

Commerce Lifts Ban on ZTE

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Today, the U.S. Department of Commerce (Commerce) officially lifted its denial order on ZTE, paving the way for companies to fully reengage in business with the Chinese telecom company. While the action removes much of the regulatory uncertainty that has haunted the Chinese telecom giant and rattled its U.S. suppliers over the past three months, ZTE continues to face bipartisan hostility from multiple members of Congress who support legislation that would reinstate the ban on ZTE.

In April of this year, Commerce activated a suspended denial order imposing significant, far-reaching export restrictions on ZTE. This ban stemmed from ZTE's violation of the terms of a settlement agreement with the U.S. government related to a multi-year conspiracy to violate U.S. export control and sanctions laws and regulations. Because of ZTE's reliance on U.S. hardware components and software, the denial order covered a wide range of transactions, including not only exports of U.S. electronic components and commercial software to ZTE, but also provision of updates and patches for existing ZTE network equipment and handsets.

Following President Trump's tweet directing Commerce to find a path to get ZTE back up and running, Commerce announced in early June that it had reached a new settlement agreement with ZTE that would reinstate ZTE's export privileges (and allow it to resume operations) in exchange for ZTE's agreement to pay a \$1 billion fine, place another \$400 million in escrow to cover any future potential penalties, replace its entire management team, and retain a Commerce-selected team of compliance specialists embedded within ZTE for ten years, among other obligations. Although ZTE paid the \$1 billion fine and replaced its entire board and executive leadership, the company was required to deposit \$400 million in escrow to trigger lifting of the denial order,

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and Commerce and ZTE only agreed to a final escrow agreement this Wednesday. Commerce's announcement is welcome news to ZTE's suppliers and customers and comes just ahead of the looming August 1 expiration of the limited relief that Commerce granted earlier this month to permit certain types of transactions with ZTE while ZTE worked to satisfy the requirements of the new settlement agreement.

Nonetheless, the ZTE saga is not over yet. Several members of Congress who have raised broad national security concerns about ZTE were unhappy that Commerce reached an agreement with ZTE to lift the denial order. The Senate's defense budget bill includes a provision that would require Commerce to reinstate the ZTE denial order (barring a Presidential certification) as well as U.S. government procurement restrictions with respect to ZTE equipment. The House of Representatives passed a separate defense budget bill that contains broader procurement restrictions but does not require reinstatement of the ZTE denial order. The two chambers of Congress will need to resolve the differences between their respective bills, including the ZTE denial order issue, to present a single bill that passes both chambers to the President. Despite granting ZTE a reprieve, broader trade tensions between the U.S. and China continue to mount. Among ZTE's challenges are efforts at the Department of Homeland Security and the Federal Communications Commission to address what they see as national security threats in global communications supply chains.