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Remarks as Prepared for Delivery by Assistant Secretary for Export Administration Thea D. Rozman Kendler to the Export Controls and Human Rights Initiative

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Introduction: Explanation of A/S Role and Current Authorities

Thank you all for being here & for participating in this 2d day of the Export Control and Human Rights Initiative (ECHRI) Plenary, focusing on the roles of industry and civil society. I am thrilled to be here with you to talk about our shared commitment to protecting human rights and vulnerable populations throughout the world. We in the Bureau of Industry and Security (BIS) at the U.S. Department of Commerce are deeply committed to using U.S. export controls to advance this mission. Human rights are, and historically have been, at the center of U.S. foreign policy. They are central considerations for trade and especially for export controls.

We are actively formulating, coordinating, and implementing various export control measures to counter the use of items subject to our regs that enable human rights violations and abuses. Today, I would like to walk you through types of controls we have in place to prevent U.S. items from being used to enable human rights violations and abuses. I will also share my impression of the direction in which we're headed, and make the case for why, at this particular time in history, we need ally and partner engagement on these issues more than ever before.

Our current export controls are a mix of tech and end user controls, accompanied by specific licensing policies that allow review of transactions for concerns of human rights violations and abuses. We have long implemented unilateral tech controls, for items that by their nature are particularly useful to police and security services and could be used for arbitrary detention or arrest, dispersal of peaceful protests, and other activities of human rights concern. This includes items such as: restraints, stun guns, stun grenades, water cannons, saps, police batons, whips, instruments of torture (e.g., thumbscrews), equipment for executions, tear gas, and shot guns.

In Oct 2020, we added water cannons and related parts to these controls, particularly given clear evidence of the use of water cannons to suppress peaceful protestors across the world. We intended this action to signal U.S. Government resolve to address the spread of violations and abuses of human rights by enabling the U.S. Government to review the export of water cannon to most countries in the world.

BIS also has tech controls on high tech surveillance items such as surreptitious intercept, key logging, and intrusion equipment and certain biometric items that may be used to enable abusive genetic collection and analysis. These items have a multitude of legitimate end uses but also may be used to engage in or enable human rights violations and abuses. We're keenly focused on appropriately controlling new advanced surveillance tech to inhibit U.S. software and technology from being misused, and to ensure human rights-related export controls reflect the realities of today, with an eye on the future.

Separate from these specific items, we consider HR when reviewing all licensing applications, even where items to be exported are not controlled for HR-related reasons. All license applications we receive for the export of items, including firearms, are reviewed by BIS foreign policy experts and our international affairs partners at the U.S. Department of State for assessment of foreign policy and human rights implications. We take human rights protection into account when we look at the items, destination, end-users, specific nature of the end use, and the risk of unauthorized use or diversion. Our end-user controls are based on recognition that authoritarian regimes, repressive governments, and complicit commercial entities seek U.S.-origin items to engage in or enable human rights violations and abuses throughout the world.

We have taken reg action, primarily through additions to our Entity List, to identify malign actors and prevent them from obtaining and misusing items subject to our controls. To level-set, the Entity List includes foreign persons involved in activities contrary to U.S. foreign policy or national security, and generally restricts exports/re-exports of U.S. items and technology if such entities are a party to the transaction. Not just end-user, also middleman or financier. We've added over 100 government and commercial entities to the Entity List to protect Human Rights.

Specifically, the EL includes over 80 entities in China that are connected with human rights violations and abuses, including campaigns of repression, mass arbitrary detention, and high-technology surveillance against minority groups in Xinjiang. We've added entities in Russia and Burma for selling and procuring military equipment used to carry out aerial attacks that have killed civilians. Similarly, we've added entities in Nicaragua for being complicit in, or directly or indirectly engaging in, serious human rights abuses. Our Entity List generally prohibits listed parties from acquiring items subject to BIS's export licensing jurisdiction without specific authorization, which is unlikely to be granted.

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Dual-Use Technologies are Increasingly being Used to Commit Human Rights Abuses at a larger Scale

That's what we do to combat this problem, and the tools we have. Now we find ourselves at an inflection point; state actors are leveraging advanced tech to automate surveillance at scale. This significantly enhances their ability to track dissidents, profile and repress minorities, spread disinformation, and restrict political freedoms. These practices are not new, of course. In 1985,

we issued regulations restricting the export of certain computers to specific South African government agencies due to their use in Apartheid-era repression.

But modern technology has supercharged the ability of authoritarian regimes to exercise social control over their populations in violation of universal human rights. We witness this on the world stage today with dual-use tech. State-actors leverage technology such as AI and big data to turn entire regions of the world into open-air prisons. They target populations for forced DNA collection and collect genetic information. Many of this tech has peaceful and legitimate uses, in fact, AI can assist with image recognition to gather data on human rights abuses. Last night there was a story on NPR about using AI to help clear Russian-seeded mine fields in Ukraine. And forensic technology can reconstruct crime scenes and hold perpetrators accountable.

In the wrong hands, though, this same technology is being weaponized. Export controls are more important than ever in balancing the risk and benefits of dual-use tech. And new export control tools are essential to combat the spread of the software, technology, and know-how that enables such activities.

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Role of Export Control Human Rights Initiative

We in the United States cannot confront the issue of dual-use tech being used to commit HR abuses alone. It's an axiom of export controls that unilateral controls are not as effective as multilateral controls. This is especially true in protecting human rights and why the Export Control and Human Rights Initiative is so important. Sharing a political commitment among countries that with shared values is exactly the foundation we need to create an ecosystem in which our goods are not misused to commit human rights violations.

Commitment is only the first step, of course. Our goal is to exchange best practices, develop a shared understanding of threats and risks, and implement controls. A diversity of countries have signed onto ECHRI. Some have long-established export control systems and others are new to export controls. We have much to learn from one-another, including those who are considering export controls with fresh eyes. I'd note for you in particular that I am personally an enormous fan of the Export Control and Related Border Security (EXBS) program, which I encourage you to take advantage of for capacity-building efforts.

The beauty of this afternoon's event is the opportunity to work not just with likeminded countries, but also with industry. Frankly, we cannot fully implement export controls to protect human rights without you. Our export controls will be more effective when we pair with commitments from industry to conduct due diligence, particularly in evaluating customers, to identify transactions that might contribute to repression, detention, surveillance, censorship, and other activities of human rights concern.

The National Science and Technology Council last year identified 19 areas of critical and emerging technology of particular importance to U.S. national security, including advanced computing, AI, autonomous systems and robotics, biotech, and human-machine interfaces. In each of these fields, we must work with industry to think ahead to not just the wonderful benefits they will bring to humanity but also the potential nefarious applications. Emerging technology such as artificial intelligence, machine learning, and the Internet of Things are shaping every aspect of modern society, with human rights and national security implications. As we work together as governments, we will also work with industry to develop creative best practices and solutions in this evolving tech landscape.

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Conclusion

As President Biden said upon the United States election to the United Nations Human Rights Council:

“We stand at an inflection point in history. The choices we make in the years ahead will determine the kind of world we leave to future generations. Defending human rights . . . is a fundamental challenge of our time . . . we have to meet that challenge [to] unleash our full human potential.”

The world is undergoing a fundamental digital transformation that is changing how we live, work, and think. The technologies of tomorrow have the potential to move humanity forward to a better and safer world, but alternatively, if technology ends up in the wrong hands, will cause massive societal disruption. We must be at the forefront of ethical innovation. And only a collective solution will work.

Thank you for your participation today and please join me in renewing our commitment to ensure that export controls promote human rights and protect vulnerable populations throughout the world. On this eve of the Jewish holiday of Rosh Hashanah I wish *Shana Tova Umetuka* to those who are celebrating. To quote former President Barack Obama:

“the Days of Awe are a time to ask of ourselves something only we can control: the strength to do better. To be better. To make the world we live in a kinder, more peaceful place. To hear in the sacred shofar blast a call from within to change.”

Everyone in this room has that power, to do better, be better, and make our world kinder and more peaceful. By working together to protect human rights through export controls, we will make a difference in our lives and in our world.