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## Accessible Version

September 1, 2021

Report to Congressional Committees

### **Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2021**

The mission of the Export-Import Bank of the United States (EXIM) is to support the export of U.S. goods and services 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 gave EXIM statutory authority to support exports of defense articles and services with both commercial and military uses, known as dual-use exports, provided the agency determines that the items are nonlethal and primarily for civilian use.<sup>1</sup> For example, in 2011, EXIM directly loaned about \$64 million, to a French company to finance a dual use export: a geosynchronous satellite<sup>2</sup> mainly to supply civilian services, such as direct-to-home TV and broadband.<sup>3</sup>

The Further Consolidated Appropriations Act, 2020, extended EXIM's authority to finance dual-use exports until the date when EXIM's operating authority expires under 12 U.S.C. § 635f,<sup>4</sup> December 31, 2026. An earlier law that granted EXIM's dual-use authority 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.<sup>5</sup> This report (1) examines the status of EXIM's monitoring of dual-use exports that it continued to finance in fiscal year 2019, as of August 2021; and (2) identifies any new dual-use exports that EXIM financed in fiscal year 2020.

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 determination, and database records—and interviewed EXIM officials in Washington, D.C. We

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<sup>1</sup>12 U.S.C § 635(b)(6)(l).

<sup>2</sup>A geosynchronous, or geostationary, satellite travels in earth's orbit and always remains in the same place over the earth.

<sup>3</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>4</sup>Pub. L. No. 116-94, Div. I, Title IV, § 401(a) (Dec. 20, 2019).

<sup>5</sup>Pub. L. No. 103-428, § 1(a) (Oct. 31, 1994).

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 July 2021, 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 data used to identify the status of dual-use exports were sufficiently reliable for purposes of identifying dual-use exports financed by EXIM.

We conducted this performance audit from May 2021 to September 2021 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

EXIM's Engineering and Environment Division, with assistance from the bank's Office of the General Counsel, Office of Congressional and Intergovernmental Affairs, and Office of Policy Analysis and International Relations, is responsible for implementing EXIM's dual-use authority. EXIM defines "defense articles" and "defense services" based on the end user, the nature of the item, and its use. In 2015, EXIM revised its guidance for monitoring dual-use transactions in response to findings we identified in August 2014.<sup>6</sup> Specifically, in response to our recommendation, the revised guidance called 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 the 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 documentation, such as 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.* Within 120 calendar days of the beginning of each calendar year, the engineer is to determine whether information received during the previous year was adequate to demonstrate that the transaction complied or failed to comply with the 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 agreement's dual-use requirements, the engineer must retain files documenting his or her referral of this determination to senior management and the Office of the General Counsel. In addition, the engineer must retain files documenting

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<sup>6</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).

any follow-up correspondence with the buyer to confirm the actual end use of the exports.

### **EXIM Continued to Monitor a Single Dual-Use Export Transaction**

As of August 2021, EXIM was monitoring the end use of a single transaction that it continued to finance in fiscal year 2019, according to EXIM officials. This government of Mexico transaction, comprising two satellites, required documentation in 2021. The transaction included a fixed service satellite that was launched in December 2012 and became operational in February 2013, and a mobile service satellite that was launched in October 2015 and became operational in December 2015.<sup>7</sup> According to EXIM, it received all required documents from the government of Mexico on time. The EXIM engineer subsequently determined that Mexico was in compliance with the bank's dual-use policy, as outlined in table 1.

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<sup>7</sup>We reported on this transaction in 2019 and 2020. 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), and GAO, *Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2020*, [GAO-20-688R](#) (Washington, D.C.: Aug. 27, 2020).

**Table 1: Status of Export-Import Bank (EXIM) End-Use Monitoring of Government of Mexico Dual-Use Transaction, as of August 2021**

	<b>Government of Mexico: mobile service satellite (Mexsat 2 / Morelos 3)</b>	<b>Government of Mexico: fixed service satellite (Mexsat 3 / Bicentenario)</b>
<b>Maturity date / final payment due<sup>a</sup></b>	January 2025: repayment term 10 years, with 20 semi-annual payments beginning July 25, 2015.	December 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) February 4, 2021; buyer submitted in English a joint technical operating report covering both satellites on time, on January 29, 2021. <sup>b</sup>	Submitted on time  Due from buyer (government of Mexico) April 15, 2021; buyer submitted in English a joint technical operating report covering both satellites on time, on January 29, 2021. <sup>c</sup>
<b>Annual end-use certification</b>	Submitted on time  Due from buyer (government of Mexico) March 31, 2021; submitted in English on time, on March 29, 2021.	Submitted on time  Due from buyer (government of Mexico) March 31, 2021; submitted in English on time, on March 29, 2021
<b>Annual determination of dual-use compliance</b>	Submitted on time  Due from EXIM April 30, 2021; EXIM engineer communicated on March 31, 2021 that certification and supporting data demonstrated the government of Mexico's compliance with EXIM's dual-use policy	Submitted on time  Due from EXIM April 30, 2021; EXIM engineer communicated on March 31, 2021 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 and testimony | GAO-21-105227

<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 2020**

EXIM did not finance any new exports under its dual-use authority in fiscal year 2020, according to EXIM authorization data and EXIM officials. According to EXIM officials, no viable applications for dual-use projects reached EXIM's Board of Directors for approval in fiscal year 2020 or to date in fiscal year 2021.<sup>8</sup> They reiterated that the last time the Board approved a new dual-use transaction was in fiscal year 2012.<sup>9</sup> However, according to EXIM officials, there may

<sup>8</sup>EXIM has a five-member Board of Directors with three members constituting a quorum. According to EXIM officials, all new dual-use transactions must be approved by a quorum of the Board of Directors.

<sup>9</sup>EXIM's Board of Directors did not have a quorum from July 2015 to May 2019, precluding the board from approving any new dual-use transactions during this period.

be a higher potential for viable applications related to dual-use support in fiscal year 2022 because of an increase in the frequency and nature of preliminary inquiries EXIM has received.

Agency Comments

We provided a draft of this report to EXIM for comment. EXIM did not have any comments. We are sending copies of this report to the appropriate congressional committees and the Acting President and Chair 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), Tom Zingale (Analyst in Charge), Debbie Chung, Ashley Alley, and Pamela Davidson.

A handwritten signature in black ink that reads "Kimberly Gianopoulos". The signature is written in a cursive, flowing style.

Kimberly Gianopoulos  
Director, International Affairs and Trade

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## Related GAO Products

*Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2020.* [GAO-20-688R](#). Washington, D.C.: August 27, 2020.

*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.

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