tests on a generic PT01 ground test rig.

In March of 2003, however, P&W Canada employees travelled to the PRC and observed two P&W Canada PT6C-67C engines mounted on a military attack helicopter prototype test rig referred to as the PT02. This PT02 military prototype was configured as a stepped, two seat/tandem attack helicopter. The nature of the

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<sup>3</sup> Canadian export law required authorization to export PT6C-67C engines to the PRC.

test rig and its use indicated that the P&W Canada PT6C-67C engines, the EECs and modified EEC software were for use in a Chinese military attack helicopter.

In April of 2003, P&W Canada notified the Canadian Government that the first test flight of the Chinese helicopters powered by P&W Canada engines would be the Chinese Z-10 military helicopter.

In August and October 2003, HSC electronically exported without authorization to P&W Canada a development version of the modified EEC software. P&W Canada without authorization electronically re-exported the modified EEC software to the PRC.

In December of 2003, P&W Canada attended a flight test conducted by Changhe in the PRC of the Z-10 helicopter, specifically the PT03 prototype. The PT03, like the PT02, was also a stepped, two seat/tandem attack helicopter with black paint and attack helicopter indicia.

In early January of 2004, P&W Canada and HSC discussed the existence of the attack helicopter configuration and the resulting export control issues, and HSC consequently ceased work on the program. In June of 2004, P&W Canada prepared briefing material for UTC senior executive management, referencing the two-seat military helicopter configuration of the Z-10 helicopter. Despite Respondent's knowledge of the military application, between November 2004 and June 2005, P&W Canada made four (4) additional unauthorized re-exports to the PRC of the modified EEC software.

In February 2006, P&W Canada applied for Canadian government authorization to export one hundred twenty (120) PT6C-67C engines to the PRC. In its application, P&W Canada noted that one hundred and ten (110) of these engines were to be used for the military versions of the Z-10 helicopter. Though the Canadian government originally approved this authorization, it was subsequently suspended as part of the Canadian government's export control review of the program.

In a letter dated July 17, 2006, Respondent disclosed to the Department the unauthorized exports to the PRC of the modified EEC software for use with the PT6C-67C engines on the military versions of the Z-10 helicopter. These exports directly supported the development of Chinese military attack helicopters and caused harm to U.S. national security. Export of the modified EEC software,

however, did not impart specific military engine or aircraft development technology.

Respondent's July 2006 disclosure to the Department came two and a half years after P&W Canada and HSC discussed their awareness of the attack helicopter configuration and the resulting export control issues, leading HSC to stop work on the project. The disclosure was preceded by investor inquiries and publicity regarding Respondent's involvement with a PRC attack helicopter. The disclosure did not reference the early awareness of the primacy of the attack helicopter version and suspicions regarding the authenticity of the civil version, shared among certain P&W Canada personnel. In 2010, Respondent also acknowledged to the Department that its July 2006 disclosure and subsequent submissions mischaracterized several key corrective measures.

#### Other USML Modified Engines

After making its July 17, 2006, disclosure and encouraged by a subsequent meeting with the Department, Respondent undertook a review of P&W Canada engines and HSC products to determine whether proper ITAR controls were in place for U.S. defense articles and defense services. As a result of this review, Respondent detected additional violations involving misclassification of ITAR-controlled items, and then disclosed them to the Department. The violations included unauthorized exports and re-exports to Brazil, Bulgaria, Canada, Colombia, Germany, Greece, Indonesia, Ireland, Italy, Mexico, Saudi Arabia, Singapore, South Korea, Spain, Switzerland, and Turkey of EECs, EEC software and other items associated with several P&W Canada engine types.

#### Deficient Remediation

In January of 2008, after HSC did not properly label ITAR-controlled, build-to-print technical data related to gas turbine engine minor components for the F-35 Joint Strike Fighter (JSF), an HSC subcontractor without authorization exported this technical data to the PRC. This violation was initially reported to the Department in February of 2008. Upon discovering the violation, HSC initiated a complete review of all its supply-chain parts sourced to the PRC where ITAR-controlled technical data may have been exported without authorization.

In June of 2008, HSC reported that it had exported without authorization ITAR-controlled, build-to-print technical data for parts incorporated into auxiliary power units, environmental control units and engines to the PRC. More than a

year later, HSC reported that the review failed to detect a misclassified C-295 part that had been sourced to a PRC supplier. In the interim, technical data related to the part was provided to additional PRC companies.

More generally, after initially disclosing EEC-related violations involving Spain in 2006, HSC committed to undertake a complete review of all items in its automated compliance system, to verify correct classification and coding. HSC planned to complete the review by the end of 2006. Five years later, HSC reported in a different disclosure that it had incorrectly identified 261 items as not ITAR-controlled, and exported these items and related technical data without authorization on 812 occasions, including 58 unauthorized exports of defense articles to Switzerland, United Kingdom, Italy, Australia, Denmark, Brazil, France, Germany, United Arab Emirates, South Korea, Japan, Hong Kong, Honduras, Turkey, and Singapore.

#### *Derco Test Stands*

In October 2005, Derco contracted to develop, assemble and provide an F-16 Avionics Intermediate Maintenance Test Stand for the Venezuelan Defense Ministry/Air Force (“VAF”). On August 17, 2006, the Department issued an arms embargo of all ITAR-controlled items to Venezuela. A Derco employee designed the test stand using non-ITAR components, and Derco neglected to separately classify the test stand itself. The Derco employee assembled and programmed the test stand in Milwaukee, Wisconsin, for inspection by the VAF in October 2006, and provided training there on its use to the VAF in December 2006.

Derco exported the test stand components to Venezuela between October and December 2006. The Derco employee assembled the test stand on-site in Venezuela in December 2006 and January 2007, provided troubleshooting advice to the VAF in November 2007, and repaired the test stand in Venezuela in February 2008, with approval of Derco compliance personnel. Derco became aware of potential ITAR violations involving the test stand in May 2010, but did not report them to the Department until August 2011.

In 2010, Derco also disclosed similar unauthorized exports in 2007 of two hydraulic actuator test stands and related services for F-16s of the Belgian Air Force. The stands were incorrectly classified as not subject to the ITAR.

## II. Failures by Respondent and Subsidiaries to Exercise Internal Controls over Technical Data, Resulting in Unauthorized Exports

In 2000, P&W U.S. began outsourcing to contract engineers from Infotech Enterprises Ltd. (Infotech), India, certain engineering tasks involving P&W civil gas turbine aero engines. Foreign person contract engineers co-located at P&W U.S. facilities were provided with access to electronic data and hard copy documents related to the engines. In 2008, a review of the technology control plans and work space for the foreign person contract engineers at P&W U.S. facilities revealed that fifty-one (51) ITAR-controlled technical data documents had been accessed without authorization by the Indian engineers, including data designated as significant military equipment (SME). P&W U.S. also without authorization provided access to programming tools that incorporated data on military aircraft engines including the F135 for the F-35 Joint Strike Fighter (JSF).

P&W U.S. disclosed these violations to the Department in 2008 and 2009, while continuing its investigation. In addition, P&W U.S.'s Engineering Department initiated a full review of its export compliance policies and procedures related to outsourcing in general. In subsequent disclosures, P&W U.S. informed the Department that between 2003 and 2009, 419 foreign persons affiliated with approximately 50 different entities had unauthorized access to a software file containing technical data for the F119 engine. P&W U.S. also disclosed that between 2007 and 2010, a manual containing technical data related to several military engines was posted on an Internet-based portal, was downloaded and viewed without authorization by employees of Infotech and another foreign vendor, and was accessible by foreign persons employed by P&W U.S., third party vendors and customers.

In 2010 and 2011, P&W U.S. made additional voluntary disclosures to the Department regarding potential violations associated with unauthorized access by foreign persons to P&W U.S. intranet systems. Most of these potential violations could not be confirmed because P&W U.S. had no means to capture forensic evidence on data access. The potential violations included at least 700 documents containing technical data that were variously accessible by foreign person employees, contractors and third party vendors. The potential number of foreign persons exceeded 260,000 individuals from 90 countries, including countries proscribed pursuant to § 126.1 of the ITAR. Some of the data was SME and dealt with sensitive and advanced defense technology, access to which by foreign persons would have caused significant harm to U.S. national security. After

consultation with the Department of Defense, the Department was unable to assess the level of actual harm given the lack of forensic evidence.

P&W U.S. undertook several comprehensive compliance reviews related to the above violations, and implemented extensive remedial measures. Nevertheless, P&W U.S. continued to discover similar violations. In several instances, actual and potential violations were not remedied sufficiently upon discovery, resulting in additional violations. Also, P&W U.S. repeatedly disclosed violations to the Department years after discovering them, attributable in part to the need for extensive investigations.

Similarly and in 2011, P&W Canada voluntarily disclosed to the Department potential violations by unauthorized foreign persons with access to 97 ITAR-controlled technical data drawings on an intranet system. While these violations were identified in 2006, P&W Canada did not address the matter until 2010.

Also in 2011, HSC disclosed that an HSC contract engineer traveled to the People's Republic of China (PRC) on business with an HSC-issued laptop containing ITAR-controlled technical data. The contract engineer left the laptop at a Shanghai airport upon departure in December 2009, and then failed to retrieve it. The laptop contained technical data related to the auxiliary power units for the C5, A400M, and JAS39 platforms. No export control review by HSC preceded the export of technical data to the PRC, so Department authorization for the export was neither requested nor granted. HSC was unaware of the export and loss until April 2010, and then did not disclose the incident to the Department until September 2011. The laptop was apparently in the custody of Shanghai airport security for 6 months before it was retrieved by the company. Weaknesses in HSC procedures and computer forensic investigation have precluded a definitive determination as to whether the laptop was accessed during that time.

### III. Failure by Respondent and Subsidiaries to Properly Manage Department-Authorized Agreements

#### *Pratt & Whitney, U.S.*

In 2006, acting on a referral from the Department of Defense, the Office of Defense Trade Controls Compliance determined that P&W U.S. substantially exceeded the scope of a technical assistance agreement (TAA). P&W U.S. obtained the TAA to provide technical data and defense services to the Ministry of

Defense, Gas Turbine Research Establishment (GTRE), India. This agreement was limited to the evaluation and assessment of the GTX-35 Kaveri Gas Turbine Engine (also known as K-9+ and K-10). In 2005 and 2006, P&W U.S. violated several provisos and exceeded the scope of the TAA by engaging in a technical relationship equivalent to providing unauthorized training to GTRE on U.S. turbine engine design, development and production. The Department requested and P&W U.S. promised to develop and implement remedial measures to ensure compliance with P&W U.S. agreements.

Despite such assurances to the Department, P&W U.S. continued to violate the provisions of its TAAs and manufacturing license agreements (MLAs). Through 2009, P&W U.S. and its Israeli affiliates exceeded the scope of several agreements related to F100 engine production, including the unauthorized manufacture of engine forgings, the unauthorized provision of defense services, and unauthorized re-transfers of technical data and defense services to sublicensees. During that time period, P&W U.S. also exceeded the scope of two other MLAs when on eight (8) separate occasions it exported technical data and defense services related to lifing analysis of the F117-PW-100 military engine to Germany and gearbox component analysis of the F117-PW-100 and F100-PW-220/229 military engines to Italy. P&W U.S. disclosed these violations to the Department in 2009. And in 2010, P&W U.S. disclosed that over the preceding decade it exceeded the authorized value of three MLAs by a combined total of more than \$35,000,000.

P&W U.S. accompanied each successive disclosure with a compliance review and corrective actions. In 2010 and 2011, P&W U.S. reviewed 193 of its agreements in an extensive effort to ascertain ITAR compliance. This undertaking was part of an enterprise-wide review of all agreements held by UTC aerospace entities, launched in May 2010 in response to the extensive violations uncovered at Hamilton Sundstrand (discussed below). P&W U.S. found that 89 agreements had been violated in the following ways: transfers outside of scope, ITAR Part 130 reporting violations, dollar value overages, and unauthorized access to technical data by foreign persons, including foreign licensees and information technology (IT) subcontractors and unauthorized employees. Given the nature and extent of these violations and lack of proper record-keeping, P&W U.S. could only provide a summary disclosure, precluding complete review by the Department. In conjunction with this analysis, P&W U.S. reported substantial new commitment to and investment in export compliance. P&W U.S. continues its compliance reviews.

Hamilton Sundstrand Corporation

In May 2007, Hamilton Sundstrand Corporation (HSC) commenced a review of all of its agreements to identify any undiscovered compliance issues and ensure continued compliance with the ITAR. The review was to be completed by the end of 2007. Also that year, HSC instituted an “Agreement Control Plan” and launched a comprehensive company ITAR training program. HSC reported these measures and undertakings to the Department while disclosing violations of a TAA involving the US101 Presidential Helicopter (now designated VH-71A).

Despite these remedial and preventive compliance measures, nearly two years later in 2009 and again in 2010, HSC submitted to the Department multiple disclosures associated with various violations of technical assistance and manufacturing license agreements and a warehouse & distribution agreement. These violations included unauthorized access by foreign persons to defense articles, including technical data associated with component parts for a host of aircraft, submarine and ground vehicle systems. The violations involved foreign person employees, subcontractors, foreign manufacturers and contracted IT staff. Other violations involved continued manufacturing after agreement expiration, exceeding authorized dollar values, failure to file timely sales reports, Part 130 violations and incorrect export control jurisdiction of items.

In all, hundreds of violations were identified in more than 200 agreements. These violations were largely summarized by HSC for the reasons noted above regarding P&W U.S., precluding complete review by the Department. For example, HSC acknowledged its inability to supply the Department with all technical data re-transferred under the color of the reviewed agreements, and offered to submit representative samples instead.

HSC acknowledged that it failed to manage its agreements properly and to keep adequate records of its ITAR-controlled activities. HSC attributed these failures to a lack of clear compliance processes and adequate IT systems, due in turn to inadequate resources for compliance. Until recently, for instance, HSC’s agreement management was “trifurcated,” with a licensing manager responsible for drafting agreements, compliance officials responsible for transmittal letters and providing general support, and designees in the business units nominally responsible for managing agreement compliance.

As a result, HSC’s export compliance program could not keep up with the increased demands caused by organic growth, increased export activity, and

decentralized business processes. For example, HSC had been shipping all hardware sold to Japan via Sumitomo Corporation of America (“SCOA”), for forwarding to licensees pursuant to SCOA’s own DSP-5 permanent hardware export licenses. HSC did not track which of its agreements covered each shipment, and overlapping HSC and SCOA export authorizations made this impossible to determine subsequently.

Early remedial compliance measures were not effective in preventing further violations. However, HSC has recently increased its export compliance staff and is implementing a variety of remedial and preventive compliance measures, including a revised “Agreement Control Plan.”

### Other UTC Subsidiaries

Other UTC subsidiaries have also demonstrated inadequate oversight of their agreements. During the past decade, Pratt & Whitney Rocketdyne has submitted a series of disclosures regarding similar recurring violations of a TAA with Russia’s NPO Energomash related to the RD-180 rocket engine. Some of the violations took place while remedial measures related to prior violations were being implemented. And in 2010, Sikorsky Aircraft Corporation disclosed violations of six (6) TAAs and MLAs with Canadian, French and German companies, related to a variety of military aircraft. In 2011, Sikorsky Aircraft Corporation reviewed 159 of its agreements, and found that 70 agreements had been violated in the following ways: unauthorized access to defense articles and technical data by foreign persons, including foreign licensees and information technology (IT) subcontractors and unauthorized employees; activities by unauthorized parties and under expired or unexecuted agreements; and various recordkeeping violations.

## RELEVANT ITAR REQUIREMENTS

Part 121 of the ITAR identifies the items that are defense articles, technical data, and defense services pursuant to Section 38 of the AECA.

Section 123.1(a) of the ITAR provides that any person who intends to export or to import temporarily a defense article must obtain the approval of the DDTC prior to the export or temporary import, unless the export or temporary import qualifies for an exemption under the provisions of this subchapter.

Section 123.1(c)(5) of the ITAR provides that a DSP-83 (Nontransfer and Use Certificate) is required for the permanent export of significant military equipment.

Section 123.22(b) of the ITAR provides that any export of a defense article controlled by the ITAR requires the applicant/exporter, or an agent acting on the filer's behalf, to file export information with the U.S. Customs and Border Protection.

Section 124.1(c) of the ITAR requires that changes to the scope of approved agreements (including modifications, upgrades, or extensions) must be submitted for approval, and that the amendments may not enter into force until approved by DDTC.

Section 126.1(a) of the ITAR provides that it is the policy of the United States to deny, among other things, licenses and other approvals, destined for or originating in certain countries, including the People's Republic of China (PRC).

Section 126.1(e) of the ITAR provides that anyone that knows or has reason to know of a proposed or actual sale, or transfer, of a defense article, defense service or technical data to a proscribed country, such as the PRC, must immediately inform DDTC.

Section 127.1(a)(1) of the ITAR provides that it is unlawful to export or attempt to export from the United States, or to re-export or re-transfer or attempt to re-export or re-transfer from one foreign destination to another foreign destination of any defense article or technical data or to furnish any defense service for which a license or written approval is required by the ITAR without first obtaining the required license or written approval from DDTC.

Section 127.1(a)(4) of the ITAR provides that it is unlawful to violate any terms or conditions of licenses or approvals granted by DDTC.

Section 127.2(a) of the ITAR provides that it is unlawful to use any export or temporary import control document containing a false statement or misrepresenting or omitting a material fact for the purpose of exporting any defense article or technical data or the furnishing of any defense service for which a license or approval is required by the ITAR.

## CHARGES

### Charges 1-13 Unauthorized Exports to Canada of EEC Software

Respondent violated Section 127.1(a)(1) of the ITAR when HSC exported to P&W Canada thirteen (13) times EEC software specifically modified for use in the military Z-10 attack helicopter without the appropriate authorizations from the Department.

### Charges 14-24 Unauthorized Re-transfer of Modified EEC Software to the People's Republic of China (PRC)

Respondent violated Section 127.1(a)(1) of the ITAR when P&W Canada on eleven (11) occasions re-exported to the PRC EEC software specifically modified for use in the military Z-10 attack helicopter without appropriate authorizations from the Department.

### Charge 25 Failure to File Export Information

Respondent violated Section 123.22(b) of the ITAR when HSC exported a defense article to Canada and failed to file required export information with U.S. Customs and Border Protection.

### Charge 26 Failure to Immediately Notify of Sale/Transfer to Proscribed Country

Respondent violated Section 126.1(e) of the ITAR when Respondent knew of the sale, or transfer, of a defense article to a proscribed country in 2004 and failed to immediately notify DDTC.

### Charges 27-84 Unauthorized Exports of Defense Articles due to Incorrect Jurisdiction Self-Determinations

Respondent violated Section 127.1(a)(1) of the ITAR when fifty-eight (58) times HSC exported defense articles that it incorrectly determined to be not subject to the ITAR to Switzerland, United Kingdom, Italy, Australia, Denmark, Brazil, France, Germany, United Arab Emirates, South Korea, Japan, Hong Kong, Honduras, Turkey, and Singapore without the appropriate authorizations from the Department.

### Charge 85 Unauthorized Export to Venezuela of Test Stand

Respondent violated Section 127.1(a)(1) of the ITAR when Derco exported to Venezuelan Defense Ministry/Air Force an F-16 Avionics Intermediate Maintenance Test Stand without the appropriate authorization from the Department.

Charges 86-136 Unauthorized Exports of Technical Data and Automation Tools

Respondent violated Section 127.1(a)(1) of the ITAR when fifty-one (51) times P&W U.S. exported without authorization technical data and automation tools to an Indian company and its contracted engineer employees.

Charge 137 Unauthorized Export of Technical Data to the People's Republic of China

Respondent violated Section 127.1(a)(1) of the ITAR when HSC exported without authorization a laptop containing technical data related to the auxiliary power units for the C5, A400M, and JAS39 platforms to the People's Republic of China (PRC).

Charges 138-574 Failure to Comply with the Terms and Administrative Requirements of Agreements

Respondent violated Sections 127.1(a)(4), 127.2, and 124.1(c) of the ITAR four hundred and thirty seven (437) times when it failed to abide by the substantive and administrative terms and conditions associated with DDTC-approved TAAs, MLAs and WDAs.

Charges 575-576 Unauthorized Exports of Defense Articles to Singapore

Respondent violated Section 127.1(a)(1) of the ITAR two (2) times when KTI exported defense articles to Singapore in May 2009 and in June 2011 without the appropriate authorization from the Department.

The Department considered the Respondent's voluntary disclosures and remedial compliance measures as significant mitigating factors, and would otherwise have charged the Respondent with many additional violations and imposed a more severe penalty. The Department estimated the number of certain types of violations, due to the summary nature of several key voluntary disclosures by the Respondent.

## ADMINISTRATIVE PROCEEDINGS

Pursuant to Part 128 of the ITAR, administrative proceedings are instituted by means of a charging letter against Respondent for the purpose of obtaining an Order imposing civil administrative sanctions. The Order issued may include an appropriate period of debarment, which shall generally be for a period of three years, but in any event will continue until an application for reinstatement is submitted and approved. Civil penalties, not to exceed \$500,000 per violation, may be imposed as well in accordance with Section 38(e) of the AECA and Section 127.10 of the ITAR.

A Respondent has certain rights in such proceedings as described in Part 128 of the ITAR. Currently, this is a proposed charging letter. However, in the event that you are served with a charging letter, you are advised of the following matters: You are required to answer the charging letter within 30 days after service. If you fail to answer the charging letter, your failure to answer will be taken as an admission of the truth of the charges. You are entitled to an oral hearing, if a written demand for one is filed with the answer, or within seven (7) days after service of the answer. You may, if so desired, be represented by counsel of your choosing.

Additionally, in the event that you are served with a charging letter, your answer, written demand for oral hearing (if any) and supporting evidence required by Section 128.5(b) of the ITAR, shall be in duplicate and mailed to the administrative law judge designated by the Department to hear this case. These documents should be mailed to the administrative law judge at the following address: USCG, Office of Administrative Law Judges G-CJ, 2100 Second Street, SW Room 6302, Washington, D.C. 20593. A copy shall be simultaneously mailed to the Managing Director, Directorate of Defense Trade Controls, Bureau of Political-Military Affairs, U.S. Department of State, PM/DDTC, SA-1, 12<sup>th</sup> Floor, Washington, D.C. 20522-0112. If you do not demand an oral hearing, you must transmit within seven (7) days after the service of your answer, the original or photocopies of all correspondence, papers, records, affidavits, and other documentary or written evidence having any bearing upon or connection with the matters in issue.

Please be advised also that charging letters may be amended from time to time, upon reasonable notice. Furthermore, pursuant to Section 128.11 of the

ITAR, cases may be settled through consent agreements, including after service of a proposed charging letter.

Be advised that the U.S. Government is free to pursue civil, administrative, and/or criminal enforcement for violations of the AECA and the ITAR. The Department of State's decision to pursue one type of enforcement action does not preclude it, or any other department or agency, from pursuing another type of enforcement action.

Sincerely,

Lisa V. Aguirre  
Director  
Office of Defense Trade Controls  
Compliance