

Bureau of Industry and Security
Human Rights Frequently Asked Questions (FAQs)
March 2023

Does BIS consider human rights concerns when reviewing license applications?

Yes. On October 6, 2020 (85 Fed. Reg. 63007), BIS revised the Export Administration Regulations (EAR) to provide for enhanced consideration of human rights concerns when reviewing almost all license applications for items on the Commerce Control List (CCL), other than items controlled only for short supply reasons. This rule amended a longstanding licensing policy set forth in the EAR that had taken into account whether the destination country of items controlled for “Crime Control” reasons had violated internationally recognized human rights.

What do reviewers at BIS and partner agencies consider when reviewing license applications for items that may implicate human rights concerns?

Reviewers at BIS and partner agencies consider the items involved, country of destination, end-user(s), the specific nature of the end-use(s), and the risk of unauthorized use or diversion as well as any assurances or safeguards to minimize such risk.

What are my obligations as an exporter when submitting a license application that may implicate human rights concerns?

Exporters are expected to exercise due diligence with regard to identifying human rights concerns. When submitting a license application, include all facts and circumstances relevant to human rights concerns. You are responsible for knowing your customer(s) (all parties to the transaction including consignee(s), end user(s), and purchaser(s)), and you may not “self-blind” by ignoring information that comes to you or your business in the normal course of business. Also include any assurances or safeguards to minimize the risk a proposed export may contribute to human rights violations or abuses. Include all relevant information in a Letter of Explanation attached to your license application.

How can an exporter assess whether a proposed export may be destined for a country(ies), end-user(s) and end use(s) that may implicate human rights concerns?

Exporters may consult the Policy Guidance tab on the BIS website that includes a sub-tab entitled Promoting Human Rights and Democracy. Available online here: <https://www.bis.doc.gov/index.php/policy-guidance/promoting-human-rights-and-democracy>

Exporters may also consult relevant Department of State references including Country Reports on Human Rights Practices and United Nations (UN) guidance concerning implementing the UN Guiding Principles for Transactions Linked to Foreign Government End Users for Products or Services with Surveillance Capabilities.

- <https://www.state.gov/reports-bureau-of-democracy-human-rights-and-labor/country-reports-on-human-rights-practices/>
- <https://www.state.gov/key-topics-bureau-of-democracy-human-rights-and-labor/due-diligence-guidance/>
- https://www.ohchr.org/sites/default/files/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf

Does BIS offer tailored guidance to exporters concerning a proposed export that may implicate human rights concerns?

Yes. Exporters may contact the BIS Foreign Policy Division at Foreign.Policy@bis.doc.gov or 202-482-4252 for tailored guidance concerning a proposed export that may implicate human rights concerns.

Are there items currently on the Commerce Control List (CCL) specifically controlled for human rights reasons?

Yes. BIS maintains controls on an array of items specifically for human rights reasons – also known as “Crime Control” items. They include shotguns and less-lethal ammunition, stun guns, batons, restraints and certain biometric equipment and software such as fingerprint analyzers, polygraphs, and computer voice stress analyzers. Additionally, BIS controls a number of items for “National Security,” “Regional Stability” and “Surreptitious Listening” reasons that may implicate human rights concerns. They include certain non-automatic and semi-automatic firearms and ammunition, disguised microphones, and mobile communications intercept devices. As noted above, the “Crime Control” provision of the EAR was amended in October 2020 by enhancing the human rights-related review policy to apply to applications involving most items on the CCL.

Does BIS plan to add more items to the Commerce Control List (CCL) specifically controlled for human rights reasons?

BIS continually reviews whether circumstances and technological changes warrant the addition of more items to be controlled for Crime Control reasons as well as for relevant National Security, Regional Stability, and Surreptitious Listening reasons.

Does BIS place parties engaged in or enabling human rights violations and abuses on the Entity List?

Yes. The Entity List identifies parties involved in activities contrary to the national security or foreign policy interests of the United States. Foreign policy interests encompass promoting the observance of human rights throughout the world. Of particular note, currently there are numerous Chinese governmental and commercial entities on the Entity List because of their engagement in, or enabling of, human rights violations and abuses against the Uyghur people in the Xinjiang Uyghur Autonomous Region (XUAR), as well as ethnic and religious minorities and democracy activists throughout China. There are also a number of commercial entities on the Entity List because of their use of technology to enable foreign governments to maliciously target democracy activists, opposition politicians, academics, and journalists at home and abroad.

What other actions has BIS taken to promote the observance of human rights throughout the world?

Acting jointly with partner agencies, BIS has published business advisories highlighting risks and considerations for businesses with supply chain exposure to entities engaged in or enabling human rights violations and abuses. These advisories include export license requirements, license application review policies, and possible administrative and criminal penalties for unauthorized transactions, including significant monetary penalties and denial of export privileges. To date, advisories have been issued concerning the XUAR, Hong Kong, Burma, and Cambodia. These can all be found on BIS's "Promoting Human Rights and Democracy" page at: <https://www.bis.doc.gov/index.php/policy-guidance/promoting-human-rights-and-democracy>

In addition, BIS supports the Export Controls and Human Rights Initiative as part of the Summit for Democracy effort launched by the United States and partner countries in December 2021. Additional information on the goals and objectives of the Initiative is available here: <https://www.whitehouse.gov/briefing-room/statements-releases/2021/12/10/fact-sheet-export-controls-and-human-rights-initiative-launched-at-the-summit-for-democracy/>.

On March 29-30, 2023, the United States will co-host the second Summit for Democracy with the governments of Costa Rica, the Netherlands, the Republic of Korea, and the Republic of Zambia to champion a vision of our world grounded in respect for human rights. Additional information concerning the second Summit for Democracy is available here: <https://www.state.gov/summit-for-democracy-2023/>

In concert with partner U.S. government agencies, BIS continues to consult with like-minded foreign governments, non-government organizations, academia, industry, and the general public on the most effective means of promoting human rights through the application of export controls.