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## State Issues Debarment Guidance in Wake of United Settlement

U.S. exporters won't be able to get export licenses for transactions including Pratt & Whitney Canada Corp. (PWC), a Canadian subsidiary of United Technologies Corporation (UTC), based on PWC pleading guilty to exporting military software to China June 28. "New applications for licenses or other approvals or the use of ITAR exemptions involving P&W Canada, including its subsidiaries, divisions and business units, and successor entities, will be presumed to be denied unless they fall within one of the three carve-outs below or a request is made for a 'transaction exception' and the exception is granted," State said in guidance published June 28.

PWC's statutory debarment came after it pleaded guilty to violating the Arms Export Control Act (AECA) and making false and belated disclosures to the U.S. government about its export of software used in the development of China's first modern military attack helicopter, the Z-10. As part of a global settlement with Justice and State, UTC, its subsidiary, Hamilton Sundstrand Corporation, and PWC will pay more than \$75 million in penalties. Of that, \$20.7 million will go to Justice as part of a deferred prosecution agreement. The other \$55 million is part of a separate consent agreement with State. Up to \$20 million of this penalty can be suspended, if UTC applies it to remedial compliance measures.

State said certain "carve-outs" could apply to PWC's debarment. They are: exports to U.S. government programs; Coalition Operation Enduring Freedom efforts; and government programs for NATO and major non-NATO ally countries, the guidance advised.

## ITA Negotiators Seek "Goldilocks" Product List for Talks

Preparatory work the week of June 25 to set the groundwork for talks to expand the World Trade Organization's (WTO) Information Technology Agreement (ITA) underscored the challenge of creating a list of new products to bring under the accord. Negotiators would like to settle on a "Goldilocks" list that is not too big and not too small. Trade officials say they want a list that can attract as many participants as possible to the talks, but not one that would touch controversial sectors that could derail negotiations.

Proposed product lists have been submitted by the U.S., European Union (EU), Japan, South Korea, Taiwan, Costa Rica, Australia, Canada and Malaysia. The process is now focused on information gathering and not yet on analyzing the lists, one trade official reported. The list of proposed items is unwieldy for its length, and many proposed products don't have much of an



information technology aspect, he said. A short-term aim is to produce a picture of what's on the table, to have a good understanding of products that have been proposed and what the various countries want. Including products without a core IT element would complicate discussions, one official said. Although some countries may not have difficulties with those products, the rest of the ITA member countries may, he said.

About 20 countries attended the most recent sessions. Products on submitted lists were identified by Harmonized System Codes (HS Code) – mostly at the four and six-digit level -- and by product category. Countries are still consulting with industry on the lists. One source said there's hope for completing the compilation of proposals before the end of the summer, but another said it wasn't clear when the preparatory work would be finished. Very preliminary discussion has also addressed expanding the ITA work program on non-tariff barriers, an official said.

## **Amendments Make Passage of Magnitsky Bill More Likely**

A bill (S. 1039) to impose sanctions on Russians responsible for the death of Sergei Magnitsky may be more acceptable to the Obama administration and more likely to be enacted with the addition of amendments during Senate Foreign Relations Committee markup of the bill June 26. An amendment from the sponsor of the legislation, Sen. Ben Cardin (D-Md.), would allow the secretary of State to keep the list of sanctioned Russians secret as long as the secretary submits to Congress justification for keeping the names under wraps (see **WTTL**, June 25, page 1).

Cardin's amendment would allow State to create a classified, unpublished annex of names of Russians who would be subject to sanctions, if the secretary "(A) determines that it is necessary for the national security interests of the United States to do so; and (B) prior to submitting the list including a classified annex, provides to the appropriate congressional committees notice of, and a justification for, including each person in the classified annex." The committee also approved an amendment by Sen. Bob Corker (R-Tenn.), terminating the act after five years.

## **Questions Raised about Path to Plurilateral Services Deal**

Tough questions – mostly from India, China, Brazil, Argentina and Barbados -- about plans for a plurilateral agreement on services were raised at the June 29 meeting of the WTO Services Council. The council was briefed on the status of talks, which now includes 20 WTO members, up from the 16 initial participants (see **WTTL**, June 4, page 3). Some delegations at the session asked how the effort could be "supportive of the multilateral trading system," reported Hamid Mamdouh, director of the WTO Trade in Services division. There is a danger of a plurilateral accord "being perceived as undermining the multilateral system," he said.

Among the concerns raised was how a plurilateral services agreement would fit within the legal framework of the General Agreement on Tariffs and Trade (GATT). There are only a limited number of practical options at an institutional level for an international services agreement, one trade official said.

Previous plurilateral agreements on information technology, basic telecommunications and financial services were applied on a most-favored-nation (MFN) basis to all WTO members because negotiators of those deals had agreement from a "critical mass" of participants in those fields to sign up to comply with their requirements. At this stage, services negotiators are rejecting MFN application of an accord to prevent "free riders" such as the advanced developing countries from gaining its benefits without accepting its conditions.

Participants appear "really, really tangled in confusion," one official said, noting suggestions that a services pact could be like the Government Procurement Agreement (GPA), which is not applied on an MFN basis, or fall under some kind of waiver. The other options "are not

realistic,” he said. The GPA only exists as an historical exception, he said. The only other exception covers civil aircraft. The GATT specifically prohibits more exceptions unless all members agree, including those not party to the agreement, he said. No country will launch a negotiating project that would lie in the hands of non-participants, he asserted. Negotiators are also grappling with whether a services accord should be based on a positive list of service sectors that will be open to other participants or a negative list, identifying sectors that will remain restricted. There is also discussion on whether service sectors that are already open to foreign companies should be bound open and a starting point for concessions.

Another concern that has been raised in the talks is the apparent insistence of USTR officials to exclude services that are the jurisdiction of U.S. states. “That is a terribly difficult problem. States regulate professional services, period,” Bob Vastine, president of the Coalition of Services Industries, said June 26. “In what scenario do we see Congress overriding those state regulations, the right of the state to regulate? Maybe there is a path opening in insurance. That is different. But legal services, other services, very, very, very difficult. It is not a USTR matter; it’s our federal system that dictates this necessity,” he said.

## China Seen as Likely Player in Services Talks

China’s rising focus on services point to Beijing becoming involved in plurilateral talks to liberalize trade in services, officials said following talks the week of June 25. China is “putting services as one of the central components of their five-year plans,” said Hamid Mamdouh, director of the WTO Trade in Services division, following a June 29 meeting of the WTO Services Council. Mamdouh noted a recent international fair on trade in services in China where more than 10,000 companies were invited to exhibit. This reflects “a huge interest” by China in services policies and developing its services sector, Mamdouh said.

“The Chinese are on the move on services,” Bob Vastine, president of the Coalition of Services Industries, told a program in Washington June 26. He also noted the services fair in China and the large number of visitors and exhibitors. “As they see it in their own interest, they will move,” he said.

Another official noted that services account for 43% of China’s gross domestic product and is the center of attention in its 12th five-year development plan. China sees services as a vehicle for upgrading its manufacturing competitiveness, the official said. China will be interested in liberalizing its own market to attract foreign investment and boost technological and services development, he said. The Chinese are also interested in exporting services through “Mode 3,” which involves the supply of services through commercial presence in another country. While developed countries reduced foreign direct investment (FDI) during the recent economic downturn, China doubled its outward FDI in 2010, the official noted. Of that FDI, 80% was in services. That is why China is likely to join other countries in calling for “eliminating foreign equity participation” limitations and participating in the plurilateral services talks, he added.

## DC Law Firm Sued for Negligence in FCPA Case

Sidley Austin, one of Washington’s leading trade law firms, has been sued by a former client that claims the firm was negligent in not revealing information it discovered during pre-acquisition due diligence research, which resulted in the client paying nearly \$4 million to settle charges that it violated the Foreign Corrupt Practices Act (FCPA). Watts Water Technologies, Inc. of North Andover, Mass., filed the suit in DC Superior Court June 6. When contacted, a Sidley Austin attorney said the firm had “no comment” on the suit. Watts and a former employee, Leesen Chang, agreed to settle FCPA charges with the Securities and Exchange Commission Oct. 13, 2011, through a former Watts’ subsidiary in China, Watts Valve (Changsha) Co., Ltd. (CWV). At the time, Watts agreed to pay disgorgement of \$2,755,815, prejudgment interest of \$820,791 and a \$200,000 penalty; Chang paid a \$25,000 penalty; and

both Watts and Chang agreed to cease and desist from committing future violations. Watts claims Sidley discovered CWV was paying “kickbacks” to secure government contracts. “This policy violates the FCPA, and the Sidley partner responsible for the due diligence has subsequently admitted that this document was a ‘red flag.’ Undoubtedly, Sidley should have disclosed the kickback policy and the document to Watts,” the suit contends.

## USTR Rejects Issa Request to Attend TPP Negotiations

The U.S. Trade Representative’s (USTR) office June 28 politely rejected a request from Rep. Darrell Issa (R-Calif.) to observe the next round of Trans-Pacific Partnership (TPP) negotiations July 2-10 in San Diego. Instead of being allowed into the closed-door talks, Issa and his staff were offered credentials “to attend the public portions of the event,” said a letter to the lawmaker from Assistant USTR for Congressional Affairs Mac Campbell. “Only negotiators from each country are present for negotiation sessions,” he wrote (see **WTTL**, June 25, page 3).

In a June 26 letter to USTR Ron Kirk, Issa asked for himself and certain members of his staff to be allowed into the talks. “It is my hope that observing the negotiating process firsthand will help to alleviate some of my concerns about the process through which the agreement is being negotiated,” he wrote.

Issa is one of over 100 lawmakers who have complained about the lack of transparency in the TPP talks. In a separate letter to Kirk June 25, four senators said they are “concerned that this process has excluded both members of Congress and key stakeholders.” Sen. Ron Wyden (D-Ore.), chairman of the Finance Committee’s international trade subcommittee, Sens. Sherrod Brown (D-Ohio), Jeff Merkley (D-Ore.) and Robert Menendez (D-N.J.) asked Kirk to provide the public with detailed information and consistent updates on TPP matters of broad public concern. They also raised concern about intellectual property proposals that are similar to the failed Stop Online Piracy Act, which split IP providers and Internet users. “We request that you expand the consultation process by broadening the scope of the Industry Trade Advisory Committee (ITAC) for Intellectual Property Rights to include key stakeholders advocating for Internet freedom as well as right-holders,” they added.

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WASSENAAR ARRANGEMENT: BIS in Federal Register July 2 will publish changes to EAR based on agreements at December 2011 Wassenaar Plenary Meeting (see **WTTL**, June 18, page 2).

EXPORT ENFORCEMENT: Richard Phillips of Bronx, N.Y., was sentenced June 21 in Brooklyn U.S. District Court to 92 months in prison for attempting to export carbon fiber to Iran without license in violation of International Emergency Economic Powers Act. He had pleaded guilty to charges Jan. 18.

VIETNAM: President Obama June 25 issued presidential determination that permits Export-Import Bank to provide \$125.8 million direct loan for exports to Vietnam Post and Telecommunications Group, wholly state-owned company. Determination is needed for bank financing to nonmarket economy. Lockheed Martin Corporation will supply U.S. equipment and services for Vinasat II project.

BURMA: At Senate Foreign Relations hearing on Derek Mitchell’s nomination to be ambassador to Burma June 27, Sen. James Inhofe (R-Okla.) addressed “rumors” that oil and gas industries would be excluded from eased sanctions (see **WTTL**, June 25, page 4). In response, Mitchell said Secretary of State Clinton has “talked about a general license that hits all sectors equally, no carve-outs according to sector.”

EU: EU initialed comprehensive trade agreements with Colombia and Peru June 26. Separately, on June 26, it also officially launched negotiations on Free Trade Agreement with Vietnam.

RARE EARTH: U.S., EU and Japan asked WTO June 27 to establish dispute-settlement panel to hear their complaints against China’s restrictions on rare earth exports (see **WTTL**, March 19, page 2).

ITC: President Obama June 25 named Commissioner Irving Williamson chairman for two-year term ending June 16, 2014. Finance Committee June 29 approved nomination of Meredith Broadbent to ITC.