



For Immediate Release
March 17, 2009

Contact: Dan Virkstis
(202) 224-4515

FINANCE CHAIRMAN, SENATE COLLEAGUES ADDRESS TREASURY RULE ON U.S. EXPORTS TO CUBA

Baucus notes Treasury Secretary's early commitment to heed Congressional intent

Washington, D.C. – Senate Finance Committee Chairman Max Baucus (D-Mont.) expressed concern in a letter sent late yesterday to Treasury Secretary Geithner regarding a notice issued by the Treasury's Office of Foreign Assets Control (OFAC) that will continue to severely inhibit sales of U.S. products to Cuba by affecting the treatment of cash-based transactions involving U.S. agricultural exports. Baucus was joined on the letter by Senator Richard Lugar (R-ID), Senator Jeff Bingaman (D-NM), Senator Mike Enzi (R-WY), Senator Tom Harkin (D-IA), Senator Pat Roberts (R-KS), Senator Blanche Lincoln (D-AR), Senator Mike Crapo (R-ID), Senator Jon Tester (D-Mont.), Senator Kit Bond (R-MS), Senator Patty Murray (D-WA), Senator Mark Pryor (D-AR), Senator Mary Landrieu (D-LA), Senator Maria Cantwell (D-WA), and Senator Tim Johnson (D-SD). The OFAC notice is consistent with a February 2005 Treasury rule on this issue, but contrary to what Congress intended in provisions passed last week as part of the Omnibus Appropriations Act of 2009.

"I'm dismayed that the spirit and intent of the law has been disregarded by Treasury, but I fully expect that Secretary Geithner will revisit this issue to get U.S.-Cuba relations back on track and get our Cuba policy right for America's farmers and ranchers," said Baucus. **"In these difficult economic times we have an opportunity in Cuba as a growing and loyal trading partner with the U.S. I've worked to build ties and open Cuba to U.S. products, including world-class Montana wheat and peas, and I will continue to press Treasury on this until the issue gets resolved."**

Baucus helped introduce legislation two years ago that would make it easier for U.S. farmers and ranchers to sell their high-quality products to Cuba by easing restrictions on travel to and payment from Cuba. On December 11, 2007, Baucus held a hearing on the "Promoting American Agricultural and Medical Exports to Cuba Act of 2007," and will work with colleagues in the Senate to move a similar bill forward this year.

An independent International Trade Commission study commissioned by Baucus found that removing U.S. export restrictions would increase the annual U.S. share of Cuba's agriculture imports to as much as nearly 70 percent, representing an annual boost of over \$300 million in U.S. agriculture sales.

The full text of the Senators' letter follows here.

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March 16, 2009

Secretary Timothy F. Geithner
Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, D.C. 20220

Dear Secretary Geithner,

We are concerned by a March 11 Office of Foreign Assets Control (OFAC) notice outlining its planned implementation of provisions passed in the Omnibus Appropriations Act of 2009. The intent of those provisions was to facilitate already legal agricultural trade with Cuba.

The Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000 authorized agricultural exports to Cuba by payment of cash in advance or third-country bank letters of credit. For several years, until early 2005, such cash-based sales were taking place and working well. After goods shipped from U.S. ports, the Cuban buyers initiated payments, routing them through third-country banks, as required by the law. There were no reported instances in which a Cuban buyer took possession of U.S. goods prior to completing payment to the U.S. seller, a fact acknowledged by the Treasury Department during the confirmation hearing of Deputy Secretary Kimmitt in July 2005.

Despite this fact, OFAC issued a rule in February 2005 that defined "payment of cash in advance" as payment prior to shipment of goods. The change in definition has brought all cash-based sales to a halt, rendering the cash in advance provision useless and undermining Congress's intent to facilitate agriculture sales to Cuba. Your March 5, 2009 letter stated that OFAC will continue to use this definition. This is contrary to the intention of the provisions included in the Omnibus legislation to halt this use.

We are troubled to see OFAC continue this practice. Its March 11 notice mistakenly suggests that the "ordinary commercial meaning" of "cash in advance" requires payment prior to shipment of goods. Such an interpretation is legally inaccurate. The American Law Division of the Congressional Research Service has studied this issue in depth and concluded that, "[I]t would appear difficult to find legal support for OFAC's interpretation that 'payment of cash in advance' requires payment be received prior to shipment. As a review of four traditional methods of payment indicates, it appears customary within the international trade and finance community to place the emphasis on the legal transfer of control, rather than on the date of shipment...OFAC's interpretation appears to limit the available payment options to those that are considered risky, undesirable, and underutilized...."

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In your Questions for the Record during consideration of your nomination earlier this year, you committed to "... taking great care to follow congressional intent and working closely with members of Congress to ensure that OFAC's activities with regard to Cuba are achieving its important objectives without unnecessary hurdles or unreasonable administrative delays." We urge you to stand by that pledge.

We look forward to working closely with you on this matter.

Sincerely,

Senator Max Baucus
Senator Jeff Bingaman
Senator Tom Harkin
Senator Blanche Lincoln
Senator Jon Tester
Senator Patty Murray
Senator Mary Landrieu
Senator Tim Johnson

Senator Richard Lugar
Senator Mike Enzi
Senator Pat Roberts
Senator Mike Crapo
Senator Kit Bond
Senator Mark Pryor
Senator Maria Cantwell

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