



## Cuba Fact Sheets Published by BIS and OFAC Encourage Exports to Support the Cuban People, but Challenges to Carrying Out Those Exports Remain

AUGUST 13, 2021

On August 11, 2021, The Department of the Treasury and the Department of Commerce published a [Fact Sheet](#) reminding U.S. persons and exporters/re-exporters of certain U.S.-origin goods that the United States Government remains committed to promoting the ability of the Cuban people to seek, receive, or import. This fact sheet is a reaction to the protests on the island and some government measures taken to limit the flow of information and internet access in Cuba. The agencies also provided readers with a list of some of the most relevant exemptions and authorizations in order to carry out the Administration's goals. We have provided a summary of the fact sheet below, but note that exports or re-exports to Cuba remain fraught with at least three significant challenges: Helms-Burton Title III litigation; the practical issues relating to remittances to and from Cuba; and Cuban import and Customs laws.

### Title III of Helms-Burton

First, [Title III](#) of Helms-Burton remains active, meaning that any persons "trafficking" in property in Cuba that was expropriated as a result of the 1959 Cuban Revolution remain vulnerable to plaintiffs' litigation in the United States. Operating under an OFAC or BIS license or exemption does not provide immunity from these cases and hopes that the Biden Administration would reinstate the waiver remain merely hopes.

### Remittances to Cuba

Second, restrictions on [remittances to Cuba](#) – and those parties in Cuba who are eligible to process the transactions – remain in place, triggering the practical matter of how to accept payments or remit funding to or from parties in Cuba. In practice, remittances still flow to Cuba, but typically through non-U.S. financial institutions that maintain correspondent banking relationships with Cuban banks.

### Cuba Import Authorities

Finally, exports to Cuba must go through the U.S. licensing process but also are subject to the Cuban Government's import and customs process. An overt statement by the Biden Administration promoting certain exports to support the Cuban people almost certainly will be met with suspicion by the Cuban Government's import authorities. There are reports that COVID-19-related medical supplies have successfully made it to Cuba, but it is unclear whether the same would apply to telecommunications equipment meant to assist the Cuban people in accessing the internet and communications apps.

## Summary of the Fact Sheet

The Administration published a joint fact sheet to emphasize the Government's commitment to promoting the ability of the Cuban people to seek, receive, and impart information. The Administration expresses this commitment by highlighting certain authorizations and exemptions present in the Export Administration Regulations and the Cuban Asset Control Regulations.

They are as follows:

- **The software and services for Cuban internet users**, which includes the provision of fee-based internet and services related to the export and re-export of certain communication items. It also covers: (1) services including but not limited to the provision of e-mail, messaging platforms, social networking, VOIP, web hosting, and domain name registration; (2) software used on personal computers and phones and certain services including software design, business consulting, and IT management, and (3) hardware and software pursuant to the BIS License Exception Consumer Communications Device (CCD) and License Exception Support for the Cuban People (SCP).
- **The provision of telecommunications services and establishment of telecommunications facilities.** Under the CACR, OFAC has authorized transactions including payments incident to the provision of telecommunications and transactions related to the establishment of facilities and provision of telecommunications in Cuba. The CACR defines telecommunications services to include internet connectivity, data, telephone, telegraph, radio, television, news wire feeds, and similar services, regardless of medium of transmission, including transmission by satellite. See 31 C.F.R. § 515.542 and FAQ 784.
- **In-country presence of internet and telecommunications providers.** The CACR Section 515.573 authorizes providers of certain telecommunications or internet-based services to engage in transactions necessary to establish and maintain a physical presence (including leasing of physical premises such as an office, warehouse, classroom, or retail outlet space), or a business presence in Cuba to engage in transactions authorized by or exempt from the CACR.
- **Internet-based distance learning and educational training.** The CACR Section 515.565 authorizes certain undergraduate-level and below internet-based courses, including distance learning and Massive Open Online Courses, to Cuban nationals, wherever located.
- **Information and informational materials.** As with most of OFAC's sanctions programs, the CACR does not restrict the trade in pre-existing information and informational materials. In addition, the CACR authorizes the creation, dissemination, artistic or other substantive alteration, or enhancement of informational materials, as well as travel-related transactions and other transactions that are directly incident to the exportation, importation, or transmission of information or informational materials, subject to certain conditions.
- **BIS License Exceptions.** In addition to the OFAC licenses and exemptions, the Fact Sheet specifically references two License Exceptions: Consumer Communications Devices (CDD) and Support for the Cuban People (SCP). These Exceptions have been in place since 2009 and 2015, respectively. The eligible devices for export to individuals and independent NGOs in Cuba, who are not certain Cuban Government and Communist Party officials, are identified within the EAR at Section 740.19(b).

While it may be useful to remind U.S. persons of the most relevant exemptions and authorizations they have available to contribute solving the situation in Cuba relating to the lack of information and internet access, it is still impractical for U.S. persons to offer satisfactory solutions given the practical challenges we mentioned above.

4 Min Read

## Authors

Cari Stinebower

Mariana Pendás Fernández

---

## Related Locations

Washington, DC

## Related Topics

OFAC

BIS

## Related Capabilities

International Trade

Compliance Programs

## Related Regions

North America

Latin America & Caribbean

## Related Professionals

---



Cari Stinebower



Mariana Pendás Fernández

*This entry has been created for information and planning purposes. It is not intended to be, nor should it be substituted for, legal advice, which turns on specific facts.*