



August 31, 2016

Congressional Committees

Export-Import Bank: Status of Dual-Use Exports as of August 2016

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. The Export-Import Bank Charter contains a general prohibition on Ex-Im 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 having both commercial and military applications, provided that it determines these items are non-lethal and primarily meant for civilian end use.¹ These “dual-use” exports include construction equipment used by foreign militaries to build roads.² Ex-Im’s Engineering and Environment Division, with assistance from the Office of General Counsel, the Office of Congressional and Intergovernmental Affairs, and the Policy and Planning Division, is responsible for implementing the dual-use authority.

The Export-Import Bank Reform and Reauthorization Act of 2015 extended the authority for Ex-Im to finance dual-use exports until the date on which the authority of the Export-Import Bank expires under 12 U.S.C. § 635f.³ Ex-Im is currently authorized under this section through September 30, 2019. GAO is required to report annually on the end uses of dual-use exports financed by Ex-Im during the second preceding fiscal year. This report (1) examines the status of Ex-Im’s monitoring of dual-use exports that it continued to finance in fiscal year 2014, as of August 2016; and (2) identifies any new dual-use exports that Ex-Im financed in fiscal year 2015.

To address these objectives, we reviewed Ex-Im documentation—including Ex-Im guidance; credit agreements; progress reports, technical operating reports and annual end-use certifications and reports; and print-outs from Ex-Im’s database—and interviewed Ex-Im officials in Washington, D.C. We did not independently verify the information provided to Ex-Im from the buyers, or assess the appropriateness of the metrics or the effectiveness of the controls Ex-Im

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. Additionally, there are statutory exceptions allowing for Ex-Im support for certain defense article or service exports sold for anti-narcotics purposes and for certain civilian purposes (dual-use) items or services. 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 mainly for civilian activities.

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

was using to determine end use. However, 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 June 2016 to August 2016 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 exports in fiscal year 2012 and will continue to monitor these exports until the loans or guarantees are repaid.⁴ In August 2014, we reported that Ex-Im had received some reports required in its credit agreements for these dual-use exports either late or not at all, and that its efforts to obtain missing documentation were often neither timely nor documented.⁵ We also reported that Ex-Im had policies for monitoring the end use of defense articles and services it finances, including documentation requirements that are reflected in its financing agreements with borrowers, but that these policies did not specify what actions Ex-Im officials should take if the bank did not receive the required dual-use-related documents.⁶ In our most recent report, issued in June 2015, we found that Ex-Im had addressed these weaknesses by revising and implementing its guidance for monitoring these items, as we had recommended in August 2014.⁷ As a result, Ex-Im received in a timely manner all documents required between August 2014 and June 2015.

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

- *Notify buyers.* The engineer is to notify buyers in advance of reports due to be submitted to Ex-Im and, if a dual-use report becomes overdue, 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 so that appropriate action can be taken to expedite the submission of the required information.
- *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 specified documents including any reports that Ex-Im requires. 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 and reports. The annual end-use certification and report describes the civilian and military

⁴Ex-Im did not approve any new dual-use exports in fiscal years 2013 or 2014 and had not approved any dual-use exports in the 9 years prior to 2012.

⁵GAO, *Export-Import Bank: Monitoring of Dual-Use Exports Should Be Improved*, [GAO-14-719](#) (Washington, D.C.: Aug. 28, 2014).

⁶GAO-14-719.

⁷GAO, *Export-Import Bank: Dual-Use Monitoring Guidance Revised and Implemented*, [GAO-15-611](#) (Washington, D.C.: June 25, 2015).

use of the exported item and includes certification by the buyer that the item is being used primarily for civilian purposes.⁸

- *Determine compliance.* The engineer is to make an annual determination—within 120 calendar days of the beginning of each 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 Ex-Im’s dual-use policy, as set forth in the financing agreement and Ex-Im’s charter.

Although Buyers Provided Ex-Im Most Required Documentation on Time, Ex-Im Has Not Made Its Annual Determinations of Dual-Use Compliance

Ex-Im received five of six reports required by Ex-Im credit agreements on time for the three dual-use exports it continued to finance in fiscal year 2014, and mostly followed its own guidance when the sixth report was not submitted on time. However, as of August 2016, Ex-Im had not made its annual determinations for the two dual-use exports for which a determination should be made.

Figure 1 shows the status of documentation that buyers have submitted to Ex-Im for the dual-use exports it continued to finance in fiscal year 2014.

⁸For the three satellites for the government of Mexico and the construction equipment for the government of Cameroon, their annual end-use certification and reports are to be submitted to Ex-Im until the loans or guarantees are repaid.

Figure 1: Documentation Received by Ex-Im for Dual-Use Exports It Continued to Finance in Fiscal Year 2014, as of August 2016

| Dual-use export | Progress reports on construction, testing, and delivery of financed export | Technical operating reports on exported item once it is in use | Annual end-use certification and report | End-use inspections |
|--|---|--|---|--|
| Satellite for French company Eutelsat <ul style="list-style-type: none"> Launched Aug. 2013. Became operational Nov. 2013. | ⊖ No longer required, now that satellite is operational. | ✔ Due: Apr. 1, 2016. Received: Jan. 18, 2016. | ⊖ Not required because Eutelsat, the entity financed, is a private company with no military end use. ⁹ | Possible trip in Nov. 2016 to visit Eutelsat ground facility. |
| Three satellites for the government of Mexico^b | | | | |
| Fixed service satellite for the government of Mexico (Mexsat 3) <ul style="list-style-type: none"> Launched Dec. 2012. Became operational Feb. 2013. | ⊖ No longer required, now that satellite is operational. | ✔ Due: Feb. 28, 2016. Received: Jan. 31, 2016. | ✔ Due: Apr. 1, 2016. Received: Mar. 30, 2016. | At Ex-Im's discretion: none planned at this time. |
| Mobile service satellite 1 for the government of Mexico (Mexsat 1) <ul style="list-style-type: none"> Destroyed in May 2015 launch failure. | ⊖ No longer required because satellite was destroyed. | ⊖ Not applicable because satellite was destroyed. | ⊖ Not applicable because satellite was destroyed. | ⊖ Not applicable because satellite was destroyed. |
| Mobile service satellite 2 for the government of Mexico (Mexsat 2) <ul style="list-style-type: none"> Launched Oct. 2015. Became operational Dec. 2015 but still undergoing systems acceptance. | ⊖ No longer required, now that satellite is operational. | ✔ Due: Feb. 28, 2016. Received: Jan. 31, 2016. | ✔ Due: Apr. 1, 2016. Received: Mar. 30, 2016. | At Ex-Im's discretion: none planned at this time. |
| Construction equipment for the government of Cameroon <ul style="list-style-type: none"> Shipped to Cameroon military and put to use in 2013. | ⊖ Not required because the Cameroon transaction was an equipment sale and did not involve Ex-Im's support of specific physical projects. ^b | ⊖ Not required because the Cameroon transaction was an equipment sale and did not involve Ex-Im's support of specific physical projects. | Ⓜ Due: Apr. 1, 2016. Received: Completed by Cameroon Corps of Engineers on Apr. 6, 2016, but not received by Ex-Im until July 2016. The Cameroon Corps of Engineers initially submitted the report in French and provided Ex-Im an English-language translation on Aug. 2, 2016. | ✔ Site inspection of equipment and sample projects conducted in June 2015. |

Legend: Ex-Im = Export-Import Bank of the United States.

Source: GAO analysis of Ex-Im documents and interviews with Ex-Im officials. | GAO-16-844R

Notes:

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

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

- **Satellite for French company Eutelsat.** This satellite was launched in August 2013 and became operational in November 2013. Between June 2015 and August 2016, Eutelsat was only required by its credit agreement to submit a technical operating report, which it did on time. The credit agreement did not require the company to submit progress reports, since the satellite is operational, or an annual end-use certification, since the portion of the Eutelsat satellite financed by Ex-Im does not have a military end use.⁹

⁹Eutelsat submitted one dual-use certification in January 2014. According to the certification, all of the satellite's transponders—with the exception of six financed separately by the government of Qatar—are for commercial use only. Since the satellite is operational, these features cannot be changed. Therefore, the dual-use certification remains valid until the end of the satellite's operational life. The Ex-Im engineer responsible for monitoring this satellite confirmed that Eutelsat will never have to provide another annual end-use report or certification.

As a result, Ex-Im does not have to make an annual determination of Eutelsat's compliance with dual-use policy. Nevertheless, the engineer responsible for monitoring the Eutelsat satellite is planning a possible trip to France in November 2016 for an overall review of the satellite's performance, including dual-use compliance.

- *Three satellites for the government of Mexico—one fixed service and two mobile service.* The fixed service satellite was launched in December 2012 and became operational in February 2013, and one of the mobile service satellites was launched in October 2015 and became operational in December 2015. However, the other mobile service satellite—which the Ex-Im 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 currently planning to replace the one that was destroyed and, in July 2015, cancelled an undisbursed balance of \$74.3 million for the last phase of the Mexican satellite credit agreement.¹⁰ The government of Mexico submitted the technical operating report and annual end-use report required by its credit agreement on time, but was not required to submit progress reports on any of the three satellites it financed because the satellites were either operational or had failed during launch.

However, Ex-Im has not yet made its annual determination of the Mexican government's compliance with dual-use policy as outlined in Ex-Im guidance. The Ex-Im engineer responsible for monitoring these satellites told us that he had not yet made the annual determination because the mobile service satellite was still undergoing system acceptance, which will not be completed until the end of August 2016.¹¹ The engineer is not planning any trips to Mexico to conduct an end-use inspection of these satellites, but told us that he has an open invitation to visit the ground facility.

- *Construction equipment for the government of Cameroon.* This equipment was shipped to the Cameroon military and put to use in 2013. The government of Cameroon is not required by its credit agreement to submit either progress reports or technical operating reports, but is required by its credit agreement to submit an annual end-use certification and report. The Cameroon Corps of Engineers completed the required annual end-use report on April 6, 2016—shortly after the due date of April 1, 2016—but did not submit the report, which was in French, to Ex-Im until July 2016.¹² The Cameroon Corps of Engineers provided the English-language translation to Ex-Im on August 2, 2016.

Our review of Ex-Im's monitoring guidance found that the engineer followed most, but not all, of Ex-Im's steps when monitoring the end use of the construction equipment. Ex-Im guidance calls for the engineer to notify buyers of end-use documentation coming due and alert the buyers within 30 days if there are any overdue reports. In line with these steps, the engineer sent an e-mail reminder several months in advance of the report's due date and, approximately 4 weeks after the due date had passed, followed up with the buyer to

¹⁰According to an Ex-Im official, the Mexican government did not provide a reason for the cancellation and was not required to do so.

¹¹According to the Ex-Im engineer monitoring the Mexican satellites, the annual determination is made based on the total number of terminals in use and the civilian/military usage split among the terminals. This calculation is made on the system as a whole, not on a per-satellite basis. Therefore, the engineer is waiting for the mobile service satellite to complete systems acceptance before making the annual determination that will cover both operational satellites.

¹²According 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.

determine the status of the report. However, Ex-Im guidance also calls for the engineer to notify Ex-Im's Office of General Counsel of the late report. The engineer told us that he had forgotten about this step but would have notified Ex-Im's Office of General Counsel if he believed the government of Cameroon was not going to submit the report at all.

Ex-Im guidance calls for the Ex-Im engineer monitoring the construction equipment to make an annual determination of the government of Cameroon's compliance with Ex-Im's dual-use policy within the first 120 calendar days, but the engineer has not yet done so. The Ex-Im engineer said that he had made an informal determination that the government was compliant, based on an end-use inspection he conducted in Cameroon in June 2015 and the French-language version of the annual end-use report that Ex-Im received in July 2016. The engineer received the English-language translation on August 2, 2016, and plans to make an official determination by the end of the month. An Ex-Im official said that Ex-Im plans to provide additional reminders to the Cameroon government next year to submit its annual report on time.

Ex-Im Did Not Finance Any New Dual-Use Exports in Fiscal Year 2015

Ex-Im did not finance any new exports under its dual-use authority in fiscal year 2015, according to Ex-Im authorizations data and Ex-Im officials.

Recommendations

We are not making any recommendations in this report.

Agency Comments

We provided Ex-Im a draft of this report for review and comment. Ex-Im provided comments on August 24, 2016 (see enclosure). Ex-Im stated that our interpretation of the scope of our review is a departure from past practice. However, our approach for this year's review is consistent with our approach in prior fiscal years, in which we reviewed transactions that were newly financed and transactions that continued to be financed during the second preceding fiscal year. We also received technical comments from Ex-Im officials, for example, to clarify the bank's financing authority for defense articles and services that are not dual use. We made changes to our report in response to these comments where 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; Heather Salinas, Analyst in Charge; Ashley Alley; Debbie Chung; Martin DeAlteriis; Neil Doherty; and Kay Halpern.



Kimberly Gianopoulos
Director, International Affairs and Trade

Enclosure



EXPORT-IMPORT BANK
OF THE UNITED STATES

August 24, 2016

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 2016” (GAO-16-844R), August 2016.

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 Cameroon transaction.

Additionally, EXIM Bank notes that the interpretation from GAO this year regarding the scope of review is a departure from past practice. The Bank will follow up with GAO to clarify this for future Dual-Use Exports engagements.

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".

Charles J. Hall
Executive Vice President / Chief Operating Officer
Export-Import Bank of the United States

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