

ASSESSING THE ROLE OF THE CUSTOMS SERVICE
IN THE NEW DEPARTMENT OF HOMELAND SECURITY

TESTIMONY BEFORE THE UNITED STATES SENATE FINANCE COMMITTEE

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Thank you for inviting me to share my comments on the proposed establishment of the Department of Homeland Security. I remember appearing before this Committee in 1997 to discuss the Internal Revenue Service reorganization, and admire the Committee's continuing commitment to doing these kind of reorganizations right.

Let me start by noting that I am not an expert on the Customs Service or any of the agencies that are slated for reorganization in the president's proposal. However, I do believe that Congress and the president can ask a series of simple questions that might clarify whether each agency is ready for transfer, and what might be done to improve the odds that multi-mission agencies such as the Immigration and Naturalization Service (INS), Customs Service, Coast Guard, and Federal Emergency Management Agency (FEMA) can succeed wherever they might be placed. My expertise, if it can be called that, is on the management, not the mission, of the new department.

Toward that end, let me ask six simple questions about the Customs Service that might help the Committee make its recommendations regarding the reorganization:

1. Is the Customs Service ready to move?

Luckily, the Customs Service is better managed today than it was just five years ago. It was removed from the General Accounting Office high risk list in 1999 and has shown steady improvement in its financial management (back-to-back-to-back unqualified audits since 1999), human resources management, information management, and results management. Although it is part of a department that received red lights from the Office of Management and Budget implementation of all five elements of the President's Management Agenda last January, I do not believe that poor performance should be viewed as an absolute barrier to transfer. To the contrary, the agency will almost certainly have access to more resources for meeting the president's management goals in the new department of homeland security than it currently does in Treasury.

2. Will the Customs Service grow, shrink, or remain the same size as part of the new department?

Having read all the testimony regarding the potential size of the new department, especially the testimony from Treasury Secretary O'Neill, I must respectfully disagree that the Customs Service can stay at its current size and succeed.

First, current estimates of the department's size already underestimate the projected hiring needs at Customs, INS, Coast Guard, FEMA, and other agencies involved in the move. We already know, for example, that the president's proposal does not include roughly 30,000 baggage screeners that must be hired at the Transportation Security Administration by November 19. Nor does the proposal include needed augmentations at the Border Patrol, Coast Guard, Customs Service, and INS.

Second, current estimates do not include the expansions that multi-mission agencies will need to meet their expanded homeland security missions, while still maintaining their current missions. As this Committee knows, the Customs Service collects more than \$22 billion a year in revenue, and enforces roughly 400 laws governing international trade. I am reminded of former Coast Guard Commandant James Loy's statement in his 1999 "State of the Coast Guard" report that the logical extension of doing more with less is doing everything with nothing. To do everything with at least something by way of budget and employees, I would estimate that the new department will need roughly 225,000-250,000 employees. This number is neither good nor bad. It just is the number needed to accomplish the new homeland security mission without sacrificing the old missions that so many agencies must still meet.

Customs is almost certain to grow as well. The new Customs-Trade Partnership against Terrorism is sure to grow, as will the need for agents. Customs is already slated for an additional 1,200 inspectors, and its personnel budget will increase by at least \$13 million when pay rates rise by as much as 21 percent for current 2,500 inspectors and canine enforcement officers under the Commissioner's recently announced reclassification plan. (Office of Personnel Management data show that roughly 100 Customs agents have left the agency for higher-paying jobs elsewhere in government, including the Air Marshals program, the Park Police, Secret Service, and Border Patrol. Prior to the reclassification, Customs agents had the distinction of being the worst-paid law enforcement officers in the federal government.)

Third, current estimates, including the one released by the Congressional Budget Office last week, do not include the inevitable increases in budget and personnel associated with either reorganization or maintaining old missions. Although Secretary O'Neill was quite right to note that many private sector mergers result in no net increase in cost, such mergers almost always accomplish that goal through significant personnel cuts. When private-sector employees hear the words "economies of scale," they think "pink slips." At least for now, such cuts are not part of the president's agenda for the new department. If there are reductions in force on the horizon, the president should make them clear for Congress and the public to see.

3. Will Customs Service efficiency be affected by the reorganization?

Efficiency is very much in the eye of the beholder, but Customs has certainly become more efficient over the past five years. Forced to balance the competing priorities of interdicting drugs, speeding trade, and becoming faster, friendlier, and more responsive at the border, Customs received a grade of C from *Government Executive* magazine for its overall management in 1999. Specifically, *Government Executive* gave the agency a B on its financial management, a C on human resources, a C on information technology, and a C on managing for results. As the Federal Performance Project grading team reported,

Though many of Customs management problems stem from its ambiguous mission, some are simply the result of inadequate systems. The agency historically has had a difficult time managing its finance....At the same time, the agency fails to do much human resources planning. In addition, its major computer system is in danger of

imminent overload, and a replacement system is running six years behind schedule. Not surprisingly, given its trouble establishing mission priorities, Customs has a difficult time coming up with performance measures.

Reorganization is most certainly not going to accelerate the agency's implementation of the \$1.3 billion Automated Commercial System (ACE), which has had more crashes than a bumper-car ride. Given its impact on the agency, the General Accounting Office labeled ACE a "high-risk endeavor" last May, while recommending further action on system design, worker training, software-acquisition management, and cost estimation before detailed design and development of the project.

One can only surmise that the reorganization will slow ACE, if only because the new secretary of homeland security will want time to review all the information technology modernizations in the new department.

Nor is reorganization likely to change the agency's accountability to the secretary. Like many federal agencies, including INS and the FBI, Customs has more than its fair share of management layers between the top and bottom of its hierarchy. There are at least 15 layers between front-line Customs inspectors and the Secretary of the Treasury, including the Secretary, senior advisor, Deputy Secretary, a slew of under secretaries, the commissioner of Customs, chief of staff to the commissioner, deputy commissioner, assistant commissioner for field operations, deputy assistant commissioner, and field operations executive director, and the normal mix of headquarter bureau chiefs, Customs Management Center directors, and Ports of Entry supervisors on down the line. Moving to the new department is not likely to thicken this organization chart one way or the other.

4. Will reorganization diminish any of the current Customs Service missions?

It is impossible to know whether and how the Customs Service will change its mission in response to the reorganization. However, it seems reasonable to ask whether the new secretary of homeland security will not place as much weight on revenue collection as the Treasury Department has. The top priority in the new department will be homeland security, even if that comes at some cost to traditional agency missions. Much as the new secretary will argue that all missions are valued, it is hard to imagine that any of the homeland security agencies will not shift capacity toward the central task of the agency.

We can already see mission displacement, as it might be called, at several of the agencies involved in homeland security. Over the past twelve years, most of the homeland security agencies have been under increasing pressure to improve customer service at the border. That is certainly what the Bureau of Consular Affairs sought to accomplish through its various programs to reduce customer frustration in the visa process. The pendulum is clearly swinging back today, however, as more focus is placed on detection and security. Having once won kudos for increasing customer satisfaction, the Bureau is now under fire for having gone too far.

Customs may well feel some of the same pressure. Consider *Government Executive's* analysis of the agency's multi-mission problem in 1999: "Sometimes it seems Customs cannot win. Those who see it primarily as a law enforcement agency often say it is not aggressive enough. Those who favor rapid movement of people and goods into and out of the country see Customs as a bureaucratic

impediment. The agency constantly must shift between facilitating trade and capturing contraband. The result is overall management inefficiency.□

Like Consular Affairs and INS, the agency has always performed a balancing act between encouraging trade and stopping crime, between moving passengers through the ports quickly and detecting drugs, collecting revenue and preventing abuse. I have no doubt that the department of homeland security is just as committed to finding the proper balance in the Customs□ mission, but encourage the Committee to maintain active oversight to ensure that the pendulum is set at the proper point.

These kinds of imbalances have been faced and at least partially resolved in other agencies such as the Internal Revenue Service through the creation of oversight boards, ombudsmen, and advocates. The IRS not only has an oversight board to protect against taxpayer abuse, it also has an office of the taxpayer advocate. These reforms, which were enacted in 1998 as part of this Committee□s response to taxpayer abuse, were designed to provide a counter-weight to the revenue-raising pressures on individual IRS agents. Although these mechanisms are only as good as the people who join and staff them, I would urge this Committee to consider the creation of a trade advocates office and oversight board as part of the homeland security reorganization.

5. Will the Customs Service be damaged by the move?

The answer to this question is anyone□s guess. Reorganization does carry its costs, not the least of which is the uncertainty that might come from worries about the various waivers contained in the president□s draft legislation. I remain particularly troubled by the waivers regarding the civil service. The president's proposal would give the secretary and director of the Office of Personnel Management full authority to create a personnel system that is "flexible and contemporary." Although the two words are never defined, the implication is obvious: the new department would be free to design a new system from scratch. The rules governing this system would be subject to the notice and comment requirements of the Administrative Procedure Act, which would provide an opportunity for the deliberative consideration and public input that such a redesign would require. It is hard to blame the president for wanting this waiver. The current personnel system underwhelms at virtually every task it is asked to do. It is slow at the hiring, interminable at the firing, permissive at the promoting, useless at the disciplining, and penurious at the rewarding. The vast majority of federal employees describe the hiring process as slow and confusing, a quarter do not call it fair, and less than a third say that the federal government does a good job at disciplining poor performers.

6. How can Congress help the new department succeed?

Tempting though it is to give the secretary maximum authority to move quickly, Congress should modify the waivers to assure greater accountability and appropriate oversight. The Senate would be well advised, for example, to reduce the president's appointment burden by simply cutting the number of proposed appointees in the new department from 28 to 14, which is roughly the same number that launched the departments of Energy and Education, and the same number at Treasury.

The department of homeland security will be thick enough at 14. Where the president wishes to avoid the Senate burdensome confirmation process, he already has ample authority to appoint non-career members of the Senior Executive Service and personal and confidential assistants.

Similarly, the new secretary needs a workforce that hits the ground running, not one that spends its first days asking how the words "flexible" and "contemporary" might affect each worker's future. At the same time, however, the secretary needs a workforce that does not spend its first days figuring out how to jump from lower-paying jobs in one homeland security agency such as the Customs Service to higher-paying jobs in another such as the Air Marshals program.

Toward that end, Congress could help the new secretary succeed in two ways:

- First, Congress could help the department's new appointees by passing the Presidential Appointments Improvement Act co-sponsored by Senators Thompson (R-TN) and Lieberman (D-CT), and reported to the Senate floor this spring. The act would streamline the government's ridiculously detailed financial disclosure form, and address the need to reduce the number of presidential appointments, and the bureaucratic thickening that they bring. Senate sponsors have also encouraged encourage the White House to streamline its own forms by asking, for example, whether the nation really needs to worry these days about whether a potential appointee has any traffic tickets over \$150 or has ever seen a marriage counselor. Relief is only a few legislative votes and an executive order away.
- Second, Congress could improve the recruitment and retention of talented employees by taking up the Federal Workforce Management Improvement Act, introduced last month by Senator George Voinovich (R-OH). The bill would give the federal government desperately needed, and clearly specified authorities for accelerating the hiring process, while paving the way for the large-scale reforms that are sure to come later this year from the National Commission on the Public Service chaired by Paul Volcker. Congress could also cherry pick from past statutes to give the department the same kind of broad personnel flexibility it has already given to the Internal Revenue Service, the Federal Aviation Administration, and the Central Intelligence Agency.

This Committee is already aware of the value of such authority from its own experience overseeing implementation of the 1998 Internal Revenue Service. Although Congress gave the IRS Commissioner broad authority to design and implement a new personnel system, it provided clear directions on how the new system was to work. It gave the commissioner the freedom to hire and pay his senior executives outside the civil service system, but limited the number of positions to no more than 40. It gave the commissioner authority to give those executives larger bonuses, but placed a check on the size of those awards by requiring the Secretary of the Treasury to approve any amounts that exceed more than 20 percent of an executive's base pay. It permitted the IRS to create new personnel demonstration projects and increase cash awards for performance, streamlined the employee disciplinary process, and gave the commissioner authority to offer employee buyouts through January 1, 2003. In sum, Congress and this Committee gave the commissioner broad

authority, but did so through seven pages of statutory text setting limits and informing the IRS workforce about the range of authority.

I would urge the Committee to revisit this statute again as it writes its recommendations for the Governmental Affairs Committee. You have had significant experience with civil service reform, and should share your insights widely. Certainly, you have agreed upon a set of guiding principles that could guide the president's waiver, not the least of which are labor-market pay, performance-sensitive bonuses and promotion, and