



## United Technologies Case - Liability from Selling Commercial Products to Military Customers

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The recent guilty plea by United Technologies subsidiary Pratt & Whitney Canada (PWC) provides further insight into the complex and troubling issue of ITAR liability that may arise from the sale of commercial products to military customers. In this case, PWC sold helicopter engines to China Aviation Industry Corporation II (CAI). A number of the engines were eventually used in the new Chinese Z-10 military helicopter. According to the Justice Department release, PWC determined that the engines did not constitute defense articles covered under ITAR since they were identical to engines PWC was supplying to CAI for commercial helicopters. However, as part of the transaction, PWC also provided Electronic Engine Control software to operate the engines, and PWC allegedly modified the software to permit the engines to be used on the Z-10 helicopters. PWC was charged with ITAR violations in connection with the sale, pleaded guilty and paid over \$75 million in penalties.

This is yet another ITAR case in which a company is charged with ITAR violations arising from transactions involving the sale of commercial items. In an earlier case, Analytical Methods, Inc., a US company, sold software to a foreign military customer. The software was dual use and not subject to ITAR, but the company made modifications to the software for the customer as part of the sale. The Directorate of Defense Trade Controls (“DDTC”) charged that such modifications were defense services (presumably since they were performed for a military organization in connection with certain military activity), and hence subject to ITAR, and fined the company \$500,000. The takeaway here for US companies: firms should use a heightened level of care when selling commercial items to foreign military organizations. Even though such items may be purely commercial (and normally not subject to ITAR), the performance of services related to such items (integration services, installation, modification services and other routine services) could constitute a defense service that requires a TAA or other DDTC approval. The link to the Justice Department release can be found [here](#). The Analytical Methods, Inc. Consent Agreement can be found [here](#).

## Related People

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- International
- ITAR, Export Controls and Economic Sanctions