De minimis **Rules and Guidelines**
§ 734.4 and Supplement No. 2 to part 734 of the EAR
(as modified on 5 November 2019)

🔻 **IF ...**
- ➢ Non-U.S.-made commodity '*incorporates'* controlled U.S.-origin commodities,
- ➢ Non-U.S.-made commodity is *'bundled'* with controlled U.S.-origin software,
- ➢ Non-U.S.-made software '*incorporates'* controlled U.S.-origin software, or
- ➢ Non-U.S.-made technology is commingled with or drawn from controlled U.S.-origin technology,

🔻 **THEN**... non-U.S.-made item **is** *subject to the EAR* if the value of incorporated U.S.-origin ***controlled content*** (*i.e., content requiring a license to the destination of the non-U.S.-made item and not eligible for License Exception GBS*):
- ➢ **Exceeds 0 %** of total value of the non-U.S. item in special situations (see § 734.4(a) and (b));
  - o 3A001 semiconductors (other than memory circuits) or 4A994.j high speed interconnect devices in certain high performance computers,
  - o Hot section technology (9E003.a.1 through a.8, .h, .i, and .j),
  - o Certain encryption or cryptanalytic items (5A002, 5A004, 5B002, 5D002) that don't meet identified requirements,
  - o 6A002, 6A003, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz) in foreign-made military commodities to Country Group D:5,
  - o .a - .x of 9x515 or "600 series" items to Country Group *D:5*,
  - o .y of 9x515 or "600 series" items to *China* or Country Group *E:1 or E:2*.
- ➢ **Exceeds 10%** of the total value of the non-U.S. item, when *going to Country Group E:1 or E:2*;
  - o Most/all Commerce Control List (CCL) items; and
  - o EAR99 items to *Cuba, N. Korea* and *Syria (e.g., with some exceptions for food and medicine).*
- ➢ **Exceeds 25%** of the total value of the non-U.S. item, when *NOT going to Country Group E:1 or E:2*
  - o Many CCL items; and
  - o EAR99 items to *Crimea region of Ukraine* (e.g., except food, medicines and certain software).

🔻 **Uncontrolled content (No License Required (NLR) items)**
  - o .y items in "600 series" or 9x515, unless destined to Country Group *E:1, E:2, China* or *Crimea region of Ukraine*;
  - o Most items controlled for (AT) reasons only, unless destined to Country Group *E:1* or *E:2*, and *Crimea region of Ukraine (except certain software);* and
  - o EAR99 items to *all locations, except where noted above*.

🔻 **Sample Calculation**
U.S.-origin field programmable gate array (FPGA) integrated circuit 3A001.a.7 valued at $600.00 is incorporated into a German acoustic towed hydrophone array valued at $6,000.00, which will be sent to China.

- ➢ U.S.-origin FPGA $600 ÷ German hydrophone $6000 =.1 x 100 = 10 % *U.S. controlled content, which is below 25% de minimis threshold for China – therefore, not subject to the EAR*

- **IF ABOVE *DE MINIMIS* THRESHOLD OR INELIGIBLE FOR *DE MINIMIS***
  - ➢ Classify the non-U.S.-made product (self-classification vs BIS classification), see § 748.3
  - ➢ Determine license requirements of the non-U.S. made product
  - ➢ If there is a license requirement, determine license exception eligibility, see Part 740 of the EAR
  - ➢ If no license exception eligibility, obtain a license via SNAP-R

- **ADDITIONAL GUIDELINES**
  - ❖ **Controlled Content**
    - ➢ **U.S.-origin items that require BIS authorization (license or license exception) for export to the ultimate destination of the non-U.S.-made product.**
      - o Example: EAR99 items are considered "controlled content" for Cuba (E:2), N. Korea (E:1) (except food and medicines), Syria (E:1) (except food and medicines), and Crimea region of Ukraine (except food, medicines and certain software);
    - ➢ **U.S.-origin content that is NOT considered controlled content for *de minimis* calculations**
      - o Items eligible for License Exception GBS;
      - o Items that do not require a license to the ultimate destination of the non-U.S. made product (NLR designated items); and
      - o Items subject to Short Supply (SS) controls.

  - ❖ **Fair Market Value (FMV) of the controlled content is needed to calculate *de minimis* percentage.**
    - ➢ FMV can be a regional price (*e.g.*, price use for Asia, Europe, US, etc.)
    - ➢ FMV can be a category price (*e.g.*, universities, laboratories, students, etc.)
    - ➢ FMV cannot be a *special* price for an individual company or person.

  - ❖ **When determining controlled content, only factor in the destination country.**
    - ➢ End-use and end-user license requirements are not relevant when determining "controlled content" for purposes of the *de minimis* rules.
    - ➢ AFTER you have considered the *de minimis* rules, if your non-U.S. item is subject to the EAR, then all of the EAR requirements (e.g., end use and end user controls) must be considered.

  - ❖ **U.S. items are 'incorporated' when all of the following conditions are met:**
    - ➢ They are essential to the functioning of the non-U.S.-made equipment;
    - ➢ They are customarily included in the sale of non-U.S.-made items; and
    - ➢ They are exported abroad with the non-U.S.-made item.

  - ❖ **Bundled**
    - ➢ Software that is configured for a specific commodity, but is not necessarily physically integrated into the commodity.
    - ➢ Eligible software is software that is listed on the Commerce Control List (CCL) and is controlled for anti-terrorism (AT) reasons or software that is designated EAR99 (subject to the EAR, but not listed on the CCL).

  - ❖ **One-time report required for technology (not commodity or software) and should include:**
    - ➢ Description of the foreign technology;
    - ➢ Description of the FMV;
    - ➢ "Rationale and basis for the valuation" of the foreign technology, including the country of destination; and
    - ➢ Name, title, address, telephone, email, and fax of contact person.
    - ➢ Email the report to RPD2@bis.doc.gov