

US Issues Temporary License for Exports to Chinese Telecom Company ZTE

March 24, 2016

Today, March 24, 2016, the US Commerce Department's Bureau of Industry and Security ("BIS") issued a final rule revising the Export Administration Regulations ("EAR") and creating a temporary general license lifting certain export restrictions it recently imposed on Zhongxing Telecommunications Equipment Corporation ("ZTE") and its affiliate ZTE Kangxun Telecommunications Ltd. ("ZTE Kangxun"). As noted in our previous client alert on March 8, 2016, BIS added ZTE, ZTE Kangxun, as well as two other ZTE affiliates, Beijing 8 Star International Co. and ZTE Parsian, to the Entity List and thereby imposed a specific license requirement for all exports, reexports and in-country transfers (collectively, "exports") of items subject to the EAR to the four designated ZTE entities. As explained in greater detail below, although today's final rule has the effect of temporarily lifting the restrictions recently imposed on ZTE and ZTE Kangxun, companies with commercial dealings with these entities should continue to be vigilant and take precautionary compliance measures.

The final rule creates a general license ("Temporary GL") that temporarily restores the licensing requirements and policies applicable to exports to ZTE and ZTE Kangxun that were in effect prior to March 8, 2016. Under the Temporary GL, if an item was authorized for export to ZTE or ZTE Kangxun prior to March 8, 2016 (*i.e.*, because it was authorized under an existing license, qualified for a license exception, or otherwise did not require an export license), it may be exported to ZTE or ZTE Kangxun under the same authorization during the term of the Temporary GL. Similarly, if an item required a specific license under the EAR for export to ZTE or ZTE Kangxun prior to March 8, 2016, such exports are not authorized under the Temporary GL and will continue to require a specific license from BIS.

The Temporary GL only applies to ZTE and ZTE Kangxun. The two other ZTE affiliates which were designated on March 8, 2016, Beijing 8 Star International Co. and ZTE Parsian, are not covered by the Temporary GL and, as such, exports to these two entities continue to require a specific license from BIS. Moreover, the Temporary GL does not remove ZTE or ZTE Kangxun from the Entity List; rather, it temporarily reinstates the export licensing requirements that were applicable to the two entities prior to their designation.

According to the final rule, the Temporary GL will be effective through June 30, 2016. BIS may extend the license if the US Government determines, in its sole discretion, that ZTE and ZTE Kangxun are fulfilling certain commitments they have made to the US Government to address the diversion and compliance concerns that led to the Entity List designations of the four ZTE entities on March 8, 2016.

In light of recent developments and the potential for BIS to revoke the Temporary GL, companies should continue to be vigilant in connection with their dealings with ZTE and ZTE Kangxun. Specifically, we encourage clients to take the following compliance precautions:

- **Confirm export classifications for items going to ZTE or ZTE Kangxun:** The Temporary GL only authorizes exports to ZTE and ZTE Kangxun of items that were authorized prior to March 8, 2016. To the extent exporters have self-classified their products and associated technology, they should consider obtaining a formal commodity classification or CCATS to confirm the export classification of their products prior to relying on the Temporary GL for exports to ZTE or ZTE Kangxun.
- **Confirm eligibility for license exceptions:** If exporters are relying on a license exception under the EAR to authorize dealings with ZTE or ZTE Kangxun, they should confirm that any requirements or conditions associated with the license exception are satisfied.
- **Be alert to possible diversion of exported items:** Exporters seeking to rely on the Temporary GL should take steps to ensure that their products will not be diverted to Beijing 8 Star International Co., ZTE Parsian, or other prohibited end users or for prohibited end uses. Such steps can include obtaining an end-user certification specifying the ultimate end-user and intended end-use.
- **Check existing commercial agreements:** Exporters seeking to rely on the Temporary GL should review their existing agreements, purchase order terms and conditions, and other export-related documents to ensure that they do not include

broad prohibitions on exports to parties on the Entity List.

- **Monitor the validity of the Temporary GL:** Due to the uncertainty as to whether the Temporary GL will be extended beyond June 30, 2016 and the possibility that it could be revoked with little or no advance notice, suppliers of ZTE and ZTE Kangxun would be wise to continue to monitor the status of the Temporary GL and related regulatory developments. In addition, exporters should make any agreements or purchase orders involving prospective exports to ZTE or ZTE Kangxun contingent on authorization under the EAR.

For assistance in complying with the Temporary GL, please contact a member of our export control team, including [Kevin King](#), [Shannon MacMichael](#), [Rebecca Ross](#), and [Karen Tsai](#). For telecommunications inquiries not related to export controls, please contact [Michael Basile](#) or Michael Pryor.

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