

BIS 2021 | VIRTUAL UPDATE CONFERENCE:
EXPORT CONTROLS & POLICY



Foreign Policy-based Controls: Promoting Human Rights and Democracy

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Agenda

- Advanced Surveillance
- Crime Control
- Human Rights
 - China Entity List Additions
 - Xinjiang Business Advisory
- Democracy
 - Hong Kong
 - Burma



Advanced Surveillance

- Ongoing review of emerging technology for advanced surveillance
- In July 2020, BIS published a Notice of Inquiry regarding adding or removing controls on surveillance items controlled for Crime Control reasons
 - Sought comments on biometric items in particular, receiving a variety of comments, including 6 comments that recommended new controls on biometric systems; 15 comments that recommended against new controls; and 15 comments that argued for tight limits and carve-outs
 - Also sought suggestions for updating controls on other advanced surveillance items
- In September 2020, the Department of State published guidance on doing business with foreign government end users for surveillance-related products and services
 - [https://www.state.gov/wp-content/uploads/2020/09/DRL-Industry- Guidance- Project-FINAL-508.pdf](https://www.state.gov/wp-content/uploads/2020/09/DRL-Industry-Guidance-Project-FINAL-508.pdf)

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Crime Control

- Items controlled for Crime Control reasons on the Commerce Control List to promote the observance of human rights throughout the world
- On October 6, 2020, BIS added water cannons to Crime Control list
- Human Rights Crossover Rule:
 - On October 6, 2020, the Department of Commerce clarified that it will consider human rights concerns when reviewing nearly all license application under the EAR
- Consultations within and outside U.S. Government
- Considering changes to controls under Part 744 of the EAR and the Commerce Control List

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China Entity List Additions (I)

- Since October 2019, 67 entities implicated in human rights abuses of minorities from Xinjiang, China have been added to the Entity List
- Chinese government organizations added include:
 - Public Security Bureau elements throughout Xinjiang
 - Ministry of Public Security's Institute of Forensic Science
 - Xinjiang Production and Construction Corps (XPCC)
- Chinese Companies added are involved in:
 - High-technology surveillance such as artificial intelligence, facial recognition, cameras, biometric analysis, and tracking software
 - Manufacturing utilizing forced labor including textiles, electronics, vehicle components, and the solar supply chain

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China Entity List Additions (II)

- Four entities added for *China-wide* human rights abuses include companies involved in high-technology surveillance and abusive genetic collection and analysis
- A license is now required for exports, exports and/or transfers (in-country) of all U.S. origin items where these entities are a party to the transaction
- There is a licensing policy of “presumption of denial” with limited exceptions for certain items necessary for public health or safety, which are considered on a case-by-case basis

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Xinjiang Supply Chain Business Advisory

- On July 13, 2021, the Department of Commerce, along with interagency partners, issued an updated business advisory to highlight risks and considerations for businesses with supply chain exposure to Xinjiang. The document may be found here:

www.state.gov/wp-content/uploads/2021/07/Xinjiang-Business-Advisory-13July2021.pdf

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Hong Kong

- On July 17, 2020, under Executive Order 13936, Hong Kong is treated under the exact same licensing policy as destinations in mainland China
- On July 31, 2020, BIS suspended the use of any license exception to Hong Kong other than those that would be granted already to destinations in mainland China
- On December 23, 2020, Hong Kong was removed as a separate destination under the EAR
- On July 16, 2021, the Department of Commerce, along with interagency partners, issued a business advisory on Hong Kong, which highlighted export control issues. The document may be found here:

<https://www.state.gov/risks-and-considerations-for-businesses-operating-in-hong-kong/>

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Burma

- On March 8, 2021, BIS added to the Entity List four entities:
 - Two government organizations: The Ministry of Defence and Ministry of Homeland Affairs
 - Two commercial conglomerates: Myanmar Economic Holdings Limited and Myanmar Economic Corporation
- On March 8, 2021, BIS placed Burma in Country Group D:1
- On April 9, 2021, BIS listed two Burmese entities as military end-users and added Burma to military intelligence end-use and end-user restrictions
- On July 6, 2021, BIS added to the Entity List four additional commercial entities for providing revenue to or supporting the Burmese military and affiliated companies:
 - Three Wanbao Mining affiliates
 - One telecommunications company: King Royal Technologies

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Questions?

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