



Direct Product Rules

Determining whether a Non-U.S. product made from U.S. technology is subject to the EAR

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General Prohibitions 1-3 Part 736

- You may **not** without a License or License Exception:
 - No. 1: Export or reexport controlled items to listed countries.
 - No. 2: Reexport foreign made items incorporating more than the allowed *de minimis* levels of controlled U.S. content
 - No. 3: Reexport foreign produced direct product of U.S. technology or software



Direct Product

- Direct product rules
 - “600 series”
 - 9x515
 - Non-“600 series”/non-9x515/non-0A919
- Classifying the Non-U.S.-Made Items Subject to the EAR
- ECCN 0A919

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Direct Products of U.S. Technology or Software:

- **Under the ITAR** (§124.8(5)), any defense article produced or manufactured from ITAR technical data or defense service requires DDTC approval prior to transfer to any non-U.S. person.
- **Under the EAR**, certain non-U.S.-made items, located outside the U.S., that are the direct product of certain U.S. controlled technology or software are subject to the EAR when exported from abroad or reexported to *certain* countries.

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“600 series” Direct Product Rule

The “600 series” direct product rule

Is the non-U.S.-made direct product of: (i) U.S. controlled “600 series” technology or software <i>or</i> (ii) A plant or major component of a plant that is a direct product of U.S. controlled “600 series” technology or software?	Yes
Is the non-U.S.-made direct product a “600 series” or 0A919 item?	Yes
Is the “600 series” or 0A919 non-U.S.-made direct product being reexported or exported from abroad to a destination listed in Country Group D:1, D:3, D:4, D:5, E:1 or E:2 ?	Yes

Note: If “yes” to all three questions, then the non-U.S.-made item is subject to the EAR.

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9x515 Direct Product Rule

The 9x515 direct product rule

Is the non-U.S.-made direct product of: (i) U.S. controlled 9x515 technology or software <i>or</i> (ii) A plant or major component of a plant that is a direct product of U.S. controlled 9x515 technology or software?	Yes
Is the non-U.S.-made direct product a 9x515 item?	Yes
Is the 9x515 non-U.S.-made direct product being reexported or exported from abroad to a destination in Country Group D:5, E:1 or E:2 ?	Yes

Note: If “yes” to all three questions, then the non-U.S.-made item is subject to the EAR.

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The NON-("600 series," 0A919 & 9x515) direct product rule

Is the non-U.S.-made direct product of: (i) U.S. controlled technology or software that requires a written assurance as a supporting document for a license, see Supp No. 2 to 748 (o)(3)(i), or as a precondition for the use of LE TSR § 740.6 <i>or</i> (ii) A plant or major component of a plant that is a direct product of U.S. controlled technology or software that meets the criterion in (i)?	Yes
Is National Security (NS) listed under the reason for control paragraph of the ECCN for the non-U.S.-made direct product?	Yes
Is the non-U.S.-made direct product being reexported or exported from abroad to a destination listed in Country Group D:1, E:1 or E:2 ?	Yes

Note: If "yes" to all three questions, then the non-U.S.-made item is subject to the EAR.

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Determining Classification of Non-U.S.-Made Items Subject to the EAR

- When exporting from abroad non-U.S.-made items that are **subject to the EAR** under *de minimis* or the direct product rules

...

Determine the license requirements for the non-U.S.-made item

- **Note:** *When a non-U.S.-made item contains an ITAR item, only the ITAR item is subject to ITAR controls.*

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ECCN 0A919

- Non-U.S.-made ‘military commodities’ located outside the United States that are not subject to the ITAR, AND having one or more of the following:
 - Incorporating more than a *de minimis* amount of U.S.-origin controlled content classified under ECCNs 6A002, 6A003, or 6A993.a (having a maximum frame rate equal to or less than 9 Hz and thus meeting the criterion of Note 3.a to 6A003.b.4);
 - Incorporating more than the *de minimis* amount of “600 series” content (see §734.4 of the EAR);
 - Are direct products of U.S.-origin “600 series” technology or software (see §736.2(b)(3) of the EAR).

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Scenario #1 Direct Product “600 Series”

- **U.S. company** exports technology for the production of a *military aircraft emergency oxygen system (EOS)* (ECCN 9E610.a).
- **U.S. company** sells the technology to the **Israeli Ministry of Defense** and exports it using a BIS license.
- The Israeli MoD produces the **military aircraft emergency oxygen system (EOS)** (ECCN 9A610) (*Fair Market Value \$300*) in Israel using all Israeli parts, except for:
 - a *U.S. high/low pressure valve* specially designed for the system (FMV \$60 each)(ECCN 9A610.x).

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Scenario #1 Direct Product “600 Series”

- Israeli MoD makes a sale of their system to **Jordan MoD**.
- Is the Israeli aircraft on-board oxygen generating system subject to the Export Administration Regulations (EAR)?



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Decision Tool Analysis – Scenario #1

- **Question 1:** Is the non-U.S.-made item produced from U.S. "600 series" or 9x515 technology or software, OR from a non-U.S.-made manufacturing plant or major plant component (made from U.S. 600 series or 9x515 technology)?

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Decision Tool Analysis – Scenario #1

- **Question 1:** Is the non-U.S.-made item produced from U.S. "600 series" or 9x515 technology or software, OR from a non-U.S.-made manufacturing plant or major plant component (made from U.S. 600 series or 9x515 technology)?

Answer 1: Yes

The Israeli military aircraft emergency oxygen system (EOS) was produced from the U.S. exported technology (**ECCN 9E610.a**) for the production of an EOS (which, if made in the US, would be classified under ECCN 9A610.a).

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Decision Tool Analysis – Scenario #1

- **Question 2:** Are either of the following true (if it were classified using the U.S. Export Administration Regulations, Commerce Control List)?
 - The non-U.S.-made **direct product** is classified under a "600 series" ECCN and is destined to a country listed in Country Group D:1, D:3, D:4, D:5, E:1 or E:2.

OR

 - The non-U.S.-made **direct product** is classified under a 9x515 ECCN and is destined to a country listed in Country Group D:5, E:1 or E:2.

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Decision Tool Analysis – Scenario #1

Answer 2: Yes, the Israeli produced *military aircraft emergency oxygen system (EOS)* would be classified under ECCN 9A610.a of the U.S. Export Administration Regulations, Commerce Control List, AND it is destined to the Jordan, which is listed in Country Groups D:3 and D:4 ...

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Decision Tool Conclusion– Scenario #1

- **Conclusion:** Non-U.S-made item is subject to the EAR and may require a license prior to export from abroad or reexport, see EAR to determine license requirements of the non-U.S-made item.
- **Click “Next”** - Thank you for using the BIS Interactive Tool. Please feel free to contact us if you have any further questions.
- **Click “Summary”** – it gives you a summary of all the questions, your response and the conclusion of your session. In the upper right corner of the page, you have the option to print this page or reset to go the beginning.

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Entity List Direct Product Rule

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Addition of Huawei Non-U.S. Affiliates to the Entity List, the Removal of Temporary General License, and Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule)

85 FR 51596 | RIN: 0694-AH99 | Final Rule

Published 08/20/2020 | Effective 08/17/2020

- Removed a temporary general license for Huawei and its non-U.S. affiliates, which allowed time for companies and persons to pivot away from equipment produced by Huawei or its affiliates.
- Added 38 additional non-U.S. affiliates of Huawei to the Entity List.
- Amended the Foreign-Produced Direct Product Rule to revise controls over certain foreign-produced items. Such items are now subject to control when there is knowledge that the foreign-produced items will be incorporated into, or will be used in the production or development of any part, component, or equipment produced by, purchased by, or ordered by an certain entities with a “footnote 1” designation on the Entity List.

[FPDP FAQs](#)



Export Administration Regulations: Amendments to General Prohibition Three (Foreign-Produced Direct Product Rule) and the Entity List

85 FR 29849 | RIN: 0694-AH99 | Interim Final Rule Published 05/19/2020 | Effective 05/15/2020

- Added new Entity paragraph in General Prohibition 3: §736.2(b)(3)(vi) of the EAR
- Added new footnote 1 to the Entity List – Supp. No. 4 to part 744 of the EAR
 - The “footnote 1” designation applies to Huawei and its non-U.S. affiliates listed on the Entity List

[FPDPR FAQs](#)



Public Comments

- BIS received 11 public comments
 - 1 non-responsive comment
 - 1 business confidential comment
 - 9 posted comments
 - Regulations.gov under BIS-2020-0011
- Topics of public comments
 - Traditional FPDP letter of assurance
 - How the FPDP rules are being circumvented
 - Savings Clause length extension request
 - Technical cut-off point – should only apply to lower level circuits
 - Multiple inputs at various stages of development/production



FPDP FINAL Rule

- Effective – upon public display – August 17, 2020
- Production Savings Clause – ended September 14, 2020
- Merging of 3 rules: Entity List, Temp. Gen. License (removal), FPDP
- FPDP Final Rule Details:
 - Removed paragraph (b)(2) of footnote 1 to supplement no. 4 of part 744
 - Removed “produced or developed by any entity with a footnote 1 designation in the license requirement column of this Supplement” from paragraph (a) of footnote 1.
 - Added Note 2 “A foreign-produced item includes any foreign-produced wafer whether finished or unfinished.”
 - Revised the license requirement in the introductory paragraph
 - Added a license review policy Note to the introductory paragraph

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FPDP rule – When is a license required?

- You may not reexport, export from abroad, or transfer (in-country) without a license or license exception any foreign-produced item specified in paragraph (a) or (b) of footnote 1 to the Entity List when there is “knowledge” that:
 - 1) The foreign-produced item will be:
 - Incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” that is
 - produced, purchased, or ordered by any footnote 1 entity; **or**
 - 2) Any footnote 1 entity is a party to any transaction involving the foreign-produced item, *e.g.*, as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”

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When is a FPDP subject to the EAR?

When the “knowledge” standard is met in the introductory paragraph of Footnote 1 to Supplement No. 4 to part 744 “Entity List”...

- The foreign-produced item is subject to the EAR when it is a direct product of ...
- “Technology” or “software” that is:
 - Subject to the EAR; and
 - Specified in Export Control Classification Number (ECCN) 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the Commerce Control List (CCL) in supplement no. 1 to part 774 of the EAR.

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When is a FPDP subject to the EAR?

- The foreign-produced item is subject to the EAR when it is produced by . . .
- Any plant or major component of a plant that is:
 - Located outside the United States
 - Made in either the U.S. or a foreign country
 - Is a direct product of U.S.-origin “technology” or “software” subject to the EAR that is specified in ECCN 3D001, 3D991, 3E001, 3E002, 3E003, 3E991, 4D001, 4D993, 4D994, 4E001, 4E992, 4E993, 5D001, 5D991, 5E001, or 5E991 of the CCL.

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Notes to paragraph (b) of Footnote 1

(1) A **major component of a plant** located outside the United States means equipment that is essential to the “production” of an item, including testing equipment.

(2) A foreign-produced item includes any foreign-produced wafer whether finished or unfinished.

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License Application Review Policy

- Note to introductory paragraph of footnote 1
 - Sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items controlled by this footnote that are **capable of supporting** the “development” or “production” of telecom systems, equipment and devices at **only below the 5G level** (e.g., 4G, 3G, etc.) will be reviewed on a **case-by-case basis**.
- **All other** license applications
 - will be reviewed using the license review policy in the license requirement column of the Entity List for each footnote 1 designated entity, which is **presumption of denial**.

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Contact Information

- **Department of Commerce, Bureau of Industry and Security (BIS):**
 - (202) 482-4811 - (located in Washington, DC)
 - (949) 660-0144 - (located in Newport Beach, CA)
 - (408) 998-8806 - (located in San Jose, CA)
 - E-mail: ECDOEXS@bis.doc.gov (General questions about the EAR)
 - E-mail: RPD2@bis.doc.gov (Regulatory interpretation, Advisory Opinions or to submit *De minimis* Reports)
- Anti-boycott Compliance Advice Line - (202) 482-2381
- Encryption – (202) 482-0707
- **Department of State, Directorate of Defense Trade Controls (DTC):**
 - Licenses defense services and defense (munitions) articles.
 - (202) 663-1282
- **Department of the Treasury, Office of Foreign Assets Control (OFAC):**
 - OFAC administers and enforces economic and trade sanctions against targeted foreign countries, terrorism sponsoring organizations, and international narcotics traffickers.
 - (800) 540-6322



Questions?