

## The Department of Commerce Announces the Activation of ZTE's Export Denial Order

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On April 16, 2018, Secretary of Commerce Wilbur Ross announced that the U.S. Department of Commerce's Bureau of Industry and Security ("BIS") has imposed a denial of export privileges against two Chinese companies, Zhongxing Telecommunications Equipment Corporation ("ZTE Corporation") and ZTE Kangxun Telecommunications Ltd. ("ZTE Kangxun") (collectively, "ZTE").<sup>1</sup> As a result of this denial, ZTE, one of China's largest manufacturers of telecommunications equipment, will no longer be able to obtain U.S.-made goods or software without special permission.

In March 2017, ZTE reached a settlement with the U.S. Departments of Justice, Commerce, and Treasury for over \$1 billion, covering civil and criminal charges levied against the company. The charges stemmed from allegations that ZTE exported U.S.-controlled goods to Iran and North Korea in violation of the International Emergency Economic Powers Act ("IEEPA") and then attempted to cover up those activities.<sup>2</sup> As part of that settlement agreement, ZTE agreed to a seven-year suspended denial of export privileges, which could be activated if any aspect of the agreement was not met or if ZTE committed additional violations of the Export Administration Regulations ("EAR"). The settlement agreement also required ZTE to submit audit reports regarding its compliance with U.S. export control laws and to make truthful disclosures of any factual information requested by the government.

During the course of the settlement and the probationary period which followed, ZTE sent letters assuring the government that ZTE had taken or would take action against 39 employees and officials that ZTE identified as having a role in the violations. In early 2018, BIS requested information and documentation showing proof of the employee discipline promised in those letters. Through further investigation and communications with ZTE, the Department of Commerce determined that ZTE's letters contained false statements made to cover up the fact that ZTE paid full bonuses to employees that had engaged in illegal conduct, and failed to issue letters of reprimand to said employees.

On March 13, 2018, BIS notified ZTE of the proposed activation of the sanctions, including denial of export privileges, which had been conditionally suspended under the settlement agreement. ZTE's March 16th response to the letter confirmed the false statements. Based on these false statements, and after taking into account ZTE's behavior over the course of the settlement and probationary period, the Acting Assistant Secretary of Commerce for Export Enforcement, Richard Majauskas, determined that it was appropriate to activate the suspended denial order in full and to suspend the export privileges of ZTE for a period of seven years, until March 13, 2025.<sup>3</sup> This denial means

that ZTE “may not, directly or indirectly, participate in any way in any transaction involving any commodity, software or technology ... exported or to be exported from the United States that is subject to the [EAR], or in any other activity subject to the [EAR].”<sup>4</sup>

For companies engaged in settlement discussions or bound by settlement agreements stemming from violations of U.S. export laws, the activation of the suspended denial order serves as a reminder that cooperation with U.S. authorities plays an important role in the determination and enforcement of settlements. As demonstrated by these developments in the ZTE case, failure to comply with a company’s obligations to reform its operations under the terms of a settlement agreement can be costly.

<sup>1</sup> The Department of Commerce’s press release

<sup>2</sup> For more information about ZTE’s settlement, see our prior briefing [here](#).

<sup>3</sup> This date is seven years from the date of BIS’s Notice of Proposed Activation of Suspended Sanctions.

<sup>4</sup> In the Matter of: Zhongxing Telecommunications Equipment, Order Activating Suspended Denial Order Relating to Zhongxing Telecommunications Equipment Corporation and ZTE Kangxun Telecommunications Ltd., 13-14 (April 15, 2018).

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