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August 29, 2017

Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2017

Congressional Committees

The mission of the Export-Import Bank of the United States (Ex-Im) is to support the export of U.S. goods and services overseas through loans, loan guarantees, and insurance, thereby supporting U.S. jobs. Ex-Im’s charter contains a general prohibition on support for defense articles and services, with limited exceptions. Since 1994, Ex-Im has had authority to facilitate the financing of U.S. exports of defense articles and services with both commercial and military applications, provided that it determines that these items are nonlethal and primarily meant for civilian end use.¹ Such “dual-use” exports include, for example, construction equipment to be used by foreign militaries to build roads.² Ex-Im’s Engineering and Environment Division, with assistance from the bank’s Office of General Counsel, Office of Congressional and Intergovernmental Affairs, and Office of Policy Analysis and International Relations, is responsible for implementing Ex-Im’s dual-use authority.

The Export-Import Bank Reform and Reauthorization Act of 2015 extended Ex-Im’s authority to finance dual-use exports until the date when the authority of the Export-Import Bank expires under 12 U.S.C. § 635f.³ Under this section, Ex-Im is currently authorized through September 30, 2019. GAO is required to report annually on the end uses of dual-use exports supported by Ex-Im during the second preceding fiscal year. In August 2016, we reported that Ex-Im had not completed its annual monitoring of all dual-use exports that it continued to support in fiscal year 2014.⁴ In this report, we review Ex-Im’s monitoring of dual-use exports that it continued to support in fiscal year 2015. Specifically, we (1) examine the status of end-use determinations made for 2015 and 2016, as of August 2017 and (2) identify any new dual-use exports that Ex-Im financed in fiscal year 2016.

To address these objectives, we reviewed Ex-Im documentation—including Ex-Im guidance, credit agreements, technical operating reports, annual end-use certifications, and database

¹12 U.S.C. § 635(b)(6)(I).

²According to Ex-Im’s Military Policy, its definitions of “defense articles” and “defense services” for dual-use exports are based on who the end user is, and then by the nature of the item and the use to which it will be put. In addition, if the item is designed primarily for military use, it is presumed to be a defense article. Certain exceptions are applied under this policy; for instance, if the item is for humanitarian purposes, it would not be considered a defense article. Under this policy, an export is eligible for financing as a dual-use item if convincing evidence exists that the export is nonlethal in nature and will be used primarily for civilian activities. Additionally, there is a statutory exception allowing for Ex-Im support for certain defense article or service exports sold primarily for antinarcotics purposes, in addition to the exception, as discussed herein, for certain primarily civilian purpose (dual-use) items or services.

³Pub. L. No. 114-94, Div. E, Title LIV, § 54001(b). (Dec. 4, 2015)

⁴GAO, *Export-Import Bank: Status of Dual-Use Exports as of August 2016*, GAO-16-844R (Washington, D.C.: Aug. 31, 2016).

records—and interviewed Ex-Im officials in Washington, D.C.⁵ We did not independently verify the information that buyers provided to Ex-Im or assess the effectiveness of Ex-Im’s methods to determine end use. However, on the basis of our prior reporting and Ex-Im’s confirmation that as of May 2017 no changes had been made to the database used to maintain information on dual-use exports, we determined that Ex-Im’s data on the status of dual-use exports were sufficiently reliable for our purposes.

We conducted this performance audit from April 2017 to August 2017 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Background

Ex-Im most recently approved financing for three dual-use export transactions in fiscal year 2012: (1) a portion of a satellite to be owned and operated by French company Eutelsat, (2) fixed- and mobile-service satellites for the government of Mexico, and (3) construction equipment for the government of Cameroon. Ex-Im will continue to monitor these exports until the loans are repaid.⁶ In August 2014, we reported that Ex-Im had received some of the reports required in its credit agreements for these dual-use exports either late or not at all, and that the bank’s efforts to obtain missing documentation were often neither timely nor documented.⁷ We also reported that Ex-Im had policies for monitoring the end use of the dual-use articles it finances, but that these policies did not specify the actions Ex-Im officials should take if the bank does not receive the required dual-use documents.⁸ In June 2015, we reported that Ex-Im had addressed these weaknesses by revising and implementing its guidance for monitoring the end uses of these items as we had recommended⁹ and, as a result, had received required documents in a timely manner. In August 2016, we reported that although the end users of these exports had provided most of the required end-use monitoring documentation on time, Ex-Im had not made its annual dual-use compliance determinations for 2015 in accordance with its revised guidance.¹⁰

Specifically, the revised guidance calls for the Ex-Im engineer assigned to monitor the transaction to take the following actions:

⁵In previous years, we have reported on the timeliness of progress reports submitted by buyers, as well as Ex-Im’s end-use inspections conducted for these exports. We are no longer reporting on the timeliness of the progress reports because they are no longer required. Similarly, we are not reporting on end-use inspections this year because according to Ex-Im officials, Ex-Im has conducted no end-use inspections since a June 2015 trip to Cameroon to view the equipment and visit some of the projects for which the equipment had been used. According to agency officials, Ex-Im conducts end-use inspections for dual-use exports at its discretion.

⁶Ex-Im did not approve any new dual-use exports in fiscal years 2013, 2014, or 2015 and did not approve any dual-use exports in the 9 years prior to 2012.

⁷GAO, *Export-Import Bank: Monitoring of Dual-Use Exports Should Be Improved*, GAO-14-719 (Washington, D.C.: Aug. 28, 2014).

⁸GAO-14-719.

⁹GAO, *Export-Import Bank: Dual-Use Monitoring Guidance Revised and Implemented*, GAO-15-611 (Washington, D.C.: June 25, 2015).

¹⁰GAO-16-844R.

- *Notify buyers.* The engineer is to notify buyers in advance of reports due to be submitted to Ex-Im. If a dual-use report becomes overdue, the engineer is to notify the buyers and alert Ex-Im's Office of General Counsel within 30 days of the date when the report or related information was due.
- *Document monitoring activities.* The engineer is to keep a record of their activities in an electronic folder, which is to contain a number of documents, including any reports that the bank requires from the buyer. The required documents vary by loan agreement and may include progress reports on construction, testing, and delivery of financed exports; technical operating reports once the item is in use, and; annual end-use certifications or reports. The annual end-use certification describes the civilian and military uses of the exported item and includes certification by the buyer that the item is being used primarily for civilian purposes.
- *Determine dual-use compliance.* The engineer is to make an annual determination within 120 calendar days of the beginning of each year—that is, by April 30—as to whether information received during the previous year was adequate to demonstrate that the transaction complied or failed to comply with the requirements of Ex-Im's dual-use policy in the previous year, as set forth in the financing agreement and Ex-Im's charter. If the engineer determines that the buyer is, or may be, out of compliance with the credit agreement's dual-use requirements, the engineer must retain files documenting the engineer's referral of this determination to senior management and the Office of General Counsel. The engineer must also retain files documenting any follow-up correspondence with the buyer to confirm the actual end use of the exports.

Ex-Im Made Annual Dual-Use Compliance Determinations for 2015 and 2016, Sometimes before Receiving End-Use Documents or after Internal Deadlines

Ex-Im received the end-use monitoring documentation for 2016 as required by the credit agreements with Eutelsat and the governments of Mexico and Cameroon, and the bank completed its 2015 and 2016 dual-use compliance determinations for the governments of Mexico and Cameroon.¹¹ However, Ex-Im made the determination of Mexico's compliance before receiving end-use documents required by the credit agreement and made the determination of Cameroon's compliance after the bank's internal deadline for these decisions. Regarding the 2015 determinations, we found in our last report that Ex-Im had not yet completed them for the exports to Mexico and Cameroon by April 30, 2016, as specified in the bank's dual-use monitoring guidance. Therefore, in this report we review the 2015 determinations together with the 2016 determinations.¹²

¹¹Ex-Im does not make an annual determination of dual-use compliance for the Eutelsat satellite. Ex-Im's Board of Directors' approval memorandum for this transaction indicated that of the 46 total transponders on the satellite, 40 were designated for civilian use—23 by Eutelsat and 17 by ictQatar. The remaining six transponders, purchased by ictQatar, were designated for military communication purposes. As such, the bank considers the satellite a dual-use export. However, Ex-Im officials noted that they monitor only the Eutelsat portion of the satellite, because this is the portion that the bank financed. In January 2014, Eutelsat submitted a statement certifying that its portion of the satellite was for commercial use only, that the six transponders dedicated to Qatar's military use are for nonlethal purposes, and that this cannot be modified over the course of the satellite's operational life.

¹² When we last reported on this topic, on August 31, 2016, Ex-Im had not provided documentation showing that it had completed its 2015 annual determinations of Mexico's compliance with the bank's end-use requirements for all dual-use exports; see GAO-16-844R. Consequently, in this report, we are reviewing Ex-Im's completion of its 2015 end-use determinations and of its 2016 determinations.

- *Satellite for French company Eutelsat.* Ex-Im received required information from Eutelsat in 2016; however, because the Ex-Im–financed portion of the satellite has no military end use, the bank did not make an annual determination of Eutelsat’s compliance with dual-use policy.¹³ The satellite was launched in August 2013 and became operational in November 2013. Eutelsat and the government of Qatar each own and operate a portion of the satellite, and for this reason, according to Ex-Im officials, the satellite was considered a dual-use export. However, after the satellite became operational, Eutelsat submitted a statement certifying that its portion of the satellite was for commercial purposes only. Ex-Im’s credit agreement with Eutelsat requires the company to submit semi-annual technical operating reports. For 2016, Ex-Im received one of these reports by the date specified in the credit agreement and received the other report 4 days late. Table 1 shows the dates when Ex-Im received 2016 end-use monitoring documentation for the Eutelsat satellite.

Table 1: U.S. Export-Import Bank (Ex-Im) Received One of Two 2016 End-Use Monitoring Documents On Time for the Eutelsat Satellite

Dual-use export and amount financed	Technical operating reports for 2016 (completed by buyer)	Annual end-use certification for 2016 (completed by buyer)	Determination of dual-use compliance for 2016 (completed by Ex-Im)
Portion of a satellite for French company Eutelsat ^a \$64.3 million	One of two received on time Due: July 30, 2016 Received: July 13, 2016 Due: Jan. 30, 2017 Received: Feb. 3, 2017	Not required ^b	Ex-Im does not make an annual determination of dual-use compliance because the portion that Ex-Im financed does not have a military end use.

Source: GAO analysis of Ex-Im documents and interviews with Ex-Im officials. | GAO-17-730R

^aEx-Im did not finance the parts of the satellite owned and operated by the government of Qatar’s state-owned telecommunications operator, ictQatar.

^bAccording to Ex-Im officials, Ex-Im does not require an annual end-use certification because in January 2014, after the satellite became operational, Eutelsat stated that its portion of the satellite was for commercial purposes only and that the portion of the satellite used by Eutelsat could not be changed over the satellite’s operational life.

- *Three satellites for the government of Mexico.* Ex-Im received required information from the Mexican government in 2016 and completed 2015 and 2016 determinations of end-use compliance for the Mexican satellites; however, Ex-Im completed the determinations before receiving end-use documents required by the credit agreement. The fixed-service satellite was launched in December 2012 and became operational in February 2013, and one of the two mobile-service satellites was launched in October 2015 and became operational in December 2015. The other mobile-service satellite was destroyed in May 2015 during a launch failure, and according to the Ex-Im engineer assigned to monitor the transaction, in July 2015, the Mexican government cancelled an undisbursed balance of \$74.3 million for the last phase of the agreement.¹⁴ The Mexican government submitted the technical operating reports and annual end-use certification required by its credit agreement on time.

¹³ The Eutelsat portion of the satellite is the only export financed under this authority that has no military end use, unlike the exports for Mexico and Cameroon also reviewed in this report.

¹⁴According to an Ex-Im official, the Mexican government did not provide a reason for the cancellation and was not required to do so.

- *2015 determination.* Ex-Im made its 2015 determination of the Mexican government's compliance with dual-use policy in April 2015, before receiving required end-use documents from the government. In August 2016, we reported that Ex-Im had not yet made its annual determination of the Mexican government's compliance with dual-use policy for 2015. After we published our report, Ex-Im provided a document showing that it had completed the determination for 2015 on April 28, 2015—that is, before all technical operating reports were received, about 8 months before the end of the year, and about 11 months before the Mexican government was required to provide its annual end-use certification for that year. According to Ex-Im officials, the engineer responsible for the transaction made the 2015 determination in April of that year because no new satellites were scheduled to become operational. The officials said that, as a result, the engineer already had sufficient information and could assume that 2015 usage would be the same as the reported 2014 usage, with 60 percent of the terminals dedicated to civilian use.¹⁵
- *2016 determination.* Ex-Im made its 2016 determination of the Mexican government's compliance on January 31, 2017, 2 months before the government of Mexico submitted its annual end-use certification. According to Ex-Im, the determination was based on the technical operating report submitted on January 26, 2017, not on the annual end-use certification submitted on March 28, 2017. Ex-Im officials stated that the engineer responsible for this transaction made the determination of compliance in January because he planned to retire in March, before Ex-Im received the Mexican government's certification. Ex-Im officials said the technical operating report contained sufficient information for him to make this determination.

Table 2 shows the dates when Ex-Im received end-use monitoring documentation for the Mexican satellites, and the information that Ex-Im used to determine dual-use compliance.

¹⁵Because the engineer responsible for this transaction had retired by the time of this review, other Ex-Im officials familiar with the transaction provided this information.

Table 2: U.S. Export-Import Bank (Ex-Im) Made 2015 and 2016 Dual-Use Compliance Determinations for Satellites to the Government of Mexico before Receiving End-Use Documents

Dual-use export and amount financed	Year	Technical operating reports (completed by buyer)	Annual end-use certifications (completed by buyer)	Determinations of dual-use compliance ^d (completed by Ex-Im)	Certification Status
One fixed-service and one mobile-service satellite for the government of Mexico ^a \$921.8 million	2015	Received on time ^b Due: Feb. 4, 2016 and Apr. 15, 2016 Received: July 29, 2015 ^c and Jan. 31, 2016	Received on time Due: Mar. 31, 2016 Received: Mar. 30, 2016	Completed 368 days early Due: Apr. 30, 2016 Completed: Apr. 28, 2015	Completed before technical operating reports and end-use certification were received
	2016	Received on time ^b Due: Feb. 4, 2017 and Apr. 15, 2017 Received: July 28, 2016 and Jan. 26, 2017	Received on time Due: Mar. 31, 2017 Received: Mar. 28, 2017	Completed 89 days early Due: Apr. 30, 2017 Completed: Jan. 31, 2017	Completed before end-use certification was received

Source: GAO analysis of Ex-Im documents and interviews with Ex-Im officials. | GAO-17-730R

^aAnother mobile-service satellite for the government of Mexico was destroyed in a launch failure in May 2015; in July 2015, the Mexican government cancelled the disbursement of \$74.3 million for the last phase of the agreement.

^bEx-Im's credit agreement with the government of Mexico requires the government to submit an annual technical operating report for each satellite. However, Ex-Im subsequently agreed to accept semi-annual technical operating reports that provide dual-use information for both satellites. Because the end user is reporting more frequently than was originally required, we consider that the reports were received on time. According to Ex-Im officials, they expect these reports about every 6 months.

^cThis is the date the report was completed.

^dEx-Im's guidance for end-use monitoring requires that the bank's annual end-use determinations be made within 120 calendar days of the beginning of each year (i.e., by April 30).

- *Construction equipment for the government of Cameroon.* Ex-Im completed its determinations of Cameroon's compliance with Ex-Im's dual-use policy for 2015 and 2016, though Ex-Im made these determinations after the deadline specified in its guidance. The equipment was shipped to the Cameroon military and put to use in 2013. While Ex-Im's credit agreement with the government of Cameroon does not require the government to submit progress reports or technical operating reports, the agreement requires the government to submit an annual end-use certification and report.
 - *2015 determination.* Ex-Im made its determination of the government of Cameroon's compliance with the dual-use policy several months after the determination deadline because the Cameroon government submitted a key document late. In August 2016, we reported that the Cameroon Corps of Engineers completed the required 2015 annual end-use report on April 6, 2016—shortly after the due date of March 31, 2016—but did not submit the report, which was in French, to Ex-Im until July 2016.¹⁶ The corps provided the English-language translation to Ex-Im on August 2, 2016. Ex-Im guidance calls for the engineer monitoring the construction equipment to make an annual determination of the Cameroon government's compliance with dual-use policy within the first 120 calendar days of the year. The engineer assigned to the transaction stated

¹⁶According to the credit agreement between Ex-Im and the government of Cameroon, all documents submitted to Ex-Im must be in English or, if originally written in another language, accompanied by an English translation.

that he made an informal determination based on the French report but was unable make an official determination on time because of the delay in receiving the English translation. On August 26, 2016, the engineer made the formal determination that the government of Cameroon had complied with the bank's dual-use policy in 2015.

- *2016 determination.* In March 2017, the government of Cameroon submitted the English translation of its 2016 end-use certification before the March 31 deadline. However, Ex-Im did not determine the government's compliance with dual-use policy until May 18, 2017, a few weeks after the 120-calendar-day deadline specified in Ex-Im internal guidance. According to the engineer responsible for the transaction, he completed a preliminary review of the documentation shortly after receiving it but was unable to formally document the determination until after the deadline because of competing work demands.

Table 3 shows the dates that Ex-Im received end-use monitoring documentation for the Cameroon equipment, and the information Ex-Im used to determine dual-use compliance.

Table 3: U.S. Export-Import Bank (Ex-Im) Completed 2015 and 2016 Dual-Use Compliance Determinations Late for Construction Equipment to the Government of Cameroon

Dual-use export and amount financed	Year	Technical operating reports (completed by buyer)	Annual end-use certifications (completed by buyer)	Determinations of dual-use compliance ^b (completed by Ex-Im)	Certification Status
Construction equipment for the government of Cameroon \$37.2 million	2015	Not required ^a	Not received on time Due: Mar. 31, 2016 Received: Aug. 2, 2016	Completed 118 days late ^c Due: Apr. 30, 2016 Completed: Aug. 26, 2016	Completed with end-use certification
	2016	Not required ^a	Received on time Due: Mar. 31, 2017 Received: Mar. 26, 2017	Completed 18 days late Due: Apr. 30, 2017 Completed: May 18, 2017	Completed with end-use certification

Source: GAO analysis of Ex-Im documents and interviews with Ex-Im officials. | GAO-17-730R

^aEx-Im requires technical operating reports when supporting the construction of a specific project or asset. The Cameroon transaction was an equipment sale, and did not involve support of specific physical projects.

^bEx-Im's guidance for end-use monitoring requires that the bank's annual end-use determinations be made within 120 calendar days of the beginning of each year (i.e., by April 30).

^cThe engineer completed the determination after receiving the required English translation of the end-use certification and report in August 2016.

Ex-Im Did Not Finance Any New Dual-Use Exports in Fiscal Year 2016

Ex-Im did not finance any new exports under its dual-use authority in fiscal year 2016, according to Ex-Im authorizations data and Ex-Im officials.

Recommendations

We are not making any recommendations in this report.

Agency Comments

We provided a draft of this report to Ex-Im for comment. In addition to a letter, reproduced in the enclosure, the bank provided technical comments addressing the timing of the bank's annual determinations about the end use of the Mexican satellites. Ex-Im officials expressed their confidence that the information used to determine Mexico's compliance with dual-use policy in 2015 and 2016 was complete and conclusive. We clarified our characterizations of their determinations accordingly. They also provided other comments, which we incorporated as appropriate.

We are sending copies of this report to the appropriate congressional committees and the Chairman and President of the Export-Import Bank. In addition, the report is available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have any questions about this report, please contact me at (202) 512-8612 or gianopoulosk@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made key contributions to this report include Adam Cowles (Assistant Director), Cristina Ruggiero (Analyst-in-Charge), Martin de Alteriis, Reid Lowe, and Alexander Welsh.



Kimberly Gianopoulos
Director, International Affairs and Trade

Enclosure

List of Committees

The Honorable Michael Crapo
Chairman
The Honorable Sherrod Brown
Ranking Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Lindsey Graham
Chairman
The Honorable Patrick Leahy
Ranking Member
Subcommittee on State, Foreign Operations, and Related Programs
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The Honorable Jeb Hensarling
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Committee on Financial Services
House of Representatives

The Honorable Harold Rogers
Chairman
The Honorable Nita Lowey
Ranking Member
Subcommittee on State, Foreign Operations, and Related Programs
Committee on Appropriations
House of Representatives

Enclosure: Comments from the Export-Import Bank of the United States



Reducing Risk. Unleashing Opportunity.

August 17, 2017

Kimberly Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
Washington, D.C. 20584

Dear Ms. Gianopoulos:

Thank you for providing the Export-Import Bank of the United States ("EXIM Bank" or "the Bank") with the Government Accountability Office (GAO) report, "Export-Import Bank: Status of Dual-Use Exports as of August 2017" (GAO-17-730R), August 2017.

For GAO's consideration, the Bank is submitting along with this letter technical comments to further address the timing of the issuance of the annual determination for the Mexsat transaction.

The Bank fully supports the GAO's work and audits, which complement the Bank's efforts to continuously improve its practices and procedures.

EXIM Bank appreciates GAO's professionalism and courtesy throughout this audit.

Sincerely,

A handwritten signature in black ink, appearing to read "C. Hall", is written over a faint, circular watermark of the EXIM logo.

Charles J. Hall
Chairman of the Board of Directors and President (acting)

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Text of Enclosure: Comments from the Export-Import Bank of the United States

August 17, 2017

Kimberly Gianopoulos

Director, International Affairs and Trade

U.S. Government Accountability Office Washington, D.C. 20584

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Sincerely,

Charles J. Hall

Chairman of the Board of Directors and President (acting)

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