

**Questions and Answers from  
the De minimis and Direct Product Webinar  
of December 16, 2015**

**1) How should the value of U.S. technology be determined for de minimis calculations? It is not clear to me how technology overall can be valued or how U.S. technology can be distinguished from non-U.S. technology**

The difficulty in determining these values is one reason that the EAR require submission of a one-time report before determining that a non-U.S. technology has *de minimis* U.S. content. See § 734.4(c)(3) and (d)(3) of the Export Administration Regulations (EAR).

There may be an approximation of fair market value if the U.S. technology is purchased or otherwise obtained by a customer, affiliate, or other party abroad. The overall value of the non-U.S. technology may be determined by tying it to the costs of developing the non-U.S. technology. Because the determination is strongly tied to the facts of the transaction, the one-time report should clearly explain the methods and assumptions used.

**2) Can you please give a general description of what is included in the 600 series and 9x515?**

The 600 series items are military items that are subject to the EAR (rather than the ITAR) because they do not provide a critical military advantage or warrant control on the ITAR for other reasons. "600 series" is also a defined term in part 772 of the EAR.

From part 772: Definition of 600 series

*ECCNs in the "xY6zz" format on the Commerce Control List (CCL) that control items on the CCL that were previously controlled on the U.S. Munitions List or that are covered by the Wassenaar Arrangement Munitions List (WAML). The "6" indicates the entry is a munitions entry on the CCL. The "x" represents the CCL category and "Y" the CCL product group. The "600 series" constitutes the munitions ECCNs within the larger CCL.*

9x515 items are commercial spacecraft-related items. While 9x515 is not explicitly defined in the EAR, the definition of 9x515 for *de minimis* and direct product purposes can be found in the key terms list associated with the *De Minimis* and Direct Product Rules Decision Tool found on the BIS website.

From the Key Terms List: Definition of 9x515

*9x515 Export Control Classification Numbers (ECCNs) (the "x" representing any of the product groups A, B, C, D or E) describe "spacecraft," related items, and some radiation-hardened microelectronic circuits that were once subject to the International Traffic in Arms Regulations (ITAR) (22 CFR Parts 120-130) and United States Munitions List Category XV.*

*Just as the ITAR effectively trumps the Export Administration Regulations, items described in a 9x515 ECCN or "600 series" ECCN trump other ECCNs on the Commerce Control List.*

**3) Can you please discuss the analysis to conduct when a "600 series" item is incorporated into a non 600-series EAR item?**

This situation should rarely occur. Items in 600 series should not be in normal commercial use. Also note, the vast majority of parts and components in "600 series" are classified under a "600 series" .x paragraph, which covers "specially designed" parts and components. If the "600 series" component was incorporated into an AT-only ECCN (such as an ECCN 9A991.b civil aircraft in "production") or EAR99 in "production," the component would no longer be a "600 series" 9A610.x component but rather a 9A991.d or EAR99 component, respectively. A separate analysis of "specially designed" should be made to determine whether the 9A991.d component was "specially designed" for purposes of 9A991.d, but for purposes of the "600 series" the component would no longer be "specially designed" because it was used in a civil aircraft in "production."

**Note:** *If a "600 series" component was incorporated into an item that has any reason for control other than AT according to the applicable ECCN , the content would be treated as "600 series" and the 0 percent de minimis rule would apply for destinations in Country Groups D:5, E:1 and E:2.*

**4) Follow up question to question three (the analysis for 600 series items incorporated in the US into non-600 series items). Not necessarily a foreign de minimis question, but is there a "see through" rule within the EAR for 600-series items.**

If a "600 series" item is incorporated into a non-600 series item, the *de minimis* provision for "600 series" items applies, unless the part or component after incorporation is no longer a "600 series" item because it is no longer "specially designed" for a "600 series" item. However, it is quite likely the non-U.S. made item into which the "600 series" item is being incorporated would be classified under ECCN 0A919, a foreign made military commodity that if in the United States would be subject to the EAR. (See ECCN 0A919 for additional details on the classification and jurisdiction of such items).

**Note:** *The non-U.S. made item or higher level assembly is still what is being classified even when "600 series" content is incorporated. So, strictly speaking the EAR does not have a "see through" rule as does the ITAR. The ITAR continues to regulate transfers of the incorporated ITAR part or component rather than the product into which that part or component is incorporated.*

**5) Where the value of U.S. content in a non-U.S item exceeds the *de minimis* threshold, doesn't the final non-U.S. item also need to be identified on the CCL for the non-U.S. item to be controlled under the EAR pursuant to General Prohibition No. 2?**

For the non-U.S. item to be subject to the EAR based on the *de minimis* rules, the percentage value of the U.S.-origin controlled content must exceed the *de minimis* threshold values in § 734.4 of the EAR. If by “controlled” you mean “subject to the EAR,” then no, the non-U.S. item does not have to be listed on the Commerce Control List (CCL) in order for the non-U.S. item to be subject to the EAR. If by “controlled” you mean “require a license pursuant to the EAR,” the answer is still no, because even some EAR99 items (items not listed on the CCL) require a license to certain destinations, end users and end uses.

**6) Could you explain the second incorporation rule? It's [still] not clear [to me]**

Second incorporation is a policy determination by BIS that occurs when a U.S.-origin controlled item is incorporated into a non-U.S.-origin item outside of the U.S. and then that non-U.S. item, being a discrete product, is incorporated into another non-U.S. item outside the United States. The second incorporation rule cannot be applied to “600 series” U.S. origin content or U.S. origin see-through carve-out items. A discrete product is a non-U.S.-made product that is not specifically designed for the non-U.S. item in which it is going to be incorporated. Discrete items are sold by catalog or on-line to other buyers. Also, the buyer does not participate in the design of a non-U.S.-made discrete product.

**7) What value do you use for the fair market value (FMV) if you sell only to a distributor and not an end user?**

In this case, the distributor is your end-user, so you would use the selling price. If you are selling to the distributor at a discounted price (e.g., affiliation or special customer price), then you must use the non-discounted price (arms-length price). However, if you use a discounted or regional price for all your distributors, then that is the FMV price.