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ANNOTATED ITAR™
(“THE BITAR”)

by James E. Bartlett III

International Traffic in Arms Regulations
22 C.F.R. Chapter I, Subchapter M, Parts 120-130

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§ 126.7¹⁸⁰ *Exemption for Defense Trade and Cooperation Among Australia, the United Kingdom, and the United States*

(a) No license or other approval is required for the export, reexport, retransfer,¹⁸¹ or temporary import of defense articles,¹⁸² the performance of defense services, or engaging in brokering activities as described in part 129 of this subchapter,¹⁸³ between or among authorized users of this exemption, subject to the requirements and limitations in paragraph (b) of this section.¹⁸⁴

(b) The exemption described in paragraph (a) of this section is subject to the following requirements and limitations:¹⁸⁵

- (1) The activity¹⁸⁶ must be to or within the physical territory¹⁸⁷ of Australia, the United Kingdom, or the United States;¹⁸⁸
- (2) The transferor, recipient, or broker¹⁸⁹ must each be:
 - (i) U.S. persons¹⁹⁰ registered with the applicable Directorate of Defense Trade Controls (DDTC) registration pursuant to §§ 122.1 and 129.3 of this subchapter, and not debarred under § 127.7 of this subchapter;

¹⁸⁰ Amended by 89 FR 67670 (Aug. 20, 2024; effective Sep. 1, 2024). See also DDTC, [Fact Sheet: Key Elements of the ITAR § 126.7 Exemption for Defense Trade and Cooperation Among Australia, the United Kingdom, and the United States](#) (Aug. 16, 2024). Previously amended by 87 Fed. Reg. 16396 (Mar. 23, 2022, effective Sep. 6, 2022). Previously amended by 87 Fed. Reg. 16396 (Mar. 23, 2022, effective Sep. 6, 2022). Former 126.7(a)-(d) moved to § 120.18. Former § 126.7(e) moved to § 120.68.

¹⁸¹ 89 FR 67270 (Aug. 20, 2024), regarding whether retransfers or reexports are allowed under § 126.7 if an ITAR-controlled defense article is exported from a non-authorized user to an authorized user, states that both transferors and recipients would need to be authorized users, in addition to meeting all other criteria in § 126.7, before retransfers or reexports would be allowed under this exemption.

¹⁸² 89 FR 67270 (Aug. 20, 2024), states: “Any defense article that is designed, developed, engineered, manufactured, produced, assembled, tested, repaired, maintained, modified, operated, demilitarized, destroyed, processed, or used by a Foreign Person Employee or U.S. Person Employed Abroad pursuant to § 126.7 becomes subject to the ITAR.”

¹⁸³ Part 129: Registration and Licensing of Brokers.

¹⁸⁴ 89 FR 67270 (Aug. 20, 2024), states in part:

Any defense article produced or manufactured from U.S.-origin technical data or defense service(s) transferred via § 126.7 may only be transferred pursuant to a DDTC license or other authorization, which may include the § 126.7 exemption itself. In other words, any defense article that is designed, developed, engineered, manufactured, produced, assembled, tested, repaired, maintained, modified, operated, demilitarized, destroyed, processed, or used by a Foreign Person Employee or US Person Abroad pursuant to § 126.7 becomes subject to the ITAR.” The Department confirms such retransfers are permitted under § 126.7 provided all the criteria are met, including § 126.7(b)(2)(ii) - requirements associated with the transferor, recipient, or broker. ...As to whether the original U.S. exporter, the original equipment manufacturer, and the recipient of a defense article exported under the § 126.7 exemption could apply for a retransfer or reexport authorization to a territory outside of Australia or the United Kingdom, any of the three may apply for a retransfer or reexport authorization.

¹⁸⁵ ITAR exemptions do not automatically invalidate previously authorized licenses or agreements. For example, to the extent an exporter chooses to rely on a particular authorization to export, the provisos, conditions, and limitations that were applied to that authorization continue to govern the authorization.

¹⁸⁶ 89 FR 67270 (Aug. 20, 2024) states in part: “The term “activity” includes brokering and the provision of defense services within the scope of the exemption.”

¹⁸⁷ 89 FR 67270 (Aug. 20, 2024) states in part: “Servers hosting technical data in one of the three countries would still be within the physical territory of Australia, the United Kingdom, or the United States; however, transfers of technical data must be to or from those that meet the criteria set out in § 126.7(b)(2).”

¹⁸⁸ See also 89 FR 66210 (Aug. 15, 2024), stating in part DDTC’s policy that, effective Sept. 16, 2024, “the taking of defense articles outside a previously approved country by the armed forces of foreign government or United Nations personnel on a deployment or training exercise” is not an ITAR controlled event, as codified in § 120.54(a)(6).

¹⁸⁹ 89 FR 67270 (Aug. 20, 2024) states in part:

Brokering registration is required per § 129.3, with certain exceptions. The brokering requirements covering exemptions are already specified in § 129.4, and there is a reporting requirement in § 129.10(b) that applies with this exemption. The recipient of any defense article must be an authorized user or registered U.S. person per proposed § 126.7(b)(2)(i); however, the exemption is available for use between and among Australia, the United Kingdom, and the United States, and need not be in support of AUKUS. Lastly, the Department clarifies that foreign persons who are brokers as defined in § 129.2 must register with the Department to engage in brokering activities and must be an authorized user, per proposed § 126.7(b)(2), to use this exemption.

¹⁹⁰ 89 FR 67270 (Aug. 20, 2024) states in part, regarding whether a U.S. person who works for a U.S. company can utilize the § 126.7 exemption while traveling outside the United States, that:

The transfer must be to or within the physical territory of Australia, the United Kingdom, or the United States. Similarly, the Department again notes the text of § 120.54, which lists activities that are not exports, reexports, retransfer, or temporary imports. ... All U.S. persons, as defined in § 120.62, including individual persons, are eligible to become authorized users. The § 126.7 exemption is a unique authorization not to be conflated with a USPAB authorization issued under § 120.22(b), which authorizes the export of limited defense services only. The mere presence or involvement of a U.S. person during the design, development, etc. of a foreign-origin defense article, or the provision of limited defense services authorized via a USPAB authorization, does not subject a resultant foreign-origin defense article to the ITAR or its reexport and retransfer requirements. However, to use the § 126.7 exemption, a U.S. person must be

(ii) A ¹⁹¹U.S. Government department or agency; or

(iii) Authorized users¹⁹² identified through the DDTC website and, if engaging in brokering activities, registered with DDTC pursuant to § 129.3 of this subchapter;

(3) The defense article or defense service is not identified in Supplement No. 2 to this part as ineligible for transfer under the exemption in paragraph (a) of this section;¹⁹³

(4) The value of the transfer¹⁹⁴ does not exceed the amounts described in § 123.15 of this subchapter and does not involve the manufacturing abroad of significant military equipment as described in § 124.11 of this subchapter; and

(5) Transferors must comply with the requirements of § 123.9(b)¹⁹⁵ of this subchapter.

Note 1 to paragraph (b): The exemption in paragraph (a) of this section does not remove other applicable U.S. statutory and regulatory requirements. For example, for U.S. authorized users, transfers of classified defense articles and defense services must still meet the requirements in 32 CFR part 117, National Industrial Security Program Operating Manual (NISPOM), in addition to all other applicable laws. Australian authorized users must, for example, meet the requirements in the Australian Protective Security Policy Framework, including appropriate security risk management for contracted providers. United Kingdom authorized users must, for example, meet the requirements in the Government Functional Standards GovS 007: Security.

an authorized user – and defense services provided via the exemption subjects technical data and any resulting defense article to the ITAR, including retransfer and reexport restrictions outside the authorized user community.

¹⁹¹ ITAR exemptions do not automatically invalidate previously authorized licenses or agreements. For example, to the extent an exporter chooses to rely on a particular authorization to export, the provisos, conditions, and limitations that were applied to that authorization continue to govern the authorization.

¹⁹² 89 FR 67270 (Aug. 20, 2024) states in part, regarding the authorized user process:

DDTC will not confirm to third parties a U.S. registrant's eligibility to participate in a transfer via the § 126.7 exemption. Australian and UK entities will manage the authorized user enrollment process through their respective governments. Non-U.S. authorized users will have access to DDTC's website after enrolling and will be able to view the authorized user list. The Department is not designing additional functionality for non-U.S. authorized users in DECCS. Under 22 U.S.C. 2778(g)(5), the Department is prohibited from issuing export licenses to foreign persons. Foreign persons can submit General Correspondence requests seeking authorization to reexport and retransfer defense articles, and foreign persons owned or controlled by U.S. persons may seek approval to engage in brokering activities. Only authorized users of Australia and the UK will be identified on the authorized user list on DECCS. UK and Australian dual nationals can be authorized users, and § 126.18(e) outlines the exemption available to them for transferring classified defense articles. [Regarding] whether freight forwarders, carriers, and warehousing companies need to be authorized users, for purposes of § 126.7(b)(2), anyone who has access to a defense article would need to be an authorized user. Many carriers and other service providers do not require such access; however, freight forwarders often require access to the defense articles they are processing.

¹⁹³ 89 FR 67270 (Aug. 20, 2024) states, regarding whether a transfer of third-country origin (e.g., South African-origin; German-origin) defense articles between and among authorized users is allowed under § 126.7, provided such transfer occurs to or within the physical territory of Australia, the United Kingdom, and the United States and the defense articles are not listed on the Excluded Technology List. The ETL describes defense articles, which includes foreign-origin defense articles. If the foreign-origin defense articles are subject to the ITAR, are not on the ETL, and if all other criteria are met, the § 126.7 exemption may be used.

¹⁹⁴ 89 FR 67270 (Aug. 20, 2024), states, as edited:

The value of every transfer should be calculated, because transfers that exceed certain values are not eligible under § 126.7(b)(5) and may require congressional certification per ITAR §§ 123.15 and 124.11. The Department defers to exporters on the most appropriate formula to calculate the value of intangible transfers. When establishing the value of a transfer, exporters should strive for consistency regardless of whether a transfer will occur pursuant to a license, agreement, or exemption. Congressional certification values may be calculated separately for each transfer under the exemption, provided the transfer is not split or structured to avoid exceeding applicable notification dollar value limits.

¹⁹⁵ § 123.9(b): "The exporter, U.S. or foreign, must inform the end-user and all consignees that the defense articles being exported are subject to U.S. export laws and regulations as follows: ...". § 123.9(b) refers to tangible items only and requires that the exporter must notify the end user of certain criteria, including the exemption citation, if an exemption is used." 89 FR 67270 (Aug. 20, 2024), states, as edited, that "use of the [§ 126.7] exemption still requires compliance with all applicable sections in the ITAR, including registration and recordkeeping requirements," and that "ITAR exemptions do not require part 130 reporting, as exemptions do not require an applicant to seek authorization from DDTC pursuant to §§ 130.2 and 130.9."

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123.11(b): *Movement of USML vessels & aircraft outside of U.S. if not carrying USML cargo*
123.12: *Shipment between U.S., P.R., and U.S. possessions (Policy of exclusion, not an exemption.)*
123.13: *Domestic air shipment via a foreign country*
123.15(c): *Congressional certification for exemptions*
123.16(a): *Proscribed destinations, MTCR, SME, EEI*
123.16(b)(1): *Unclassified hardware in furtherance of agreements*
123.16(b)(2): *Parts under \$500, split orders*
123.16(b)(3): *Packing cases*
123.16(b)(4): *Unclassified models and mockups*
123.16(b)(5): *Public exhibitions and trade shows*
123.16(b)(9): *Unclassified hardware to U.S. subsidiaries overseas*
123.17(f): *Temporary export of body Armor and protective gear*
123.17(g): *Limits on exemption for temporary export of body Armor and protective gear for personal use in 126.1 countries*
123.17(h): *Temporary export of body armor and protective gear for personal use under USG contract in Iraq*
123.17(i): *Temporary export of body Armor and protective gear for personal use under USG contract to Afghanistan*
123.17(j): *Report required for failure to return temporarily exported body Armor and protective gear under 123.17*
123.19: *Shipment from Canada or Mexico transiting USA*
123.22(a)(2): *DSP-73 decrementation for GFE (footnote)*
123.22(b)(2): *Waiver of pre-departure filing for urgency*
123.23: *Shipment not exceeding 10% value authorized by license*
123.24: *(Marking of shipments by U.S. Postal Service)*
124.2(a): *Training in basic O&M of defense articles auth for export to same recipient*
124.2(b): *Services by U.S. member of foreign military*
124.2(c): *Unclassified maintenance, training, & tech data, for NATO countries, Australia, Japan, or Sweden*
124.2(c)(5): *(Defense services exemption not allowed for (i)-(xiii))*
124.3: *Exports of technical data in furtherance of an agreement*
124.15(d): *(No exemptions for insurance data)*
125.2(b): *Tech data for domestic patent applications*
125.4(a): *(No exemptions for proscribed destinations [except 123.17(h)(i)] or persons; NISPOM; Certification of technical limitations)*
125.4(b)(1): *Tech data disclosed per request or directive from DOD*
125.4(b)(2): *Tech data in furtherance of MLA or TAA*
125.4(b)(3): *Tech data, classified or unclassified, in*

furtherance of contract with USG.

125.4(b)(4): *Copies of tech data previously authorized for export to same recipient*
125.4(b)(5): *Basic operations, maintenance, and training related to article authorized for export to the same party*
125.4(b)(6): *Data related to firearms not exceeding caliber .50*
125.4(b)(7): *Data, classified or unclassified, returned to foreign source*
125.4(b)(8): *Data related to classified previously authorized for export to same party*
125.4(b)(9): *Data exported, reexported, or retransferred by or to US person or foreign employee of US person temporarily abroad*
125.4(b)(10): *Disclosures by US college to college employees in US*
125.4(b)(11): *Data per exemption granted by DDTC for DOD, DOE, or NASA contracts*
125.4(b)(12): *Tech data exempt under part 126*
125.4(b)(13): *Tech data approved by USG for public release*
125.4(c): *Services and unclassified data to NATO, Australia, Japan, and Sweden for response to DOD request for quote, bid, or proposal*
125.5(a): *Unclassified data during approved classified plant visit*
125.5(b): *Classified tech data during approved classified plant visit*
125.5(c): *Unclassified data during USG approved classified or unclassified plant visit*
126.2: *Temporary suspension or modification of any or all regulations (Policy statement; not an exemption)*
126.3: *Exceptions by DAS (undue hardship) (Policy statement; not an exemption)*
126.4(a): *Temporary import or export by or for USG, or for program authorized by President, or by USG Bill of Lading*
126.5(a): *Temporary import and return of unclassified articles from Canada*
126.5(b): *Permanent and temporary export of defense articles, defense services and tech data to Canada for Canadian Gov't or CRP*
126.5(d): *Canadian reexport/retransfers*
126.6(a): *Article or tech data sold/lent by DOD to foreign Gov't if delivered in USA*
126.6(b): *Entry and departure of foreign military aircraft and vessels*
126.6(c): *FMS*
§ 126.7: *Defense Trade and Cooperation Among AUS, UK, and USA*
120.22(b): *Related Authorizations*
126.16(e)(1)-(4): *US-Australia Treaty*
126.17(e)(1)-(4): *US-UK Treaty*
126.18: *Transfers to dual/3rd-country national employees*
129.3(b), (d): *Broker registration*
129.5: *Broker License/Approval*