

## International Trade Alert

March 24, 2016

### **BIS Grants Temporary Relief for Two ZTE Companies and their Suppliers**

In an extraordinary development, the U.S. Department of Commerce's Bureau of Industry and Security (BIS) issued a new [rule](#), effective March 24, 2016, creating a temporary general license for two entities—Zhongxing Telecommunications Equipment Corporation (“ZTE Corporation”) and ZTE Kangxun Telecommunications Ltd (“ZTE Kangxun”)—that BIS had [previously added to the Entity List on March 8, 2016](#), for their alleged role in setting up shell companies to circumvent U.S. export controls and sanctions on Iran.

#### **Relief Granted**

In its new rule, BIS indicates that ZTE Corporation and ZTE Kangxun made certain binding (undisclosed) commitments to the U.S. government that justify a restoration of BIS's earlier licensing policy. As such, all licensing requirements, review policies and exceptions regarding exports, reexports and transfers (in-country) to ZTE Corporation and ZTE Kangxun that were in effect on March 7, 2016, will now continue to remain in effect until June 30, 2016. For example, if exporters had exported items to these companies under the No License Required (NLR) exception on or before March 7, 2016, they may continue doing so until June 30, 2016.

#### **Limitations**

The temporary general license does not relieve persons of other prohibitions under the Export Administration Regulations (EAR), including those under General Prohibition 5, which provides that persons “may not, without a license, knowingly export or reexport any item subject to the EAR to an end user or end use that is prohibited by part 744 of the EAR.” Additionally, the new temporary general license does not relieve persons of an obligation to apply for export, reexport or in-country transfer licenses that are potentially required under other provisions of the EAR.

Exporters should also note that the new temporary general license applies only to ZTE Corporation and ZTE Kangxun—it does not apply to Beijing 8-Star International Co. or ZTE Parsian, the other entities BIS added to its Entity List on March 8, 2016. The temporary general license is in effect from March 24, 2016 through June 30, 2016. The U.S. may or may not renew the temporary general license beyond June 30, 2016.

#### **Precedent for Other Listed Entities**

BIS had taken the position that documents it published on its website at the time of the Entity List designation clearly established a “a ZTE-developed scheme to violate U.S. export control laws by establishing, controlling, and using a series of “detached” (e.g., shell or front) companies to illicitly reexport controlled items to sanctioned countries without authorization.”

Yet, with the sudden granting of a temporary general license, it is unclear what precedent this may establish to allow other listed entities to apply for removal or a temporary general license. The assistant secretary for Export Administration indicated in remarks yesterday that the change in the decision with regard to ZTE's listing did not necessarily create precedent because it was a specific case that involved a large company with large issues and it was a significant matter.

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