



**Goldfarb Seligman**  
Law Offices | Established 1930

Issue 3

## **Customs & Trade in Israel**

### **A Legal Newsletter**

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#### **Foundations of Defense Export Control - Obtaining an Export License- Part 2**

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The intent behind the Defense Export Control law, 2007 ("**the law**"), and the various regulations and orders enacted thereunder, is to regulate defense export on the grounds of national security, foreign policy, international commitments and other crucial interests of the State of Israel.

In the previous articles, we learned that a defense exporter must obtain a marketing license prior to marketing his products, or conducting any of the preliminary stages of marketing (such as sales offerings or negotiations). In addition to a marketing license, a defense exporter must obtain the proper export license. The various license types, their purpose, and the application procedure were detailed in the previous article. In this article we will continue to examine the application phase of obtaining an export license.

#### **A Discrepancy Between the Application and the Attached Documents May Prove Costly**

As detailed in the previous articles, the Defense Export Control Agency (DECA) is the authority authorized to approve or deny export licensing. When a discrepancy arises between the application and the attached documents, the exporter is sent a letter detailing the amendments he must perform in order to obtain a license. This may cost the exporter precious time, and it is therefore recommended to consult with professional bodies prior to submitting an application.

#### **Conditional Limited License**

In some cases, an export license may be granted under certain conditions or limitations, at the DECA's discretion. In such a case, the exporter will be required to provide the DECA with a commitment that all the DECA's conditions were met and a pledge that the exporter will continue to comply with the restrictions in the future.

## **Denial of an Export License Application- Process and Reasoning**

The DECA may occasionally deny an application for an export license. In such circumstances, the DECA will inform the exporter that the goods he applied to export are banned from export, detailing the reasons for the rejection of the license application. The reasons may vary: prior legal violations of the exporter, criminal record of the applicant, national security considerations etc.

If the DECA is inclined to deny the license application, it provides the applicant with the right to argue his case prior to announcing the application's rejection.

### **What is the "Foreign Policy Approval" Occasionally Required in Addition to an Export License?**

As a side note it should be mentioned that some goods require foreign policy approval in addition to an export license. This approval is a prerequisite to obtaining an export license when it is required (for certain weapon systems or ammunition, for example), and it is recommended to obtain it prior to applying for an export license.

### **How is a Rejection of an Application for Export License Appealed?**

The DECA's decision to deny an export licensing application (or renewal) can be appealed before the Advisory Committee, as can any limitation or conditioning thereof. The Advisory Committee is composed of representatives of the Defense Ministry and Foreign Ministry (in cases involving dual-purpose goods, a representative from the Ministry of Economy and Industry will be present as well). In order to formulate an opinion, the Advisory Committee may summon the exporter or a representative thereof in the interest of hearing supplementary arguments or obtaining additional documents. After the committee formulates its opinion, it is presented to the CEO of the Defense Ministry, who usually adopts the committee's recommendation in his final decision. The exporter may be represented by an attorney in these proceedings.

An appeal of a DECA decision must be submitted within 30 days of its decision. The appeal must include all the documents originally submitted with the application, as well as a deposition from the appellant confirming their content. The committee will decide the fate of the appeal within 45 days, and inform the appellant of its decision.

In the event that the appellant wishes to appeal the Advisory Committee's decision as well, he must file an administrative appeal with the Administrative Court within 45 days of receiving notice of its decision.

## **What is the Duration of an Export License's Validity? How May it be Extended?**

After the export license is approved and signed by the head of the DECA, it is valid for up to three years, as detailed in the license itself.

At the end of this period, an application for extension may be submitted. An extension application is submitted as a new application, submitting the previous license as an attached document. This process is usually expedited due to the fact that the application was already thoroughly examined during its first submission.

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**The review provided above is a condensed summary. The information contained therein is provided for information purposes only and does not constitute legal advice. For further details, please contact Adv.**

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