



# Committee On Finance

Max Baucus, Ranking Member

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**Statement of U.S. Senator Max Baucus on the Nominations of  
Alex Azar, Timothy Adams, Shara Aranoff, Charles Johnson, and Suzanne DeFrancis**

“We are here today to consider the nominations of:

- Alex Azar to be Deputy Secretary of the Department of Health and Human Services,
- Timothy Adams to be the Undersecretary for International Affairs at the Treasury Department,
- Shara Aranoff to be a Commissioner on the International Trade Commission,
- Charles Johnson to be the Assistant Secretary for Budget, Technology, and Finance, and
- Suzanne DeFrancis to be Assistant Secretary for Public Affairs at the Department of Health and Human Services.

These candidates are all well qualified for the respective positions for which they have been nominated. And I look forward to working with them in the future.

While many of these candidates will likely be excellent public servants, I can assure you that one individual will undoubtedly shine. The nominee to be a Commissioner at the ITC is well known to me and to others on this Committee. She has served ably on my Finance Committee trade staff for the past 4½ years — longer than anyone else currently on that staff.

She is uniquely qualified to serve as an ITC Commissioner, having worked as an attorney at the ITC for 8 years. She is smart. She is capable. And I am certain that she will be an exemplary commissioner. Congratulations, Shara. I’m delighted for you.

The International Trade Commission plays a critical role in administering U.S. trade remedy laws. U.S. companies must have assurance that their government will protect their interests against unfair practices or destabilizing forces in the international market.

But just as U.S. companies look to the ITC for redress against injury, other nations look to the ITC as an impartial, transparent entity that can be trusted as a model of good trade remedy enforcement. I have long believed that rigorous enforcement of our safeguard, anti-dumping and countervailing duty trade laws is ever more important as the United States continues to pursue a liberalized trade agenda in free trade agreements and in the WTO.

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The individuals nominated to serve at the Department of Health and Human Services are also called upon to bring their expertise and independent judgment to the Department.

Mr. Azar, welcome back to the Committee. The last time the Finance Committee confirmed you — for HHS General Counsel — I express some concerns about your lack of expertise in the Healthcare field. I am glad to hear that you have worked hard, and brought fair-minded legal analysis to the Department.

I won't spend time today talking about my concerns surrounding implementation of the new Medicare prescription drug law. I have made my concerns known at previous hearings and most recently in a letter to CMS Administrator Mark McClellan.

I also won't spend time talking about the Medicaid Commission, as I have made my views and concerns about a biased commission known to Secretary Leavitt already.

Rather, I'd like to take just a minute to say that in the coming weeks, I plan to introduce a bill with Senator Grassley that will take important steps in Medicare to pay providers based on quality. It is a critically important issue on which we need to make progress this year.

I am also working on a bill to build in transparency and accountability under the new Medicare Part D drug benefit. I want to make sure that the public, researchers, and congressional support agencies have access to the information they need to evaluate the new drug benefit. Given how difficult it was to get HHS to share enrollment data on the drug discount card, I feel that we need to make sure the law ensures adequate transparency.

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Ms. DeFrancis and Mr. Johnson, I wish you luck, and thank you for volunteering to serve.

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Mr. Adams, welcome. You have an accomplished résumé and I thank you for your willingness to serve. If you are confirmed by the Senate, one issue that will fall under your supervision is U.S. trade policy at the Treasury Department.

I want to highlight this portion of your portfolio because it requires closer oversight by this Committee in light of a recent Treasury decision to restrict agricultural exports to Cuba, a promising new market worth \$400 million to U.S. farmers and ranchers last year.

*CONGRESS INTENDED TO OPEN AG SALES TO CUBA*

Congress authorized U.S. agricultural exports to Cuba on a "cash-in-advance" basis in the Trade Sanctions Reform and Export Enhancement Act of 2000. The key words here are "export enhancement."

We in Congress intended to open up the Cuban market to ag sales for two key reasons. The first is that using food as a weapon never works. Fidel Castro hasn't missed a meal in 45 years. But more to the point, Members of Congress understood that farmers and ranchers back home needed new markets. I work for the people of Montana, and frankly, if you are confirmed to this post, Mr. Adams, you will too.

*WORKING TO OPEN NEW MARKETS FOR MONTANA*

My whole career, I have worked to open new markets for Montana farmers, ranchers, and businesses. One of those new markets is Cuba. I led a delegation of Montanans to Cuba in September of 2003 and came home with a commitment by Cuba to purchase \$10 million in Montana ag products. Over the course of the next year or so, Cuba fulfilled that commitment, buying \$10.4 million in Montana wheat, peas and beans.

So I returned to Cuba last December and negotiated an even better deal for Montana: The Cubans agreed to buy \$15 million worth of Montana ag products.

*TREASURY RULE CONTRADICTS CONGRESSIONAL INTENT*

Several contracts for the sale of Montana products made possible by that deal — worth several million dollars to my constituents — are now in serious jeopardy because of a Treasury rule change restricting the “cash-in-advance” payment rules that govern ag trade with Cuba.

The new rule re-interprets the ‘cash-in-advance’ requirement on sales to Cuba to mean ‘cash in advance of shipment’ instead of the customary ‘cash in advance of delivery.’

But if Cuba must pay for the goods before they leave a U.S. port, the goods become Cuban assets, vulnerable to seizure to satisfy unrelated property claims against Cuba. This isn’t idle speculation; two years ago a court awarded two stolen Cuban planes to a Florida woman to satisfy her claim against the Castro Government. As a result of this rule, wary Cuban buyers have already turned to non-U.S. vendors for \$300 million worth of food imports.

This was clearly just a back-door attempt to overturn the will of Congress and shut down ag sales to Cuba. Listen to what the non-partisan Congressional Research Service concluded about the legality and the effects of this new rule:

‘It appears customary within the international trade and finance community to place the emphasis on the transfer of legal control, rather than on the date of shipment.

‘In other words, it appears that a seller can ship goods without relinquishing legal control of them, therefore, payment can still be required in advance of the transfer of legal control. . . .

‘OFAC=s proposed interpretation appears to limit the available payment options to those that are considered risky, undesirable, and underutilized. Acceptance of OFAC=s proposed interpretation appears likely to result in a reduction of trade with Cuba, which appears to be contrary to the express intent of the Congress.’

Those aren’t my words. That is the objective analysis of the Congressional Research Service. Treasury had no authority to defy congressional intent with respect to these sales. We pass the laws. Treasury doesn’t.

*TREASURY RULE AFFECTS PRODUCERS IN MONTANA*

The reason I care so much about this rule change is that it impacts Montanans directly. Contracts for \$3 million worth of Montana wheat and peas negotiated months ago will have to be re-negotiated or abandoned because the rule changes the terms of sale. That’s \$3 million directly out of the pockets of Montanans, Mr. Adams. I won’t allow that to happen if I can help it.

And the bottom line is obvious — this new rule will add cost and risk to future sales, making our exporters less competitive in the Cuban market than foreign vendors.

Jim Stinehagen, who owns the Yellowstone Bean Company in Bridger, Montana, tells me that Cuba could be worth up to \$25 million a year to his company alone. As Jim put it, ‘That’s not peanuts.’ Jim was hoping to make Cuba his biggest customer, ahead of even Wal-Mart. Now, thanks to the bureaucrats at Treasury, he could lose Cuba as a customer altogether.

I get a lot of mail like this. Kim Murray, a pea farmer in Northeast Montana, recently wrote to urge me to protect these sales. ‘The Cuba market meant a lot to my family and me,’ he said. ‘We need this market and as many more as we can find.’

One rancher wrote in to the Billings Gazette on Cuba: ‘Dealing with Cuba is a win-win because there are no negative impacts to local producers. The Cubans are importing our products . . . but they’re not flooding our markets with products that we already produce,’ he concluded.

#### *WORKING TOGETHER TO FIND A SOLUTION*

Mr. Adams, I listen to my constituents, and I am not going to stop fighting for the farmers and ranchers in Montana. I can’t always get them everything they want, but this is a no-brainer. And I’m not alone in thinking this. I am joined by Republicans and Democrats who represent farmers, ranchers, port authorities, and shipping companies all over this country.

Together, we have introduced the Agricultural Export Facilitation Act to overturn this Treasury rule and cut the red tape that makes U.S. agricultural exporters less competitive in the Cuban market.

Our bill already has more than 30 cosponsors, and we will continue to push for its consideration. I’ve got a long list of ag groups that support our bill and a sample of some of the letters I have received that I would like included in the record.

But my first priority is to reverse this unnecessary and politically motivated rule change. Late last year, when word got out that Treasury was considering the rule change, I warned that I would block consideration of significant Treasury nominees if the change was made.

Treasury made the rule change anyway. So I have no choice but to make good on my promise to hold up significant Treasury nominees that come before the Senate until I feel confident that ag sales to Cuba can continue as they have for the past four years.

I have every hope that working together, we can resolve our differences, and you can be confirmed quickly. But until that time, I will continue to press the Treasury Department to reverse the rule change and allow ag sales to Cuba under the terms Congress intended.”