



441 G St. N.W.
Washington, DC 20548

August 12, 2019

Congressional Committees

Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2019

The mission of the Export-Import Bank of the United States (EXIM) is to support the export of U.S. goods and services overseas through loans, loan guarantees, and insurance, thereby supporting U.S. jobs. EXIM’s charter contains a general prohibition on support for defense articles and services, with limited exceptions. In 1994, Congress passed legislation providing an exception giving EXIM authority to facilitate the financing of U.S. exports of defense articles and services with both commercial and military applications, provided it determines that these items are nonlethal and primarily meant for civilian end use.¹ Such “dual-use” exports have included, for example, construction equipment for foreign militaries to use to build roads.² EXIM’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, implement EXIM’s dual-use authority.

The Export-Import Bank Reform and Reauthorization Act of 2015 extended EXIM’s authority to finance dual-use exports until the date when EXIM’s authority expires under 12 U.S.C. § 635f.³ Under this section, EXIM is currently authorized through September 30, 2019. An earlier law, Pub. L. No. 103-428, § 1(a) (Oct. 31, 1994), created EXIM’s dual-use authority and included a provision for GAO, in conjunction with the bank, to report annually on the end uses of dual-use exports supported by EXIM during the second preceding fiscal year. This report (1) examines the status of EXIM’s monitoring of dual-use exports that it continued to finance in fiscal year 2017, as of August 2019; and (2) identifies any new dual-use exports that EXIM financed in fiscal year 2018.

To address these objectives, we reviewed EXIM documentation—including EXIM guidance, technical operating reports, annual end-use certification, dual-use compliance determination, and database records—and interviewed EXIM officials in Washington, D.C. We did not independently verify the information that buyers provided to EXIM or assess the effectiveness of EXIM’s methods to determine end use. However, based on our prior reporting and EXIM’s

¹12 U.S.C. § 635(b)(6)(I).

²According to EXIM’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 EXIM 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).

confirmation that as of June 2019 no changes had been made to the database used to maintain information on dual-use exports, we determined that EXIM's data on the status of dual-use exports were sufficiently reliable for our purposes.

We conducted this performance audit from May 2019 to August 2019 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

In 2015, EXIM revised its guidance for monitoring dual-use transactions to address certain weaknesses that we had previously identified in our August 2014 report.⁴ Specifically, in response to our recommendation, the revised guidance calls for the EXIM engineer assigned to monitor the transaction to take the following actions:

- *Notify buyers.* The engineer is to remind buyers of the reports due to be submitted to EXIM in advance of the deadlines in the credit agreements. If a dual-use report becomes overdue, then the engineer is to notify the buyers and alert EXIM'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 his or her 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 EXIM's dual-use policy in the previous year, as set forth in the financing agreement and EXIM'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.

⁴GAO, *Export-Import Bank: Monitoring of Dual-Use Exports Should Be Improved*, [GAO-14-719](#) (Washington, D.C.: Aug. 28, 2014). In June 2015, we reported that EXIM had revised its guidance and implemented the revised guidance. See GAO, *Export-Import Bank: Dual-Use Monitoring Guidance Revised and Implemented*, [GAO-15-611](#) (Washington, D.C.: June 25, 2015). In August 2017, we reported that EXIM made annual dual-use compliance determinations for 2015 and 2016 but sometimes did so before receiving end-use documents or after internal deadlines. See GAO, *Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2017*, [GAO-17-730R](#) (Washington, D.C.: Aug. 29, 2017).

EXIM Continued to Monitor Its Dual-Use Export Transactions

As of August 2019, EXIM monitored the end use of its dual-use export transactions that it continued to finance in fiscal year 2017. We reported on three transactions last year, which are summarized below.⁵ Of those, only the government of Mexico satellite transaction required documentation in 2019. All certifications for that transaction were completed on time.

- *Two satellites for the government of Mexico.* A fixed service satellite was launched in December 2012 and became operational in February 2013, and a mobile service satellite was launched in October 2015 and became operational in December 2015. For 2019, EXIM received all documents from the government of Mexico on time and subsequently determined that Mexico was in compliance with the bank's dual-use policy, as outlined in table 1.
- *Construction equipment for the government of Cameroon.* The government of Cameroon made its final payment under the credit agreement on July 28, 2018, ending the bank's end-use monitoring responsibilities for this transaction, according to EXIM.⁶ An EXIM official confirmed that no additional reports or certifications were required in 2019.
- *Satellite for French company Eutelsat.* Eutelsat made its final payment on June 29, 2017, ending the bank's end-use monitoring responsibilities for this transaction.

⁵GAO, *Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2018*, [GAO-18-683R](#) (Washington D.C.: August 30, 2018).

⁶EXIM's revised guidance states that Pub. L. No. 103-428 requires that the bank monitor usage of the items supported under the bank's dual-use authority. EXIM officials noted that once the credit agreement is paid in full, the bank is no longer supporting the transaction and therefore no longer has legal standing to monitor the usage of the items.

Table 1: Status of Export-Import Bank (EXIM) End-Use Monitoring of Its Dual-Use Transaction, as of August 2019

	Government of Mexico: mobile service satellite (Mexsat 2/Morelos 3)	Government of Mexico: fixed service satellite (Mexsat 3/ Bicentenario)
Maturity Date/final payment due^a	Jan. 2025: repayment term 10 years, with 20 semi-annual payments beginning July 25, 2015.	Dec. 2022: repayment term 10 years, with 20 semi-annual payments beginning June 25, 2013.
Technical operating reports	✓ Due from buyer (government of Mexico) Feb. 4, 2019; the government of Mexico submitted in English a joint technical operating report covering both satellites on time, on Jan. 24, 2019. ^b	✓ Due from buyer (government of Mexico) Apr. 15, 2019; the government of Mexico submitted in English a joint technical operating report covering both satellites on time, on Jan. 24, 2019. ^c
Annual end-use certification	✓ Due from buyer Mar. 31, 2019; submitted in English on time, on Mar. 26, 2019.	
Annual determination of dual-use compliance	✓ Due from EXIM Apr. 30, 2019; Exim engineer communicated on Mar. 29, 2019 that certification and supporting data demonstrated Mexican government's compliance with EXIM's dual-use policy.	

Legend: ✓ = submitted on time.

Source: GAO analysis of EXIM documents. | GAO-19-656R

^aCiting EXIM's revised guidance, bank officials stated that payment in full ends the buyer's dual-use reporting obligations to the bank and effectively ends the bank's end-use monitoring responsibilities for the transaction.

^bAccording to the credit agreement with the government of Mexico, the technical operating report for this satellite is due annually, on the date that is 60 days after the satellite's in-orbit acceptance date of December 6, 2015.

^cAccording to the credit agreement with the government of Mexico, the technical operating report for this satellite is due annually, on the date that is 60 days after the satellite's in-orbit acceptance date of February 14, 2013. The government of Mexico, with EXIM's approval, combines into one document progress reports for both satellites.

EXIM Did Not Finance Any New Dual-Use Exports in Fiscal Year 2018

EXIM did not finance any new exports under its dual-use authority in fiscal year 2018, according to EXIM authorizations data and EXIM officials. According to EXIM officials, dual-use transactions require a quorum of board members for approval, and EXIM's board did not have a quorum from late 2015 to May 2019, precluding the bank from financing such projects during that period.

Recommendations

We are not making any recommendations in this report.

Agency Comments and Our Evaluation

We provided a draft of this report to EXIM for comment. EXIM's letter is reproduced in the enclosure. 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 will be 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 Christina Werth (Assistant Director), Marc Castellano (Analyst-in-Charge), Martin de Alteriis, Aldo Salerno, and Alexander Welsh.



Kimberly Gianopoulos
Director, International Affairs and Trade

Enclosure

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



Reducing Risk. Unleashing Opportunity.

July 25, 2019

Ms. Kimberly Gianopoulos
Director, International Affairs and Trade
U.S. Government Accountability Office
441 G Street, NW
Washington, DC 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) draft report, "Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2019" (GAO-19-656R), dated August 2019.

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 "Jeffrey Goettman".

Jeffrey Goettman
Executive Vice President and Chief Operating Officer
Export-Import Bank of the United States

Related GAO Products

Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2018. [GAO-18-683R](#). Washington, D.C.: Aug. 30, 2018.

Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2017. [GAO-17-730R](#). Washington, D.C.: Aug. 29, 2017.

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

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

Export-Import Bank: Status of Actions to Address GAO Recommendations since the Bank's 2012 Reauthorization. [GAO-15-557T](#). Washington, D.C.: Apr. 15, 2015.

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

Export-Import Bank: Financing of Dual-Use Exports. [GAO-13-628R](#). Washington, D.C.: May 29, 2013.

Export Promotion: The Export-Import Bank's Financing of Dual-Use Exports. [GAO-12-628R](#). Washington, D.C.: Apr. 12, 2012.

Export Promotion: The Export-Import Bank's Financing of Dual-Use Exports. [GAO-10-1052R](#). Washington, D.C.: Sept. 15, 2010.

Export Promotion: The Export-Import Bank's Financing of Dual-Use Exports. [GAO-08-1182R](#). Washington, D.C.: Sept. 30, 2008.

EXIM Bank: The U.S. Export-Import Bank's Financing of Dual-Use Exports. [GAO-07-1234R](#). Washington, D.C.: Sept. 27, 2007.

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International Affairs: U.S. Export-Import Bank's Financing of Dual-Use Exports. [NSIAD-99-241R](#). Washington, D.C.: Sept. 1, 1999.

International Affairs: U.S. Export-Import Bank's Financing of Dual-Use Exports. [NSIAD-98-244R](#). Washington, D.C.: Sept. 1, 1998.

U.S. Export-Import Bank: Process in Place to Ensure Compliance With Dual-Use Export Requirements. [NSIAD-97-211](#). Washington, D.C.: July 17, 1997.

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