



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

August 27, 2020

Accessible Version

Congressional Committees

## Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2020

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.<sup>1</sup> Such "dual-use" exports have included, for example, construction equipment for foreign militaries to use to build roads.<sup>2</sup> 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, implements EXIM's dual-use authority.

The Further Consolidated Appropriations Act, 2020, extended EXIM's authority to finance dual-use exports until the date when EXIM's authority expires under 12 U.S.C. § 635f.<sup>3</sup> Under this section, EXIM is currently authorized through December 31, 2026. 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 EXIM, 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 2018, as of August 2020; and (2) identifies any new dual-use exports that EXIM financed in fiscal year 2019.

To address these objectives, we reviewed EXIM documentation—including EXIM guidance, a technical operating report, an annual end-use certification report, a dual-use compliance

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<sup>1</sup>12 U.S.C. § 635(b)(6)(I).

<sup>2</sup>According to EXIM's Military Policy, its definitions of "defense articles" and "defense services" for dual-use exports are based first 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.

<sup>3</sup>Pub. L. No. 116-94, Div. I, Title IV, § 401(a) (Dec. 20, 2019).

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. On the basis of our prior assessments of the data and EXIM's confirmation that, as of June 2020, no changes had been made to its data collection procedures or the database it uses 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 2020 to August 2020 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.<sup>4</sup> 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 29 this year—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

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<sup>4</sup>GAO, *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 had made annual dual-use compliance determinations for 2015 and 2016 but had sometimes done 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).

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.

### **EXIM Continued to Monitor Its Dual-Use Export Transaction**

As of August 2020, EXIM had monitored the end use of the single dual-use export transaction that it continued to finance in fiscal year 2018. This government of Mexico transaction comprising two satellites required documentation in 2020.<sup>5</sup> All required documentation for that transaction was 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 2020, 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.

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<sup>5</sup>We also reported on this transaction last year. See GAO, *Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2019*, [GAO-19-656R](#) (Washington, D.C.: Aug. 12, 2019).

**Table 1: Status of Export-Import Bank (EXIM) End-Use Monitoring of Government of Mexico Dual-Use Transaction, as of August 2020**

Category	Government of Mexico: mobile service satellite ( <i>Mexsat 2 / Morelos 3</i> )	Government of Mexico: fixed service satellite ( <i>Mexsat 3 / Bicentenario</i> )
<b>Maturity date / final payment due<sup>a</sup></b>	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.
<b>Technical operating reports</b>	submitted on time  Due from buyer (government of Mexico) Feb. 4, 2020; buyer submitted in English a joint technical operating report covering both satellites on time, on Jan. 28, 2020. <sup>b</sup>	submitted on time  Due from buyer (government of Mexico) Apr. 14, 2020; buyer submitted in English a joint technical operating report covering both satellites on time, on Jan. 28, 2020. <sup>c</sup>
<b>Annual end-use certification</b>	submitted on time  Due from buyer (government of Mexico) Mar. 30, 2020; submitted in English on time, on Mar. 26, 2020.	submitted on time  Due from buyer (government of Mexico) Mar. 30, 2020; submitted in English on time, on Mar. 26, 2020.
<b>Annual determination of dual-use compliance</b>	submitted on time  Due from EXIM Apr. 29, 2020; EXIM engineer communicated on Mar. 30, 2020 that certification and supporting data demonstrated the government of Mexico's compliance with EXIM's dual-use policy.	submitted on time  Due from EXIM Apr. 29, 2020; EXIM engineer communicated on Mar. 30, 2020 that certification and supporting data demonstrated the government of Mexico's compliance with EXIM's dual-use policy.

Legend: ✓ = submitted on time.

Source: GAO analysis of EXIM documents. | GAO-20-688R

<sup>a</sup>Citing 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.

<sup>b</sup>According 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.

<sup>c</sup>According 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 the technical operating reports for both satellites.

### **EXIM Did Not Finance Any New Dual-Use Exports in Fiscal Year 2019**

EXIM did not finance any new exports under its dual-use authority in fiscal year 2019, according to EXIM authorization data and EXIM officials. According to EXIM officials, dual-use transactions require a quorum of EXIM's Board of Directors for approval. EXIM's board did not have a quorum from July 2015 to May 2019, precluding the bank from financing dual-use transactions during that period, according to EXIM.<sup>6</sup> According to EXIM, while it was authorized

<sup>6</sup>EXIM has a five-member Board of Directors, with three members constituting a quorum. On May 8, 2019, the Senate confirmed three nominations to the board (President / Chairman and two members), thereby reinstating a quorum.

to finance new dual-use transactions within fiscal year 2019 after its board had a quorum—from May 2019 through September 2019—it did not finance such transactions during that period.

## Recommendations

We are not making any recommendations in this report.

## Agency Comments

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 President and Chairman 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](mailto: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 Ryan Vaughan (Assistant Director), Teresa Heger (Analyst in Charge), Martin De Alteriis, Debbie Chung, and Alexander Welsh.



Kimberly Gianopoulos  
Director, International Affairs and Trade  
Enclosure

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According to EXIM's website, as of August 2020, these three members constituted EXIM's board, with two seats continuing to remain vacant.

*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  
Committee on Appropriations  
United States Senate

The Honorable Maxine Waters  
Chairwoman  
The Honorable Patrick McHenry  
Ranking Member  
Committee on Financial Services  
House of Representatives

The Honorable Nita Lowey  
Chairwoman  
The Honorable Hal Rogers  
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 7, 2020

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”) with the Government Accountability Office (GAO) report, *Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports, August 2020*, (GAO-20-688R).

In its report GAO indicated that EXIM has continued to monitor its single, dual-use export transaction and that all required documents related to this transaction were completed in timely manner. EXIM notes that there were no findings and no recommendations resulting from this audit.

EXIM supports the GAO’s work, which complement EXIM’s efforts to continuously improve its practices and procedures.

Sincerely,

Kimberly A. Reed  
Chairman and President  
Export-Import Bank of the United States

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**Accessible Text for Enclosure: Comments from the Export Import Bank of the United States**

August 7, 2020

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Director, International Affairs and Trade

U.S. Government Accountability Office

Washington, D.C. 20584

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Sincerely,

Kimberly A. Reed

Chairman and President

Export-Import Bank of the United States



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### Related GAO Products

*Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2019.* [GAO-19-656R](#). Washington, D.C.: August 12, 2019.

*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.

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

*Export-Import Bank: Status of Dual-Use Exports as of August 2016.* [GAO-16-844R](#). Washington, D.C.: August 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.: April 15, 2015.

*Export-Import Bank: Monitoring of Dual-Use Exports Should Be Improved.* [GAO-14-719](#). Washington, D.C.: August 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.: April 12, 2012.

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

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

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

*Export-Import Bank: The U.S. Export-Import Bank's Financing of Dual-Use Exports.* [GAO-01-1110R](#). Washington, D.C.: August 31, 2001.

*Export-Import Bank: The U.S. Export-Import Bank's Financing of Dual-Use Exports.* [NSIAD-00-231R](#). Washington, D.C.: September 1, 2000.

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

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