

International Trade Alert

April 19, 2018

Key Points

- The United States Department of Commerce announced the denial of export privileges against Zhongxing Telecommunications Equipment Corporation and ZTE Kangxun Telecommunications Ltd. (collectively, ZTE) on April 16, 2018. This action will have a significant impact on both U.S. and non-U.S. companies.
- The Denial Order is based on a determination that ZTE made false statements to BIS in the course of settlement negotiations in 2016 and during its probationary period in 2017 related to ZTE's prior violations of U.S. export control laws and sanctions against North Korea and Iran.
- The Denial Order contains restrictions that exceed those resulting from ZTE's earlier designation on the Entity List, and it prevents ZTE from directly or indirectly participating in any way in any transaction involving any commodity, software or technology subject to the EAR.
- ZTE is also under scrutiny in the United Kingdom. The NCSC warned U.K. telecommunications companies to refrain from using network equipment or services from ZTE due to a "long term negative effect on the security of the UK."



Denial of Export Privileges for ZTE

Background

On April 16, 2018, U.S. Secretary of Commerce Wilbur L. Ross, Jr. announced the denial of export privileges ("Denial Order") against Zhongxing Telecommunications Equipment Corporation of Shenzhen, China ("ZTE Corporation") and ZTE Kangxun Telecommunications Ltd. of Hi-New Shenzhen, China ("ZTE Kangxun") (collectively, ZTE). Both ZTE Corporation and ZTE Kangxun now appear on the Department of Commerce's Bureau of Industry and Security's (BIS) Denied Persons List. This Denial Order follows ZTE's March 2017 combined civil and criminal penalty settlement and forfeiture totaling \$1.19 billion for violations of U.S. export control laws and sanctions against North Korea and Iran. ZTE's 2017 settlement also included a seven-year suspended denial of export privileges that could be triggered if ZTE did not meet the terms of the agreement and/or if the company committed additional violations of the Export Administration Regulations (EAR). The Denial Order has activated the previously suspended denial of export privileges and will have a significant impact on both U.S. and non-U.S. companies.

Overview and Impact of Denial Order

BIS has issued the Denial Order based on a determination that ZTE made false statements to BIS in the course of settlement negotiations in 2016 and during its probationary period in 2017. Specifically, at the time of the settlement, ZTE committed to dismiss four senior employees and to discipline 35 others for their conduct related to the prior sanctions violations. Yet, as noted by Secretary Ross in his announcement of the Denial Order, “ZTE misled the Department of Commerce. Instead of reprimanding ZTE staff and senior management, ZTE rewarded them. This egregious behavior cannot be ignored.” The full Denial Order can be accessed via the Department of Commerce website available [here](#).

Prior to entering into the settlement agreement in March 2017, ZTE had been named to the Entity List administered by BIS. The Entity List designation had the effect of restricting ZTE’s receipt of exports subject to the EAR. As a result of ZTE’s cooperation in the U.S. government’s investigation of its activities, BIS issued and repeatedly extended a temporary general license to mitigate the effect of the Entity List designation during the investigation.

The Denial Order that has now come into effect contains restrictions that exceed those resulting from an Entity List designation. Specifically, the Denial Order prevents ZTE from directly or indirectly participating in any way in any transaction involving any commodity, software or technology subject to the EAR, including the following activities:

- applying for, obtaining or using any license, license exception or export control document
- carrying on negotiations concerning, or ordering, buying, receiving, using, selling, storing, disposing of, forwarding, transporting, financing or otherwise servicing in any way, any transaction involving any items or activities subject to the EAR
- benefiting from any transaction involving any item exported or to be reexported from the United States that is subject to the EAR or from engaging in any other activity subject to the EAR.

Moreover, the Denial Order prohibits **any person** from doing any of the following:

- exporting or reexporting to or on behalf of ZTE any item subject to the EAR
- facilitating the acquisition or attempted acquisition by ZTE of the ownership, possession or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities
- taking action to acquire from, or to facilitate the acquisition or attempted acquisition from, ZTE of any item subject to the EAR that has been exported from the United States
- obtaining from ZTE in the United States any item subject to the EAR with knowledge, or reason to know, that the item will be, or is intended to be, exported from the United States
- engaging in any transaction to service any item subject to the EAR that has been or will be exported from the United States and that is owned, possessed, or controlled by ZTE

- servicing any item of whatever origin that is owned, possessed or controlled by ZTE if such service involves the use of any item subject to the EAR that has been or will be exported from the United States.

Other Actions Impacting ZTE

Coinciding with BIS' Denial Order, ZTE is also under scrutiny in the United Kingdom. Earlier this week, the U.K.'s National Cyber Security Centre (NCSC) warned U.K. telecommunications companies to refrain from using network equipment or services from ZTE due to a "long term negative effect on the security of the UK," and noting that ZTE's violations of U.S. sanctions played a role in NCSC's decision to issue a warning letter related to the use of ZTE equipment or services.

Conclusion

The Denial Order will likely have far-reaching implications for many U.S. and non-U.S. companies, and industries worldwide. The Denial Order is also expected to have significant economic implications for ZTE.

Contact Information

If you have any questions regarding this alert or if we can be of any assistance as you navigate the impact of this designation on current or pending engagements with ZTE, please contact:

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