



# EIB World Trade Headlines

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## 126.13 Requirements for Re-Exports/Re-Transfers Under §123.9

Posted 8/26/14

Effective October 1, 2014, foreign persons requesting re-export/re-transfer of defense articles pursuant to §123.9(c) must provide a letter addressing the following:

· Whether the applicant or the chief executive officer, president, vice-presidents, secretary, partner, member, other senior officers or officials (e.g., comptroller, treasurer, general counsel) or any member of the board of directors is the subject of an indictment or has been otherwise charged, convicted of, violating any of the U.S. criminal statutes enumerated in §120.27 of ITAR; or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. Government;

Whether, to the best of the applicant's knowledge, any party to the export as defined in §126.7(e) has been convicted of violating any of the U.S. criminal statutes enumerated in §120.27 of this subchapter, or is ineligible to contract with, or to receive a license or other approval to temporarily import or export defense articles or defense services from any agency of the U.S. government.

The foreign party signing the statement must be a responsible official empowered by the applicant. The statement must be signed by the foreign person making the re-export or re-transfer request.

Re-export and re-transfer requests submitted after September 30, 2014 that do not contain the 126.13 statement are subject to being returned without action.

### NEWSLETTER NOTES

- 126.13 Requirements...
- September 30, 2014 - October 1,
- October 2, 2014, Export Control Reform
- Su Bin, Lode-Tech, And Privatizing...
- Implementation of Understandings Reached...
- Ukraine Bans Military Exports to Russia
- Paula Connelly
- US: Russia Directing New Offensive in...
- Aviation and Aerospace; S.C. is Flying
- BIS Updates

## September 30, 2014 - October 1, Complying with U.S. Export Controls

The two-day program is led by BIS's professional counseling staff and provides an in-depth examination of the Export Administration Regulations (EAR). The program will cover the information exporters need to know to comply with U.S. export control requirements on commercial as well as some military items. We will focus on what items and activities are subject to the EAR; steps to take to determine the export licensing requirements for your item; how to determine your export control classification number (ECCN); when you can export or reexport without applying for a license; export clearance procedures and record keeping requirements; and real life examples in applying this information. Presenters will conduct a number of "hands-on" exercises that will prepare you to apply the regulations to your company's export activities. This program is well suited for those who need a comprehensive understanding of their obligations under the EAR.

Event details can be found on BIS Website

## October 2, 2014, Export Control Reform

This one day training course is designed to provide in-depth exposure to core elements of the Export Control Reform (ECR) initiative. Regulatory, compliance, and engineering officers will provide training on the key elements ranging from licensing issues to "specially designed" and license exceptions such as use of the Strategic Trade Authorization. The course will focus on new and different compliance requirements. This course will be useful to defense exporters with relatively limited exposure to the regulatory requirements of the Export Administration Regulations, and to exporters who now will be able to support U.S. military items without incurring International Traffic in Arms Regulations (ITAR) liability.

Event details can be found on BIS Website

**The programs will be held at the *Hilton Alexandria Mark Hotel, 5000 Seminary Road, Alexandria, VA 22311, 703-845-1010. A discounted room rate of \$219.00 per night (single/double) is available for this seminar from September 29-October 2, 2014. To make room reservations contact the Hilton at 877-783-8258 and provide the Group Code: BIS DOC or visit, [https://resweb.passkey.com/Resweb.do?mode=welcme\\_ei\\_new&eventID=11406339](https://resweb.passkey.com/Resweb.do?mode=welcme_ei_new&eventID=11406339)***

## Su Bin, Lode-Tech, And Privatizing Cyber Espionage In The PRC

The criminal complaint against Chinese businessman Su Bin (aka Stephen Su, Stephen Subin) is a must-read. Be sure to read the Wall Street Journal article as well. It marks the first time that the FBI has issued an arrest warrant for a foreigner charged with an act of cyber espionage via a network attack that has until now been attributed solely to state actors like the PLA.

The complaint provides an indepth look at an EaaS (Espionage-as-a-Service) operation involving one named suspect and two unnamed co-conspirators. I've tried to reduce the 49 page complaint into its essential components and added a few missing pieces.

### **SU Bin (Stephen Su)**

Su's alleged role was to help his partners identify valuable military aviation technology to steal and then find buyers for the stolen data. His company's logo as portrayed on the Lode-Tech.com website is almost laughably ironic: "We will track the world's aviation advanced technology." Su and his partners did exactly that, but would then attempt to steal the technology and sell it to their customers.

Su has been the owner and manager of Beijing Lode Technology Company, Ltd. since 2003. Lode-Tech is a cable harness equipment company that serves the aviation and space market. The company has offices in Beijing, Shanghai, Guangzhou, Shenzhen, Chengdu, Xi'an, Shenyang and Changchun. Lode-Tech is also a representative and distributor of related aerospace products for a number of companies including DIT-MCO in Kansas City, MO; a company which proudly announces that its equipment "was used on the early "Hawk Missile," the first intercontinental Atlas missile, the Polaris missiles for the Navy, the Titan missiles for the Air Force, and the Patriot Missile used so successfully in the Desert Storm War, as well as almost all the aircraft used by the Air Force, Army and the Navy." DIT-MCO plus Lode-Tech's other business relationships in the aerospace industry (such as sharing space with Boeing at the Beijing Aviation Expo) put Su in an excellent position to identify valuable data for theft by a team of mercenary hackers who are identified in the complaint as UC1 and UC2.

**NOTE:** This case underscores the importance for companies in high value technologies like aerospace to (a) conduct indepth due diligence investigations on all of their vendors and (b) restrict network access by implementing least privilege rules.

### **Uncharged Co-Conspirator 1 and 2 (UC1, UC2)**

According to the complaint, UC1 and UC2 are located in China, are hackers for hire, and are affiliated with multiple organizations and entities in the PRC.

They have a diverse history of accomplishments but have chosen to focus on "military technology intelligence". They have an unidentified funding source that provided working capital in seven figures RMB, a hierarchical structure, and engage in business development. They've been working with Su since at least August, 2009. In addition to their collaboration with Su on the Boeing C-17 project, UC1 sent several reports to UC2 which described other actions:

- Targeted F-22 data from Lockheed Martin (LMT) wasn't named in the complaint but they're building the F-22 and their sensitive documents use the classification terminology "Proprietary Information Source Selection Sensitive" which was mentioned in the complaint on p. 42).
- Stole 20GB of data from a U.S. military contractor via the company's FTP server
- Acquired a list of contractors and suppliers for a U.S. Unmanned Aerial Vehicle project and performed network reconnaissance.
- Have access to a Russian-Indian joint missile development program by "controlling" the company's website and "awaiting the opportunity to conduct internal penetration".

**NOTE:** The name of the company is redacted in the report but it may be referring to the Brahmos 2 missile developed by [Brahmos Aerospace](#); a joint venture between India's DRDO and Russia's NPO Mashinostroyenia.

#### Activities and Methodologies

- Their target selection is informed by S&T (Science and Technologies) priorities of their potential customers.
- They establish "technology bases" and hop servers outside of China (i.e.; U.S., Korea, Singapore) and "machine rooms" with legal status in Macao and Hong Kong
- Intelligence collection is done outside of the PRC (presumably at the above locations) and brought into China in person rather than electronically.

They focus on those U.S. and Taiwanese defense contractors which are among the Global top 50 arms companies.

#### Conclusion

While this is the first criminal complaint that describes "hackers-for-hire" or Espionage-as-a-Service it isn't new and it isn't exclusive to China. U.S. cyber security companies who research APT threat actors should study this criminal complaint closely; especially those who have spent the last 9 years defining APT solely as the Chinese government. Threat intelligence companies worldwide need to find ways to differentiate the activities of a nation-state with those of a for-profit hacker group, criminal organization, or other alternative entities engaging in acts of cyber espionage. That may be difficult under current APT assumptions and with the limitations of purely technical indicators. Finally, the SU-UC1-UC2 enterprise as described in this criminal complaint underscores and validates a data-centric approach to cyber security wherein a company identifies their own high value files by knowing the [S&T research priorities](#) of a given nation state and its state-owned or publicly-owned enterprises.

## Implementation of Understandings Reached at the 2005, 2012, and 2013 Nuclear Suppliers Group (NSG) Plenary Meetings and a 2009 NSG Intersessional Decision; Additions to the List of NSG Participating Countries

This rule amends the Export Administration Regulations (EAR) to implement the understandings reached at the 2005, 2012 and 2013 Nuclear Suppliers Group (NSG) Plenary meetings. Specifically, this rule amends certain entries on the Commerce Control List (CCL) to reflect changes in the Annex to the NSG "Guidelines for the Transfer of Nuclear Related Dual Use Equipment, Materials, Software and Related Technology" (the NSG Annex) based on the understandings reached at the aforementioned NSG Plenary meetings. This rule also amends the CCL to implement a decision adopted under the NSG intersessional silent approval procedures in December 2009. In addition, this rule amends the EAR to reflect the status of Croatia, Estonia, Iceland, Lithuania, Malta, Mexico and Serbia as participating countries in the NSG. Finally, consistent with the 2005 NSG understandings, this rule amends the export licensing policies in the EAR that apply to items that require a license for nuclear nonproliferation (NP) reasons, or as a result of certain nuclear end-users or end-uses, by adding an additional factor that must be considered by BIS when it reviews license applications involving such items, end-users, and/or end-uses.

## Ukraine Bans Military Exports to Russia

KIEV, August 28 (RIA Novosti) -Ukrainian President Petro Poroshenko signed a decree banning the export of military equipment and dual-use military goods to Russia. The decree, No. 691/2014, published on the Ukrainian president's official website on August 27, orders the Ukrainian Cabinet of Ministers to take measures "to stop exporting to Russian Federation the military equipment and dual-use military goods" with the exception of "space equipment, used for research and peaceful uses of outer space in the frameworks of international space projects." The decree approves the decisions of the Ukrainian National Security and Defense Council, that has been in force for several months. In March, Ukraine's state-owned defense conglomerate Ukroboronprom barred all shipments of military goods to Russia.



## Customs Lawyer

Paula M. Connelly is a principal in the Law Offices of Paula M. Connelly, a law firm specializing in Customs and international trade matters. She has been practicing law since 1991 and prior to working as an attorney, worked as a licensed Customs broker for several customs brokerage companies in the Boston area. She has over 20 years experience in Customs and International Trade matters and works with numerous importers and exporters in addressing and resolving import and export compliance issues.



THE LAW OFFICES OF  
**PAULA M. CONNELLY**

Sunday morning Broker Exam refresher course begins Sept 7!

As summer comes to a close and people return to the full work mode, I would like to share two important news items that developed recently.

First – a recent decision issued by the Eastern New York U.S. District Court on a negligence suit brought by an importer against its customs broker for alleged negligence was dismissed as the court determined that the suit was brought after the deadline established in the broker's Terms and Conditions contract. The court recognized the limitations set forth in the Fedex Trade Network's Terms and Conditions contract which limited any entry-related lawsuits to 75 days after the date of liquidation. As the importer, Cardi Furniture, brought the suit which involved antidumping duties on wooden bedroom furniture, more than 75 days after liquidation, the suit was time-barred. This case serves as an important reminder to importers to review all Terms and Conditions closely before using services of any Customs

Second – Customs Headquarters has issued a notice to all ports concerning the use of 19 USC 1514 Protests for post-importation free trade claims. This is an important development and importers and brokers should be aware of the change in their policy. The notice, which was issued last week, states that as many Free Trade Agreements include specific remedies for filing for post importation claims, such as the NAFTA 1520(d) mechanism, importers are not allowed to file Protests for post importation claims. Many of the more recent FTA's include specific post importation remedies which are generally limited to one year from the date of importation. Thus, if a claim is not filed at the time of entry, the importer would have one year from date of importation to file the post importation claim for a duty refund. The Court of International Trade has addressed the issue of filing protests in lieu of these "520(d) claims" and has determined that such claims are not protestable, thus importers are limited to the one year from date of importation period. However, for several other programs, including the GSP, importers have in the past filed Protests for duty refunds in cases in which a claim was not filed at the time of entry and Customs had processed them accordingly. This process will no longer be acceptable by Customs. Any post importation claims for GSP must be filed before liquidation by means of a Post Entry Amendment (PEA) or Post Summary Correction (PSC).

Most importantly, importers and brokers should keep in mind that a traditional protest under 19 USC 1514 which can be filed up to 180 days after liquidation will not be accepted by Customs for any FTA post importation claims. The protest will be rejected upon submission.

As the GSP has still not been reinstated, brokers/importers should continue to flag eligible entries as Customs has indicated that if GSP is reinstated retrospectively, the refunds will be issued automatically. However, if entries are not flagged, then you will be limited to the time constraints discussed above. There will be no option to protest entries that have liquidated without flagging. I strongly recommend that importers/brokers review any GSP eligible entries to ensure that they were flagged and if not, make the necessary arrangements for the claim which is either a PEA or PSC. If the entries have liquidated without being flagged, Customs will not allow a protest as a refund method.

If you have questions on this or would like a copy of the Customs notice, please contact my office at [atpaula@connellycustomslaw.com](mailto:atpaula@connellycustomslaw.com) and I will send over a copy.



**SUNDAY MORNING CUSTOMS BROKER EXAM SESSIONS BEGIN SEPTEMBER 7 – SEVERAL SPOTS ARE AVAILABLE** – this session is intended for those who have taken the exam and are looking for some extra help in the more difficult areas including Classification, Valuation, and Free Trade Agreements. This is not an intensive prep course and is not intended for those who are not familiar with the exam. The session will be held on 4 Sundays (Sept 7, 14, 21 and 28) from 8:30-12:30 at the Red Roof Inn in Woburn. The cost is \$200 per person. If you are interested contact my office asap as there are only several spots remaining.

**Email Me:**

[paula@connellycustomslaw.com](mailto:paula@connellycustomslaw.com)

## US: Russia Directing New Offensive in Ukraine

WASHINGTON (AP) — The Obama administration accused Russia on Wednesday of orchestrating a new military campaign in Ukraine that is helping rebel forces expand their fight in the country's east and sending tanks, rocket launchers and armored vehicles toward communities elsewhere.

"These incursions indicate a Russian-directed counteroffensive is likely underway in Donetsk and Luhansk," State Department spokeswoman Jen Psaki told reporters, referring to two rebel regions in eastern Ukraine. She also voiced concern about overnight deliveries of materiel in southeast Ukraine, where separatists on Wednesday entered a key town linking Russia to the Crimean Peninsula it recently annexed.

The reports of Russian activity are the latest wrinkle in months of fighting in Ukraine that spiraled out of street protests against the former government, the ouster of a pro-Russian president and then rebellion in the most pro-Russian parts of the country. Ukraine and Western governments say Moscow has played a direct role in escalating the conflict, though Moscow denies directly supporting separatists.

Psaki said Russia was being dishonest about its actions, even to its own people.

Russian forces, she said, are being sent 30 miles inside Ukraine, without them or their families knowing where they are going. She cited reports of burials in Russia for those who've died in Ukraine and wounded Russian soldiers being treated in a St. Petersburg hospital. She said such actions show Russia isn't acting transparently.

Despite the critical rhetoric, Psaki didn't outline any

President Barack Obama and European allies will discuss Ukraine at next week's NATO summit, she said, but didn't outline any imminent steps Washington was considering.

The mayor of Novoazovsk, a port in southeastern Ukraine, said rebel forces entered his town Wednesday after three days of heavy shelling, capturing territory far from most battles with government troops. It wasn't clear if the rebels reached the area via Russia.

The new southeastern front raises fears the separatists are seeking to create a land link between Russia and Crimea.

The new southeastern front raises fears the separatists are seeking to create a land link between Russia and Crimea. Novoazovsk lies on the Azov Sea on the road between the territories. If Russia or its proxies seize southeastern Ukraine, it would give them control over the entire Azov Sea and any oil or mineral riches it contains.

On Tuesday, Russian President Vladimir Putin and his Ukrainian counterpart, Petro Poroshenko, met in the Belarusian capital of Minsk for their first ever one-on-one meeting, lasting more than two hours. There was no indication of a swift resolution to the fighting.

## Aviation and Aerospace; S.C. is Flying High

August 25, 2014 2:30 am • The Times and Democrat

South Carolina is celebrating aviation this week at a time when the business of flight has never been a bigger player in the state.

Orangeburg Mayor Michael Butler has joined in proclaiming Aug 17-23 as "General Aviation Appreciation Week." General aviation contributes \$417 million annually in economic activity in South Carolina.

"Mayor Butler's proclamation highlights to the public the economic benefits and valuable services that general aviation provides to Orangeburg and South Carolina," said Selena Shilad, executive director of the Alliance for Aviation Across America. "We sincerely thank the mayor and the city of Orangeburg for recognizing this important industry."

Regarding aviation in the state, other officials offer these assessments:

General aviation is a means to stay connected for thousands of businesses and communities across South Carolina,” said Mark Baker, president and CEO of the Aircraft Owners and Pilots Association.

- “Business aviation helps South Carolina companies reach customers, suppliers and markets, thus allowing them to operate in an increasingly competitive environment,” said Ed Bolen, president and CEO of the National Business Aviation Association.
- “Aviation is a lifeline to communities, a driver for business and a passion for many across our country,” said Jack Pelton, chairman of the Experimental Aircraft Association.
- “South Carolina’s network of airports helps the state’s companies, farms, and communities reach necessary goods, services, and businesses,” said Kim Stevens, interim president and CEO of the National Association of State Aviation Officials.
- “General aviation and local airports are essential to the competitiveness and growth of businesses in South Carolina and around the nation,” said Thomas L. Hendricks, president and CEO of the National Air Transportation Association.

The aviation observance comes a week after University of South Carolina research economist Joseph Von Nessen with the Darla Moore School of Business released the findings of a study on the economic impact of the state’s growing S.C. aerospace cluster, which now has a \$17.4 billion economic impact and supports more than 102,000 workers.

The study, titled “Uncovering the Stealth Cluster: The Economic Impact of Civilian and Military Aerospace on South Carolina,” was released Aug. 19 by New Carolina — South Carolina’s Council on Competitiveness and the university’s Ronald E. McNair Center for Aerospace Innovation and Research during the state’s first ever Aerospace Industry Day held in Columbia.

South Carolina’s aerospace cluster includes private-sector firms operating directly within the industry (known as the “aerospace core”), the state’s four military aviation facilities and smaller private companies supporting the aviation and aerospace industries. Among the key findings of the study:

- Since 2010, South Carolina’s aerospace core has had an average annual employment growth rate of 11.4 percent, which is approximately eight times higher than the employment growth rate for the state over the same time period.

(\*Continued On The Following Page)

- Since 2010, South Carolina’s aerospace core has had an average annual firm growth rate of 19.2 percent, with the majority of growth originating in small firms with five or fewer employees.
- The average compensation for a civilian aerospace employee is \$70,748, which is significantly higher than South Carolina’s average employee compensation of \$41,206.
- The aerospace cluster generates an average of \$532,096,021 in state tax revenue per year.

S.C. Commerce Secretary Bobby Hitt cited Boeing as the catalyst for South Carolina as an emerging leader in aerospace, with the corporation’s presence in the state continuing to grow.

“Much like BMW accelerated the growth of the state’s automotive industry, South Carolina’s aerospace industry has grown exponentially since Boeing selected the Charleston region in 2009,” Hitt said. “And the ‘Boeing boost’ continues as we recruit major global suppliers — like carbon fiber manufacturer Toray Industries — that serve the aerospace cluster in South Carolina.”

As much as Orangeburg’s commitment to general aviation through the city’s Orangeburg Municipal Airport remains a sound one in the pursuit of economic development, it is our hope that the “Boeing boost” will ultimately lead to more enterprises associated with the aerospace industry finding reason to land in our locale with its proximity to Charleston.



August 30, 2014 Implementation of high performance computer revisions in BIS published Rule: Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls

## AES Filing Please Remember

An AES Filing must be done for all ECCN's that are part of the 600 series of products that moved from the USML to the CCL, regardless of value, even if the export is made to Canada.



The Federal Register was added to the following names on the DPL:

79 F.R. 49283 Dated August 20, 2014

Gatewick LLC a/k/a Gatewick Freight & Cargo Services a/k/a Gatewick Aviation Services Mohamed Abdulla Alqaz Building Al Maktoum Street Al Rigga Dubai, United Arab Emirates

and

G#22 Dubai Airport Free Zone P.O. Box 393754 Dubai, United Arab Emirates

and

P.O. Box 52404 Dubai, United Arab Emirates

Please visit [http://export.gov/ecr/eg\\_main\\_023148.asp](http://export.gov/ecr/eg_main_023148.asp) for more information.



August 30, 2014 Implementation of high performance computer revisions in BIS published Rule: Wassenaar Arrangement 2013 Plenary Agreements Implementation: Commerce Control List, Definitions, and Reports; and Extension of Fly-by-Wire Technology and Software Controls

Published: August 4, 2014 (79 FR 45288)

*You must welcome change as the rule but not  
as your ruler.*

*~Denis Waitley~*



## "Essentials of Export Controls" Seminar for USG Employees

The Bureau of Industry and Security (BIS) will offer, for U.S. Government employees only, a one-day seminar on the Export Administration Regulations. The program, entitled "Essentials of U.S. Export Controls", will be held on Wednesday, September 10, 2014 at the Commerce Department, HCHB Room 6087B, 14th Street and Pennsylvania Avenue, N.W., Washington, D.C. 20230. Entrance for USG employees with badge is at the main entrance, on 14th Street midway between Pennsylvania Ave. and Constitution Ave. The seminar will begin at 9:00 a.m. and conclude at 4:00 p.m.

The seminar, designed for U.S. Government employees involved with export transactions subject to the Export Administration Regulations (EAR), will provide guidance on how to determine export licensing requirements under the EAR, what other U.S. Government agencies are responsible for implementing export controls, and a better understanding of terminology specific to the EAR. A regulatory specialist will provide a summary discussion of the current status of the President's Export Control Reform Initiative (ECR).

To register, please send an email to [Christine.Wheeler@bis.doc.gov](mailto:Christine.Wheeler@bis.doc.gov).

Space is limited, so please register early. There is no cost for this seminar

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*~Denis  
Waitley~*