

## § 734.9 FOREIGN-DIRECT PRODUCT (FDP) RULES

Foreign-produced items located outside the United States are subject to the EAR when they are a “direct product” of specified “technology” or “software,” or are produced by a plant or ‘major component’ of a plant that itself is a “direct product” of specified “technology” or “software.” If a foreign-produced item is subject to the EAR, then you should separately determine the license requirements that apply to that foreign-produced item (*e.g.*, by assessing the item classification, destination, end-use, and end-user in the relevant transaction). Not all transactions involving foreign-produced items that are subject to the EAR require a license. Those transactions that do require a license may be eligible for a license exception.

### *(a) Definitions (some definitions from part 772 have been added here)*

**“Direct product”:** The immediate product (including processes and services) produced directly by the use of technology or software.

**“Equipment”:** This is a combination of parts, components, accessories, attachments, firmware, or software that operate together to perform a function of, as, or for an end item or system. Equipment may be a subset of “end items” based on the characteristics of the equipment. Equipment that meets the definition of an end-item is an end-item. Equipment that does not meet the definition of an end-item is a part, component, accessory, attachment, firmware, or software.

**Major Component:** 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.”

**“Production”:** Means all production stages, such as: product engineering, manufacture, integration, assembly (mounting), inspection, testing, quality assurance.

### *(b) National Security FDP rule*

A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (b)(1) of this section and the country scope in paragraph (b)(2) of this section.

**(1) Product scope of National Security FDP rule.** The product scope applies if a foreign-produced item meets the conditions of either paragraph (b)(1)(i) or (ii) of this section.

**(i) “Direct product” of “technology” or “software.”** A foreign-produced item meets the product scope of this paragraph if it meets both of the following conditions:

**(A)** The foreign-produced item is the “direct product” of U.S.-origin “technology” or “software” that requires a written assurance as a supporting document for a license, as defined in paragraph (o)(3)(i) of supplement no. 2 to part 748 of the EAR, or as a precondition for the use of License Exception TSR at §740.6 of the EAR; and

**(B)** The foreign-produced item is subject to national security controls as designated in the applicable ECCN of the Commerce Control List in part 774 of the EAR.

**(ii) “Direct product” of a complete plant or ‘major component’ of a plant.** A foreign-produced item meets the product scope of this paragraph if it meets both of the following conditions:

**(A)** The foreign-produced item is a “direct product” of a complete plant or ‘major component’ of a plant that itself is the “direct product” of U.S.-origin “technology” that requires a written assurance as a supporting document for a license or as a precondition for the use of License Exception TSR in §740.6 of the EAR; and

**(B)** The foreign-produced item is subject to national security controls as designated on the applicable ECCN of the Commerce Control List at part 774 of the EAR.

**(2) Country scope of National Security FDP rule.** A foreign-produced item meets the country scope of this paragraph if its destination is listed in Country Group D:1, E:1, or E:2 (See supplement no.1 to part 740 of the EAR).

**(c) 9x515 FDP rule**

A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (c)(1) of this section and the country scope in paragraph (c)(2) of this section.

**(1) Product scope of 9x515 FDP rule.** The product scope applies if a foreign-produced item meets the conditions of either paragraph (c)(1)(i) or (ii) of this section.

**(i) “Direct product” of “technology” or “software.”** A foreign-produced item meets the product scope of this paragraph if it meets both of the following conditions:

**(A)** The foreign-produced item is the “direct product” of U.S.-origin “technology” or “software” that is specified in ECCN 9D515 or 9E515; *and*

**(B)** The foreign-produced item is specified in a 9x515 ECCN.

**(ii) “Direct product” of a complete plant or ‘major component’ of a plant.** A foreign-produced item meets the product scope of this paragraph if it meets both of the following conditions:

**(A)** The foreign-produced item is a “direct product” of a complete plant or any ‘major component’ of a plant that itself is the “direct product” of U.S.-origin “technology” specified in ECCN 9E515; *and*

**(B)** The foreign-produced item is specified in a 9x515 ECCN.

**(2) Country scope of 9x515 FDP rule.** A foreign produced item meets the country scope of this paragraph if its destination is listed in Country Group D:5, E:1, or E:2 (see supplement no.1 to part 740 of the EAR).

**(d) “600 series” FDP rule**

A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (d)(1) of this section and the country scope in paragraph (d)(2) of this section.

***Note to introductory paragraph (d):** As described in the CCL, ECCN 0A919 is included in this paragraph because it includes the “direct product” of “600 series” “technology” or “software”.*

**(1) Product scope of “600 series” FDP rule.** The product scope applies if a foreign-produced item meets the conditions of either paragraph (d)(1)(i) or (ii) of this section.

**(i) “Direct product” of “technology” or “software.”** A foreign-produced item meets the product scope of this paragraph if it meets both of the following conditions:

**(A)** The foreign-produced item is the “direct product” of U.S.-origin “technology” or “software” that is specified in a “600 series” ECCN; *and*

**(B)** The foreign-produced item is specified in a “600 series” ECCN or ECCN 0A919.

**(ii) “Direct product” of a complete plant or ‘major component’ of a plant.** Foreign-produced items meet the product scope of this paragraph if they meet both of the following conditions:

**(A)** The foreign-produced item is the “direct product” of a complete plant or ‘major component’ of a plant that itself is the “direct product” of U.S.-origin “technology” that is specified in a “600 series” ECCN; *and*

**(B)** The foreign produced item is specified in a “600 series” ECCN.

**(2) Country scope of “600 series” FDP rule.** A foreign-produced item meets the country scope of this paragraph if it is destined to a country listed in Country Group D:1, D:3, D:4, D:5, E:1, or E:2 (see supplement no.1 to part 740 of the EAR).

*(e) Entity List FDP rule<sup>1</sup>*

A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (e)(1) of this section and the end-user scope in paragraph (e)(2) of this section. See § 744.11(a) of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph.

**(1) Product Scope of Entity List FDP rule.** The product scope applies if a foreign-produced item meets the conditions of either paragraph (e)(1)(i) or (ii) of this section.

**(i) “Direct product” of “technology” or “software.”** A foreign-produced item meets the product scope of this paragraph if the foreign-produced item is a “direct product” of “technology” or “software” subject to the EAR and specified in 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; or

**(ii) “Direct product” of a complete plant or ‘major component’ of a plant.** A foreign-produced item meets the product scope of this paragraph if the foreign-produced item is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the U.S. or a foreign country, itself is a “direct product” of “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.

*Note to paragraph (e)(1): A foreign-produced item includes any foreign-produced wafer whether finished or unfinished.*

**(2) End-user scope of the Entity List FDP rule.** A foreign-produced item meets the end-user scope of this paragraph if there is “knowledge” that:

**(i) Activities involving Footnote 1 designated entities.** The foreign-produced item will be incorporated into, or will be used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any entity with a footnote 1 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR; or

**(ii) Footnote 1 designated entities as transaction parties.** Any entity with a footnote 1 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR 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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<sup>1</sup> § 744.11(a)(2) Entity List Foreign-Direct Product (FDP) license requirements, review policy, and license exceptions. You may not, without a license or license exception, reexport, export from abroad, or transfer (in-country) any foreign-produced item subject to the EAR pursuant to § 734.9(e) of the EAR to any end user described in § 734.9(e)(2) of the EAR. All license exceptions described in part 740 of the EAR are available for foreign-produced items that are subject to this license requirement if all terms and conditions of the applicable license exception are met and the restrictions in §740.2 do not apply. The sophistication and capabilities of technology in items is a factor in license application review; license applications for foreign-produced items subject to a license requirement by this paragraph (a)(2) that are capable of supporting the “development” or “production” of telecom systems, equipment and devices below the 5G level (e.g., 4G, 3G) 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.]

*(f) Russia/Belarus FDP rule<sup>2</sup>*

A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (f)(1) of this section and the destination scope in paragraph (f)(2) of this section. See § 746.8 of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (f).

**(1) Product scope of Russia/Belarus FDP rule.** The product scope applies if a foreign-produced item meets the conditions of either paragraph (f)(1)(i) or (ii) of this section.

**(i) “Direct product” of “technology” or “software.”** A foreign-produced item meets the product scope of this paragraph (f)(1)(i) if the foreign-produced item is not designated EAR99 and is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E of the CCL; or

**(ii) “Direct product” of a complete plant or ‘major component’ of a plant.** A foreign-produced item, meets the product scope of this paragraph (f)(1)(ii) if the foreign-produced item is not designated EAR99 and is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E in of the CCL.

**(2) Destination scope of the Russia/Belarus FDP rule.** A foreign-produced item meets the destination scope of this paragraph (f)(2) if there is “knowledge” that the foreign-produced item is destined to Russia or Belarus or will be incorporated into or used in the “production” or “development” of any “part,” “component,” or “equipment” not designated EAR99 and produced in or destined to Russia or Belarus.

*(g) Russia/Belarus Military End User FDP rule<sup>2</sup>*

A foreign-produced item is subject to the EAR if it meets both the product scope in paragraph (g)(1) of this section and the end-user scope in paragraph (g)(2) of this section. See § 746.8 of the EAR for license requirements, license review policy, and license exceptions applicable to foreign-produced items that are subject to the EAR pursuant to this paragraph (g).

**(1) Product Scope of Russia/Belarus Military End User FDP rule.** The product scope applies if a foreign-produced item meets the conditions of either paragraph (g)(1)(i) or (ii) of this section.

**(i) “Direct product” of “technology” or “software.”** A foreign-produced item meets the product scope of this paragraph (g)(1)(i) if the foreign-produced item is a “direct product” of “technology” or “software” subject to the EAR and specified in any ECCN in product groups D or E in any categories of the CCL; or

**(ii) “Direct product” of a complete plant or ‘major component’ of a plant.** A foreign-produced item meets the product scope of this paragraph (g)(1)(ii) if the foreign-produced item is produced by any plant or ‘major component’ of a plant that is located outside the United States, when the plant or ‘major component’ of a plant, whether made in the United States or a foreign country, itself is a “direct product” of U.S.-origin “technology” or “software” subject to the EAR that is specified in any ECCN in product groups D or E in any categories of the CCL.

**(2) End-user scope of the Russia/Belarus ‘Military End User’ FDP rule.** A foreign-produced item meets the end-user scope of this paragraph (g)(2) if there is “knowledge” that:

**(i) Activities involving footnote 3 designated entities.** The foreign-produced item will be incorporated into, or used in the “production” or “development” of any “part,” “component,” or “equipment” produced, purchased, or ordered by any entity with a footnote 3 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR; or

**(ii) Footnote 3 designated entities as transaction parties.** Any entity with a footnote 3 designation in the license requirement column of the Entity List in Supplement No. 4 to part 744 of the EAR is a party to any transaction involving the foreign-produced item, e.g., as a “purchaser,” “intermediate consignee,” “ultimate consignee,” or “end-user.”

*Note 3 to paragraph (g).* A ‘military end user’ for purposes of paragraph (g) is any entity listed on the Entity List in Supplement No. 4 to part 744 of the EAR with a footnote 3 designation.

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<sup>2</sup> See § 746.8(a)(4) and Supp. No. 3 to part 746 of the EAR for countries excluded from the license requirements associated with this FDP rule.