



August 30, 2018

Congressional Committees

Export-Import Bank: Status of End-Use Monitoring of Dual-Use Exports as of August 2018

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 that 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 to be used by foreign militaries 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 annually report 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 2016, as of August 2018; and (2) identifies any new dual-use exports that EXIM financed in fiscal year 2017.

To address these objectives, we reviewed EXIM documentation—including EXIM guidance, credit agreements, technical operating reports, annual end-use certifications and dual-use compliance determinations, and database records—and interviewed EXIM officials in

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).

Washington, D.C.⁴ 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, on the basis of our prior reporting and EXIM's confirmation that as of July 2018 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 2018 to August 2018 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 fiscal year 2016, EXIM was responsible for monitoring three dual-use export transactions: (1) fixed- and mobile-service satellites for the government of Mexico, (2) construction equipment for the government of Cameroon, and (3) a portion of a satellite to be owned and operated by a French company, Eutelsat. EXIM approved financing for these three dual-use export transactions in fiscal year 2012 and continues to monitor these exports until the loans are repaid.⁵

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.⁶ 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, 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

⁴In previous years, we have reported on the timeliness of progress reports submitted by buyers, as well as EXIM'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 under any of the credit agreements. Similarly, we are not reporting on end-use inspections because according to EXIM officials, EXIM has conducted no end-use inspections since a June 2015 trip to Cameroon. According to agency officials, EXIM conducts end-use inspections for dual-use exports at its discretion.

⁵EXIM did not approve any new dual-use exports in fiscal years 2013, 2014, 2015, or 2016 and did not approve any dual-use exports in the 9 years prior to 2012.

⁶GAO, *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).

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.

EXIM Monitored Active Dual-Use Export Transactions; Most Documentation Was Timely but Some Initial Documentation Lacked Sufficient Detail

EXIM monitored the end use of two dual-use export transactions—with the government of Mexico and the government of Cameroon—that it continued to finance in fiscal year 2016. As of August 2018, EXIM received all documents from the government of Mexico on time and made a timely determination that Mexico was in compliance with the bank’s dual-use policy, but did not clearly document this determination until 3 months later, on July 26, 2018. The bank received the government of Cameroon’s annual end-use certification several days late and made a timely dual-use compliance determination for the Cameroon construction equipment. Regarding a third transaction that the bank continued to finance in 2016, Eutelsat paid off its loan in June 2017, almost 4 and a half years early, which, according to EXIM officials, ended the bank’s end-use monitoring of the transaction. For additional information, see the bulleted text below and table 1.

- *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 2015.⁷ The government of Mexico submitted a joint technical operating report covering both satellites on January 24, 2018, shortly before the annual February 4 deadline for the mobile service satellite, which falls earlier in the year than the annual deadline for the fixed service satellite.⁸ In addition, the government of Mexico submitted its annual end-use certification and report on time, a few days before the March 31 due date. Several days before the April 30 deadline for EXIM’s dual-use compliance determination, the EXIM engineer responsible for monitoring the satellites’ end use sent a brief email to the EXIM official overseeing the credit agreement with Mexico stating that “this email is to confirm that the attached annual dual use certification meets our dual use certification requirement to be sent to us no later than March 31 of each year.” According to EXIM officials, this email served as the bank’s affirmative dual-use compliance determination. Three months later, on July 26, 2018, in response to our questions noting that the email did not specify whether the certification was sufficient to make an annual dual-use compliance determination in accordance with the bank’s dual-use policy, the engineer issued a more comprehensive statement clarifying that the certification and supporting data were sufficient for this purpose and demonstrated that the primarily civilian use of the satellite terminals was compliant with the dual-use policy.
- *Construction equipment for the government of Cameroon.* The government of Cameroon submitted its annual end-use certification in English on April 11, 2018.⁹ However, EXIM officials noted that the government submitted a copy in French on the first business day after the due date, on Monday, April 2. The engineer monitoring the

⁷A third satellite, another mobile service satellite, which the EXIM engineer assigned to monitor the transaction said was a spare, was destroyed in May 2015 during a launch failure. According to the engineer, the Mexican government is not planning to replace it and, in July 2015, cancelled an undisbursed balance of \$74.3 million for the last phase of the credit agreement. According to an EXIM official, the Mexican government did not provide a reason for the cancellation and was not required to do so.

⁸The Mexican government’s credit agreement with the bank requires that the borrower submit a technical operating report 60 days after each satellite’s in-orbit acceptance date and annually thereafter until all amounts owed under the agreement have been paid in full. The government of Mexico, with EXIM’s approval, combined into one document progress reports for the two mobile service satellites and the technical operating report for the fixed service satellite, and continues to combine the technical operating reports for the two remaining satellites into one document.

⁹According to the credit agreement between EXIM and the government of Cameroon, all documents submitted to EXIM must be in English or, if originally written in another language, accompanied by an English translation.

Cameroon transaction conducted a detailed analysis of equipment usage data within the 2017 calendar year based on information in Cameroon's end-use certification and report and determined that the use of the equipment was overwhelmingly civilian in nature and thus met the bank's dual-use requirement of being used primarily for civilian purposes.¹⁰ The engineer made this determination on April 27, a few days before it was due. The government of Cameroon made its final payment under the credit agreement on July 28, 2018. Citing EXIM's revised guidance, the 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.¹¹

- *Satellite for French company Eutelsat.* Eutelsat made its final payment on June 29, 2017, a month before its next technical operating report would have been due and almost 4 and a half years before the final payment would have been due in November 2021.¹² According to EXIM officials, such prepayment is not uncommon.

¹⁰The engineer concluded that the civilian use of the equipment was between 72 percent and 92 percent, depending on whether one analyzed the end-use information by number of projects, equipment allocation, or time-weighted equipment allocation (multiplying the number of equipment units allocated to a specific project by the duration of the project within 2017). We applied this analysis to the information in Cameroon's end-use certification and report and arrived at a similar conclusion, with civilian use between 72 percent and 90 percent. Civilian projects include activities such as road grading and construction, drainage and flood control, and civilian housing.

¹¹EXIM's revised guidance states that P.L. 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.

¹²According to its credit agreement, Eutelsat was therefore no longer required to provide technical operating reports to the bank. Exim did not make annual determinations of dual-use compliance for the Eutelsat satellite. EXIM'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 the government of Qatar's state-owned telecommunications operator, ictQatar. The remaining 6 transponders, purchased by ictQatar, were designated for military communication purposes. As such, the bank considered the satellite a dual-use export. However, EXIM officials noted that they monitored 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 is for commercial use only, that the 6 transponders dedicated to Qatar's military use are for nonlethal purposes, and that these facts cannot be modified over the course of the satellite's operational life. 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.

Table 1: Status of Export-Import Bank (EXIM) End-Use Monitoring of Dual-Use Transactions, as of August 2018

	Government of Mexico: mobile service satellite (Mexsat 2/Morelos 3)	Government of Mexico: fixed service satellite (Mexsat 3/Bicentenario)	Government of Cameroon: road construction equipment	French company Eutelsat: satellite
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.	<i>July 2018; government of Cameroon made final payment on July 28, 2018.</i>	<i>Nov. 2021, but Eutelsat prepaid in full on June 29, 2017.</i>
Technical operating reports	✓ Due from buyer (government of Mexico) Feb. 4, 2018; buyer submitted in English a joint technical operating report covering both satellites on time, on Jan. 24, 2018. ^b	✓ Due from buyer (government of Mexico) Apr. 15, 2018; buyer submitted in English a joint technical operating report covering both satellites on time, on Jan. 24, 2018. ^c	Not required. ^d	No longer required, since Eutelsat prepaid in full in June 2017.
Annual end-use certification	✓ Due from buyer Mar. 31, 2018; submitted in English on time, on Mar. 26, 2018.		✗ Due from buyer (government of Cameroon) Mar. 31, 2018; submitted in English 11 days late, on Apr. 11, 2018.	Not required. ^e
Annual determination of dual-use compliance	✓ Due from EXIM Apr. 30, 2018; Exim engineer made brief statement on Apr. 27, 2018 confirming end-use certification received on time. According to EXIM officials, this statement served as EXIM's dual-use compliance determination. On July 26, 2018, engineer issued more comprehensive statement clarifying that certification and supporting data demonstrated Mexican government's compliance with EXIM's dual-use policy.		✓ Due from EXIM Apr. 30, 2018; submitted on time, on Apr. 27, 2018.	Not required. ^e

Legend: ✓ = submitted on time. ✗ = submitted late.

Source: GAO analysis of EXIM documents and interviews with EXIM officials. | GAO-18-683R

^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.

^dEXIM 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.

^eEXIM did not make annual determinations of dual-use compliance for the Eutelsat satellite because, according to EXIM officials, Eutelsat, the entity financed, notified EXIM that its portion of the satellite is for commercial purposes only and that the portion of the satellite used by Eutelsat could not be changed over the course of the satellite's operational life. EXIM did not finance the parts of the satellite owned and operated by the government of Qatar's state-owned telecommunications operator, ictQatar.

EXIM Did Not Finance Any New Dual-Use Exports in Fiscal Year 2017

EXIM did not finance any new exports under its dual-use authority in fiscal year 2017, 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 has not had a quorum since late 2015, precluding the bank from financing such projects.

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. In addition to a letter, reproduced in the enclosure, the bank provided technical comments, which we incorporated as appropriate. We are sending copies of this report to the appropriate congressional committees and the acting 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 Adam Cowles (Assistant Director), Kay Halpern (Analyst-in-Charge), Debbie Chung, Martin de Alteriis, and Alexander Welsh.



Kimberly Gianopoulos
Director, International Affairs and Trade

Enclosure

List of Committees

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

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The Honorable Harold Rogers
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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 9, 2018

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 2018” (GAO-18-683R), dated August 31, 2018.

For GAO’s consideration, the Bank is submitting along with this letter technical comments.

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,

Ambassador Jeffrey D. Gerrish
President and Chairman (Acting) of the Export-
Import Bank of the United States
Deputy United States Trade Representative for
Asia, Europe, the Middle East, and Industrial
Competitiveness

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Related GAO Products

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.

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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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