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));
  - 3A001 semiconductors (other than memory circuits) or 4A994.j high speed interconnect devices in certain high performance computers,
  - Hot section technology (9E003.a.1 through a.8, .h, .i, and .j),
  - Certain encryption or cryptanalytic items (5A002, 5A004, 5B002, 5D002) that don’t meet identified requirements,
  - 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;
  - .a - .x of 9x515 or “600 series” items to Country Group D:5,
  - .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;
  - Most/all Commerce Control List (CCL) items; and
  - 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
  - Many CCL items; and
  - EAR99 items to Crimea region of Ukraine (e.g., except food, medicines and certain software).

Uncontrolled content (No License Required (NLR) items)
- .y items in “600 series” or 9x515, unless destined to Country Group E:1, E:2, China or Crimea region of Ukraine;
- 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
- 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.
    - 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
    - Items eligible for License Exception GBS;
    - Items that do not require a license to the ultimate destination of the non-U.S. made product (NLR designated items); and
    - 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