

**HOMELAND SECURITY AND  
INTERNATIONAL TRADE**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON FINANCE**  
**UNITED STATES SENATE**  
**ONE HUNDRED SEVENTH CONGRESS**  
SECOND SESSION

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JULY 16, 2002  
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## HOMELAND SECURITY AND INTERNATIONAL TRADE

TUESDAY, JULY 16, 2002

U.S. SENATE,  
COMMITTEE ON FINANCE,  
*Washington, DC.*

The hearing was convened, pursuant to notice, at 10:09 a.m., in room 215, Dirksen Senate Office Building, Hon. Max Baucus (chairman of the committee) presiding.

Also present: Senators Lincoln, Grassley, and Murkowski.

### **OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM MONTANA, CHAIRMAN, COMMITTEE ON FINANCE**

The CHAIRMAN. The committee will come to order.

Today the committee will hear testimony on the subject of homeland security and international trade. Specifically, we are interested in the President's proposal to remove Customs functions from the Department of Treasury and integrate them into the new Department of Homeland Security.

There is a critical need to reorganize our agencies to improve homeland security. At the same time, the creation of a new department will be successful only if we take the time to do it right.

For this committee, the main issues relate to the Customs Service. The operations of the Customs Service are critical to homeland security. At the same time, the processing of imports and exports are at the very heart of Customs' mission.

In fact, the collection of duties on imports is one of the oldest functions of the Federal Government. It was authorized by the second act of the first Congress in July of 1789 to help the new Nation generate revenues and pay off its debts.

The first collection of import duties occurred on August 5, 1789 when the ship *Persis* arrived in New York harbor with cargo from Italy. The total bill: \$774.41. Since then, Customs' job has grown immensely more complex. In part, this is due to the rapid growth in trade.

In fiscal year 2001, the Customs Service processed over 25 million formal entries of cargo—25 million—a 65 percent increase from only 5 years earlier. The cargo that was processed hit a value of over \$1 trillion.

Customs collected about \$20 billion in duties, taxes, and fees on that cargo. That makes the Customs duties the second most important source of revenue to the U.S. Government, after income taxes.

Moreover, Customs' job has grown beyond the collection of duties, a complicated process in itself. Customs must enforce a multitude

of commercial and other laws on behalf of itself and over 40 other Federal agencies.

For example, Customs is responsible for enforcing reciprocal trade agreements, such as NAFTA. It is responsible for protecting intellectual property rights. It is responsible for enforcing environmental laws, such as restrictions on trade in endangered species.

It is responsible for enforcing laws restricting trade in products made with prison labor and the worst forms of child labor.

Customs also is responsible for activities related to exports, including the enforcement of anti-money laundering laws and restrictions on export of certain defense-related technology.

As with any agency, the most valuable resources of the Customs service are its people. In performing many of its functions, Customs relies on a skilled staff with highly-specialized areas of expertise. Collecting duties alone requires personnel with knowledge of the complex classification rules in the harmonized tariff schedule. Customs also relies on a legal team to decipher the arcane web of rulings and regulations.

Other critical personnel include inspectors, auditors, computer specialists, entry specialists, and many more. Taking all of this into account, in planning a major reorganization of homeland security, we should try to keep expert personnel.

We should also be mindful of valuable working relationships that have developed over time between Customs and other agencies within the Department of Treasury.

This is well-illustrated by coordination on anti-money laundering efforts which involve no fewer than five Treasury agencies, including Customs.

We should also give careful consideration to the impact that splitting Customs off would have on such operations. Finally, we must keep in mind that the proposal under consideration would move Customs from a department where its primary mission is stewardship of the national economy to a department whose primary mission is protection of our territory.

The significance of that shift is profound. In deciding whether it is wise, we must give careful consideration to its implications for both the commercial functions of Customs and international security. I hope today's hearing will shed light on some of those implications.

I want to take a moment to extend a special welcome to a fellow Montanan appearing before the committee today, Ms. Mary Ann Comstock, with UPS Freight Services of Sweet Grass, Montana. That is on the northern border. Mary Ann, good to see you. I look forward to hearing from her, as well as the other witnesses we have before us today.

Senator Grassley?

**OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
SENATOR FROM IOWA**

Senator GRASSLEY. Yes. Mr. Chairman, I think that you have covered a lot of the issue so much, that I am going to put my statement in the record, but take a couple of moments to emphasize a couple of things that go beyond just the work of this committee as I am looking at my concerns over a homeland security department.

One—and I brought this also up in the Judiciary Committee when we had a hearing—I am concerned that whistleblowers will not be adequately protected under the legislation that was sent up here from the White House. Any bill to create a new agency without whistleblower protection is doomed to foster a culture that protects its own reputation rather than the security of the homeland.

Another point, is that I am concerned that the Office of Inspector General, under the legislation sent up here, will not have sufficient independence to aggressively oversee the department.

The new department needs independent oversight. An aggressive, completely independent Inspector General will ensure that agencies will perform their mandated duties in the most efficient and cost-effective manner. So, a strong Inspector General, in my view, will be critical to the success of the new department and my support for that legislation.

Also, from a fiscal standpoint, I think the administration needs to pledge that it will not allow agencies to replace personnel or resources that are sent over to homeland security. This whole issue of homeland security is about national security, it is not about job security.

In regard to the functionings of the new Department of Homeland Security, as we consider what the Customs Service now does and the shifting of that function, we need to remember that one of the functions of the Customs Service has been to interact in drug smuggling.

We have seen the mission of the Customs Service shifted to homeland defense. From that standpoint, we have a very front-line agency in the war on drugs, to some extent, cut back. We want to make sure that homeland security involves the traditional role of Customs, particularly from the standpoint that there is so much on international terrorism that is financed through the interaction of drug trade and terrorist activities.

Mr. Chairman, that is a small part of some of the points that I was going to make. But you did such a good job, my entire statement should be in the record then.

The CHAIRMAN. Well, thank you very much, Senator.

[The prepared statement of Senator Grassley appears in the appendix.]

The CHAIRMAN. We are very honored to have now the Deputy Secretary of Treasury, Hon. Kenneth Dam. Secretary Dam has been with the government and has served our country in many, many ways over a significant period of time.

Mr. Secretary, we are very honored to have you here. I know you have an 11:00 appointment that you must meet. We are going to make sure you meet that. We look forward to your testimony.

**STATEMENT OF HON. KENNETH W. DAM, DEPUTY SECRETARY OF THE TREASURY, U.S. DEPARTMENT OF THE TREASURY, WASHINGTON, DC**

Mr. DAM. Thank you very much, Mr. Chairman.

I would like to submit my full statement for the record. I will have a shorter version that will address some of the questions that have been raised.

The CHAIRMAN. Without objection.

[The prepared statement of Mr. Dam appears in the appendix.]  
Mr. DAM. Chairman Baucus, Ranking Member Grassley, thank you very much for the opportunity to testify before you today on this matter of national urgency.

Last month, the President announced a comprehensive plan to create a Department of Homeland Security to respond to the new and ominous threat of terrorism.

Among other things, President Bush's proposal would move, in their entirety, U.S. Customs Service and the U.S. Secret Service from the Department of Treasury into the new department.

As Secretary O'Neill testified last week, we in the Treasury Department fully support the President's proposal. It has been both an honor and a pleasure to serve alongside the dedicated Customs and Secret Service employees. We believe that consolidation within the new Department of Homeland Security will substantially enhance the ability to safeguard the American people.

The need for the new department is clear. Today, responsibility for homeland security is scattered among many—and I might say many, many—different government agencies. Lines of communication are not always open. Lines of authority are not always sharply defined. Redundancies and inefficiencies are built in.

The new department, however, will have primary responsibility for all homeland security matters. It will consolidate within one department the key entities for securing and policing our borders, ports, airports, and territorial waters.

Such a department must include the Customs Service, an agency whose mission is entirely border-related and an agency that plays a front-line role in guarding our borders and confiscating illegal contraband.

By consolidating these entities within the new department, we can ensure that we have a unified, coherent plan for protecting our citizens and our borders against the new threats.

But this consolidation must also be one of substance, not just form. I want to echo Secretary O'Neill's statements before the House Select Committee last week. To make this enterprise worthwhile, it is imperative that you grant the new Secretary substantial flexibility. We need a department that is both accountable and creative, and this requires a structure allowing flexibility.

This structure needs to not only address the current threat, but must also be capable of adjusting as necessary when new, and as yet unforeseen threats appear. Simply rearranging current functions among departments will not capture the essential value added that is at the heart of the President's proposal. We need flexibility to respond quickly to changing threats.

The necessity for the new Secretary to have that kind of flexibility becomes obvious when we consider numerous changes that have been implemented within the Customs Service just since last September 11th.

Customs has made averting terrorism its top priority, while still moving goods and people efficiently across the border. With their existing statutory flexibility, Treasury and Customs have been able to rearrange resources and engage in fresh thinking to address these twin objectives.

Take the case of the northern border. Because we have the flexibility to reassign resources, Customs was able to immediately make non-permanent redeployments of personnel.

This ability to move manpower and resources quickly without restrictive requirements has been an essential element of our response effort to date and will continue to be so.

It is crucial that the Secretary of Homeland Security have similar freedom to manage throughout the new department. But the flexibility also allowed us to develop new programs in response to new threats.

On April 16 of this year, Governor Ridge, Secretary O'Neill, and Commissioner Bonner from the Customs Service announced the Customs-Trade Partnership Against Terrorism in Detroit. We call this C-TPAT.

C-TPAT is a unique partnership in which U.S. importers, carriers, brokers, and others work together to improve security along the entire supply chain, while expediting the flow of legitimate commerce into the United States.

Over 300 companies currently participate in the program, including some of the Nation's largest. We are working to increase that number and have opened participation to air, sea, and rail carriers, generally.

I want to tell you, it makes a real difference. For example, at the Ambassador Bridge in Detroit, which has been the subject of a considerable amount of newspaper attention in the past, it could take up to an average of 54 minutes for a non-participating importer to be cleared across the bridge.

Because of the existing flexibility to redesign processes now, for a C-TPAT participant the average time is 17 seconds. That is 17 seconds as opposed to 54 minutes, which was the average time at the time this was introduced.

This benefits the importers by allowing them to have their goods processed more quickly, and benefits government by getting greater security and allowing Customs to focus on higher-risk shipments.

Now, let me talk about the Container Security Initiative as another example of using flexibility to achieve things rapidly. With this initiative, called CSI, Container Security Initiative, Customs is working with foreign seaports to pre-screen sea containers, targeting potentially risky containers before they are shipped to our ports.

Governments in the Netherlands, Belgium, and France have already formally agreed to participate in CSI. Singapore, which operates one of the largest ports in Asia, has indicated it also will participate.

So in four of the top 20 mega-ports in the world—Rotterdam, Antwerp, LeHavre, and Singapore, U.S. Customs, the host government, soon will be pre-screening all cargo containers bound for the United States. I anticipate agreements with additional governments in the near future.

Now, in both cases, Customs has leveraged its broad duties and flexibility to make immediate changes. These programs underscore how Customs can make trade-offs and reach agreements that increase security at the borders, while facilitating the flow of trade into and out of the United States.

These are important interim steps, but they are not enough for the long term. The new Secretary of Homeland Security, with the flexibility and vision of the President's plans, needs to be able to create an even larger and more dynamic set of synergies to respond to the changing threats.

This need is not limited to the Customs Service, by the way, but should extend to the entire approach to border security. The President's goal is, of course, "one face at the border", to bring one-top shopping for shipments of people seeking to enter the United States.

This illustrates a central point on creating a new cabinet department. There really is no other option. We cannot respond to the terrorist threats simply by rearranging the deck chairs.

The dramatic reality requires a dramatic transformation in our homeland defense, one based on flexibility, consolidation, and integration of functions.

Now, without question, major change is not easy. It is never easy. Some have suggested that critical functions, particularly trade, ought to be walled off in the new department and kept separate from other functions.

The worry is that, in a department dedicated to homeland security, trade and other vital functions may get short shrift. Now, that is a healthy reminder for all of us.

Even as we secure the home front, we must also guarantee the American people that the myriad of current tasks performed by the agencies moving to homeland security will continue.

Now, I understand this instinct to wall off some of the vital non-security functions or, in some views, keeping them out of the new department entirely. But, frankly, such approaches ultimately miss the mark.

Such an approach would unduly limit the latitude and accountability of the new Secretary's ability to manage the new department. We would also diminish the effectiveness of the non-security functions, trade or otherwise, that originally give rise to this concern by locking current inefficiencies into place. Clearly, we have to find some middle ground here.

Customs' widely varied trade and enforcement functions remain broad, yet they are wholly intertwined. Customs inspectors, import specialists, and special agents work closely together to enforce trade and anti-smuggling laws.

The same is true of border-related enforcement matters. Collaboration between inspectors on the border and special agents in the field operates more smoothly as a result of Customs' dual missions.

In intellectual property piracy cases, for example, what begins as an infringement identification often becomes an investigative effort.

Now, given this vast array of functional interconnectedness, we face the substantial danger of undermining current synergies and successes if some Customs functions are split off from others.

Instead, to protect these working relationships the President proposed that the entire Customs Service be transferred into the new Department of Homeland Security. Such a transfer will permit those close working relationships that I have talked about to continue and allow Customs to perform the tasks it has carried out so ably over the years.

It will protect our borders from terrorists, administrator and enforce our Customs laws, and assist the flow of legitimate commerce. No mission will be left behind.

The President's plan strikes the appropriate balance between enforcement and trade facilitation, both of which are critical to our Nation's economy and security.

Now, we know that you here in the Congress face an exceedingly difficult task, and under a tight timeframe. We want to work closely with you as you develop this legislation. During the past few weeks, we have worked with several House committees.

The President's proposal will provide the Secretary of Homeland Security enough flexibility to leverage the strengths of the many component parts, provide accountability through clear and workable lines of authority, and create the most efficient possible structure.

We will continue to offer our guidance, to share our experience, and to provide any assistance we can to this committee, to the Congress, and indeed to the new department when it is organized.

So, thank you again, Mr. Chairman and members of the committee, for the opportunity to testify. I am happy to answer any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Secretary. We appreciate the time and attention you have devoted to this major effort.

I would like, now, to turn to a very valuable member of this committee, Senator Blanche Lincoln from Arkansas, who has other meetings she must attend to and would like to make a statement.

**OPENING STATEMENT OF HON. BLANCHE L. LINCOLN, A U.S.  
SENATOR FROM ARKANSAS**

Senator LINCOLN. Thank you, Mr. Chairman.

Being down here in the lower 40, it is sometimes hard to see me. [Laughter.]

But I have just a few brief thoughts. First of all, a very special thanks to you, Mr. Chairman, for holding this important hearing.

As the Senate moves towards legislation on the creation of a new Department of Homeland Security, it is, of course, critical that each of the various committees of jurisdiction take an opportunity to scrutinize what effects the proposed changes will have on the normal, day-to-day operations and activities of the various agencies and subagencies of the Federal Government.

So, we do particularly appreciate the Chairman's interest in this issue, and certainly having you, Mr. Secretary, be here to share with us some of your thoughts.

It is critical to do so because, as we can see looking at just the Customs Service, the business of the American people requires that we ensure that all of the day-to-day operations in the affected Federal agencies are carried out efficiently and effectively, not just the operations related to homeland security, as important as homeland security truly is.

Second, and I think building on that last thought, as we look into the proposed integration of the Customs Service into a new Department of Homeland Security, we should give particular consideration to how we can best preserve the commercial operations of the

Customs Service. You touched a little bit on that in terms of your assurances to us in your testimony there.

But separate and distinct from its border enforcement activities, it is going to be, I think, vital to ensuring some of the very important aspects of the day-to-day services of the Customs Service.

Both kinds of operations are clearly very, very important, with the border security being extremely important to us as we move forward into the 21st century.

But I think that assurances that there are going to be enough resources delegated to the monitoring of imports is going to be critical, having come out of the last couple of years issues like our steel import issues, our softwood lumber imports, many of these which have been devastating to a lot of our States and a lot of our industries.

The assurance that the resources and the efforts will be there on that import monitoring is going to be absolutely critical. So, while I support the creation of the Department of Homeland Security, I will look to support proposals that do effectively ensure that all aspects of the Customs' services are maintained.

I think that is critical and, as you mentioned, Mr. Secretary, a very important part of the job that we as the Congress have to do, and that is to look and reassure people that we represent that not just the security of the borders is insured, but also in the monitoring of imports and Customs activities, some of which we have needed to improve and increase on already, and we will continue to be working towards that.

So, I thank you, Mr. Chairman, very much for being interested in holding this hearing which I think is going to be very, very important to the jurisdiction that our committee has.

Mr. Secretary, and to the other panel, I appreciate your input.

The CHAIRMAN. Thank you very much, Senator. You have raised some very good points. They are many of the points that I raised and many of the concerns that I have, and I think most members of this committee have.

Security interests are of vital importance. But, at the same time, on the commercial side is ultimately the strength of our economy, which really determines the strength of this country. I appreciate you raising those concerns.

Mr. Secretary, there are various options before us on how to treat Customs. As you know, the President's proposal would give maximum flexibility to a range of Customs functions that he deems appropriate.

Under the legislation that is emerging in the Senate in the Government Affairs Committee, the Customs Service remains a discrete entity in the new department.

That is, the legislation would name Customs as a discrete entity in the new department, whereas, in the President's proposal, as I mentioned, the functions are left entirely up to the President. There is no guarantee that we will have a discrete Customs entity within the Homeland Security Department.

As you also know, there was an amendment recommended by the House Ways and Means Committee to provide that there will continue to be a Commissioner of Customs, and commercial functions of Customs would have a special status in the new department.

I am curious as to your view. Which of these formulations would best enhance security and issues of trade facilitation? They are all, three, quite different.

Mr. DAM. Well, the current plan, as I understand it, would transfer Customs as a whole into the new department. Now, I think what is really being addressed here is what might happen over time. In my statement, I referred to the importance of flexibility. As I understand it, the Commissioner of Customs would go with Customs into the new department.

We know there are a lot of other things that happen at the border besides just what Customs does. There are people from the Agriculture Department that inspect trucks along the Mexican border, and there are other agencies that get involved.

I cannot say that it would not appeal in the future, perhaps, to attach more activities to the core, which will always be there, surely, of what we now know as the Customs Service.

So, walling off Customs from everything else might not be optimum. Of course, over time I am sure that there will be oversight of the functions. There will be budget hearings, and so forth.

So I would not anticipate that anything would happen very quickly, but this is something that obviously we would work with the Congress on.

With regard to splitting up Customs, as some other kinds of proposals have, I have already indicated, and I will be glad to talk at greater length about why I do not think that is a good idea.

Now, I am not sure I have responded to everything that was in your question, but I wanted to give some initial thoughts.

The CHAIRMAN. Yes. It is a bit early, but I was just curious as to whether you had any specific objections to the Government Affairs formulation, or even the Ways and Means formulation.

Mr. DAM. Well, with regard to the Ways and Means formulation, I think the fundamental idea there is to keep the core functions together. I see every reason for them remaining together. Whether it is necessary to legislate that or not, I do not know, but I am more concerned about people who would split up the core functions.

The general idea of delegating functions from Treasury to the new department could work if it was clear that there would be no legal liability so that the Treasury really has to run that part of Homeland Security.

In other words, delegation is a fine concept in the abstract. The question is what it means in particular, and what would be the remaining oversight responsibilities of Treasury. I think that has to be worked out for that to be a viable option.

The CHAIRMAN. Frankly, I think if there is a Homeland Security Department, the Ways and Means formulation is not a bad idea because it provides for continuation of a Commissioner of Customs, and commercial functions of Customs would have a recognized, special status in the new department.

Second, I am just curious. In your judgment, whereas Customs and Secret Service would be transferred out of Treasury, the Bureau of Alcohol, Tobacco, and Firearms would remain. What is the reason for that?

Mr. DAM. When the President was working with his staff and consulting with the departments about how to organize for the future, at the end of the day there had to be a decision made.

The decision was made that it would not involve the Bureau of Alcohol, Tobacco and Firearms, for example. That decision was made because it was important to take a decision not to make the new department too big and to be sure that the things that had to be in the new department would be there.

Now, perhaps in the future there may be a study, reorganization, in which there might be another location for Alcohol, Tobacco and Firearms. There have been suggestions in the past, the Webster Commission, for example, that that bureau should be in Justice. So, there are complexities here, and this is not for all time. But this was, it seems to me, a sensible decision in the first instance.

The CHAIRMAN. I just wondered, because firearms has a relationship to Customs and Homeland Security. Yet, it stays in Treasury and is not transferred to Homeland Security.

The same question applies to the Federal Law Enforcement Training Center, which, under the proposal, would stay in Treasury. Why? I am just curious. Customs would transfer, even though it is primarily a commercial operation.

Mr. DAM. Well, FLETC, as we refer to it, trains law enforcement officers. There are many more law enforcement officers outside of Customs than there are inside Customs or Secret Service. Secret Service has some training facilities.

I think, again, it is just the question of whether you want to try to decide every issue for all time in the initial decision. Many people, I suspect, would argue that FLETC really should be attached to the Justice Department.

So, you are getting into other issues that I think are not crucial to the determination of what are the important things that should be put into the new department.

Also, there is a question of the size of the department. You could add a lot of things that have some peripheral connection to Homeland Security, but then the question is, would the department not be unduly large?

I know some of the people who come behind me will probably argue that the department—in fact, I looked at one piece of testimony which argues that the department is too large. So, a decision had to be made, and I think it was a reasonable decision.

The CHAIRMAN. Well, actually, FLETC would train 70 percent of Homeland Security personnel. The agency is training 70 percent of Homeland Security personnel. Yet, it would not be in the department. I just raise this question. My time has expired.

Senator Grassley?

Senator GRASSLEY. Thank you very much for coming. I hope, in regard to the statements I made about inspectors general as well as whistleblower protections, that you will take those back now that you are in the center of all this debate, at least to the extent you have participated in this committee meeting and you heard me say that. I would appreciate that.

In regard to the questions I have to ask you, I will start with law enforcement, different places than what the Chairman had.

Most of law enforcement, it looks like, will be taken out of the Treasury Department, but it would leave agencies like FINSSEN and the Office of Foreign Financial Asset Control. Their functions seem to fall into counter-terrorism and law enforcement categories. Financial data that they give can be used to track down terrorists and to detect money laundering activities, information that might help prevent terrorist attacks.

FINCEN provides information to agencies like Customs, which will move to Homeland Security, to Secret Service which will move to Homeland Security, and I think to the FBI, which is in charge of preventing terrorism.

So I would like to hear what you think about whether FINSSEN should also move to the Homeland Security Department, and also, if it does not, how FINSSEN's role might change as it continues to work within Treasury.

Mr. DAM. Thank you, Senator Grassley. I will take back what you said. But I did want to read to you, if I could just take a moment, what Governor Ridge said before the House Select Committee on the whistleblower question, because I think you will take some satisfaction—at least I hope you will—from what he had to say.

He said, “There has been much concern in the past few weeks that the proposed personnel system for the new department would deny employees whistleblower protection. That is just not so. Let me be very clear on this point. Department of Homeland Security employees will have whistleblower rights and protections,” and goes on further. We could provide that to you if you would like that full statement.

Now, on the question of FINSSEN and the Office of Foreign Asset Control. The Office of Foreign Asset Control has been around for a long time. I do not know the exact history, but I believe it dates back to World War II.

It is involved in many different activities which go well beyond what Homeland Security will do. For example, the drug kingpin statutes. They are designed to get at the drug problem where it originates on the producing side. So, the OFAC role goes well beyond what Homeland Security will be directly concerned with.

With regard to FINSSEN, it is really a service activity. It is a service activity for—you mentioned the FBI. I think probably the FBI, along with State and local law enforcement units, are consumers.

For many of these organizations—particularly in the case of the FBI, I know that is true. I think it may well be true with regard to non-Federal law enforcement activities, though I am not absolutely sure of that—are able to tap in remotely, electronically into the database that FINSSEN builds.

So, while you could make an argument for putting it in Homeland Security, it will be just as useful to Homeland Security being where it is as if it were inside the department.

But there is another point, and this is one I think we have to consider. FINSSEN has a relationship with the banking community and financial institutions. So, there is a lot of consultation back and forth about how to design the reports that they have to file.

This is particularly true, as we have, under the Patriot Act, included more and more financial-type institutions in the realm of those that have to make the reports on suspicious activity and the like.

So I think we have to remember that there is, in a sense, a very important private sector group which, frankly, I think would be more comfortable dealing with a Treasury bureau than they will be dealing with a new Security bureau.

So I think that there are strong reasons for thinking that FINSEN, in particular, and I would argue OFAC, too, should remain within the Treasury. At least, that was the decision that was taken, and I think it was a sound decision taken by the President.

Senator GRASSLEY. If you could, in regard to the Office of Financial Asset Control, there was an Inspector General report from April that highlighted problems at that agency, such as over-reliance on voluntary compliance and outdated paper-based systems. I would like to have you comment on that.

But I would also like to remind you that I look forward to a response to my June 26 letter about that report. That response I would like to have back, if you could, by July 25. I would appreciate it.

Mr. DAM. Well, Senator, thank you for bringing that to my attention. I assure you, we will have a response for you.

I am aware of the report by the Inspector General. There are a number of things that we are doing internally having to do with the procedures of OFAC. We have a general review under way about the procedures of OFAC, and I think they are referred to in the Inspector General's report.

But what I would like to do, is get you a response. We will try to do that quite promptly for your consideration in connection with this bill, and get you a response in writing, if we may.

Senator GRASSLEY. I appreciate that. I thank you, Mr. Chairman.

I might have one more question. Well, I may have a lot of questions, but I do not want to take your time or the time of the committee, so I may ask you to respond to some in writing.

Here would be my last one for an oral response. The decisions that are made about Customs programs and resources within the context of the new department will make clear the importance of trade facilitation vis-a-vis border security.

The Container Security Initiative, which depends on international cooperation from foreign governments and port authorities also requires a larger Customs presence overseas to help target and inspect containers in foreign ports and a place to share non-intrusive inspection and information technology.

The CSI program, while new, is steadily expanding. What assurance does the international community have that, if a foreign government elects to participate in the CSI, the U.S. Government will remain committed to its pledge to increase the U.S. Customs presence overseas and to foster the availability of better inspection equipment and information systems for targeting suspicious containers in foreign ports?

Mr. DAM. Well, Senator, I am not quite sure, myself, although there are people perhaps even here with me who are well-informed about the question of Customs personnel overseas and what the

plans are in that respect. On that portion of it, I would like to also give you a written response.

But let me say more generally that CSI is a good example of how we have to be inventive in order to both protect us, but also speed commerce. That is one of the main reasons why I think we would not want to separate the security functions from the normal Customs trade functions, because the idea is, in this globalized age, we have to protect our economy. We have to keep the trade flowing. At the same time, we have to protect ourselves.

So the idea behind CSI, the container initiative, is to be able to focus our attention on the problematical cargo, on the containers that we really do not know anything about.

Whereas, if we can work with our allies—and, after all, working on security has to include working with our allies—we can do more in advance. Just like the Detroit bridge example.

The idea there is that the participant companies will work with Customs. They will take responsibility for closing the trucks and sealing the trucks. They will send forward the manifests of what is inside and they will be subject to spot-checks, and so forth. But, basically, those trucks will be able to go through very rapidly.

The only thing that happens when they get to the inspection station, is they have to show their driver's license to be sure the driver is the person they said was going to be the driver.

So the essence here is to deploy resources, and particularly deploy ideas, that will allow us to speed up the shipments, while at the same time enhancing the security.

That is our objective, and that is why I think this new department needs to have the flexibility to put the security people together with the people engaged in what we think of as Customs as we walk past the Customs inspector, the trade type things, and looking at the merchandise that is coming through, and so forth, so that we get some synergy there and improve both functions. That is our objective.

Senator GRASSLEY. Thank you, Mr. Secretary.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Mr. Secretary, a couple of questions. One, the Secretary of Homeland Security is in charge of protecting domestic security, whereas the Treasury Secretary is essentially the main cabinet official in charge of our economy, currently, the various trade laws, the GSP, Trade Act, upcoming Andean Trade Preferences Act, et cetera.

The Treasury Secretary promulgates regulations with respect to a whole host of economic operations under those statutes, administration of Customs laws, timing of duties, collection of manifests, collection of Census data, for example.

I am just curious whether that authority would also be transferred from the Treasury Secretary, that is to promulgate those regulations, over to the Homeland Security Secretary, and if so, would that not create some questions with respect to who is in charge of the economy?

Mr. DAM. Well, I take your point. I am not sure exactly what the bill says in that regard. There are many kinds of regulatory activities that are so closely connected with what happens at the border, that I am not sure you would want those kinds of regulatory activi-

ties divorced from the people who are doing the job, and particularly when you get into things like classification of goods. That is a moving target.

I am sure that it is important for classification decisions to be made on an interactive basis where the people are actually seeing what is coming through. The current bill, as I understand it, will transfer all legal authorities to the new department.

That does not mean, however, that there will be no contact between the new department and the Treasury, and indeed the USTR, which, after all, is responsible for negotiating these authorities.

Actually, under the current circumstances, put a new department aside, Treasury actually delegates these kinds of functions to Customs today. We have a staff in Treasury which provides an oversight function with regard to the decisions made by the Customs.

That is one of the reasons why there will be an interagency process for the new Homeland Security Department in order to be sure that we are all operating in synch. I do not expect this department to be operating in the economic area without full consultations with the economic departments.

The CHAIRMAN. Well, you have put your finger on the essential problem here, for which there is really no precise answer. Namely, on the one hand, we are concerned about coordinating law enforcement with, say, commercial activities for the sake of protecting our domestic national security. That has led to this proposal, clearly, the Department of Homeland Security.

On the other hand, clearly, we have a commercial interest in this country. We are very worried that the Homeland Security Department is going to subsume all of the commercial activities, or at least take away too much of that.

The Homeland Security Department will have a flavor of law enforcement, and that is going to be the sort of culture, the law enforcement culture. It will not be a domestic economic culture, it will be law enforcement.

So, obviously, the commercial interests and economic interests in our country are legitimately concerned that the law enforcement culture will not give adequate attention to the economic interests.

On the other hand, people say all of these agencies are not coordinated, which comes down to, I think, the basic point, namely that organizational charts count less. What counts more is just the quality of the people.

People want to work together and because we are a very complicated society, there is going to be one organization, or there is going to be another organization, or there is going to be a third organization, they are important. They are important. I do not want to minimize that.

But of real importance is the willingness of people to work together among the various agencies and the cooperation among agencies, and that really comes down to the people.

It comes down to people who think, who are smart, who are creative, who are intelligent, who have the public interest in mind more than their own turf. Because there are going to be turf wars whether it is in the new department or whether it is in the old department. There will be turf wars.

But the real challenge is for you, Mr. Secretary, and for others in leadership positions to not let that happen, to reduce those turf wars in the name of the common interest, the public interest of our people that we are all serving.

There are a lot of questions here about this proposal. I want to make sure that the degree to which we go down this road, we do it right and just do not create more problems than we are purporting to solve.

Another question is in regards to personnel. There are a lot of people currently working for Customs who are very nervous that their rights will be taken away by the new proposal, collective bargaining, for example, and a whole host of employee protections that today exist in the Customs Service.

DoD, for example. Civilian DoD personnel have collective bargaining rights. It is my understanding—I can be corrected—that under the proposal Customs employees would not.

What assurance can you give us and a lot of people in the audience, a lot of people from Customs who are good, red-blooded Americans, want to do what is right, but are concerned about their positions in the proposed new department as well, whether their rights are going to be trampled on.

There is a lot of language here in the name of flexibility that theoretically gives the President and the potential cabinet Secretary, in the view of some, too much flexibility.

Your thoughts?

Mr. DAM. Could I just say a word about your first comments, then I will come to your question.

The CHAIRMAN. Sure.

Mr. DAM. One thing that gives me a lot of confidence that this is not going to, overnight, become a law enforcement activity solely at all, is that the people will be moving over. It will be the same people who were in the U.S. Customs that will be in the Department of Homeland Security, the same management.

Moreover, there is a factor here that I think is extremely important today, that the Customs Service depends a great deal on its contacts with the importing community, the firms that are actually involved, the freight forwarders, all the rest.

There is a formal organization that we meet with regularly. There are also all of these informal arrangements. We could not have done the CSI, Container Security Initiative, without that kind of cooperation and the kind of information and insight we get from them.

We could not have done the C-TPAT, the Detroit bridge illustration, without cooperation from those people. The new department will need that, will want that. I think that that is going to be a very important influence.

Obviously, of course, the Congress will be concerned and the economic departments will be concerned insofar as they work with the new department interagency basis. I think all of these influences are going to be extremely important in determining what that culture is in that part of the new department.

Remember, we are only talking about one part of the new department. There will be other parts of the department where we will be concerned with other kinds of matters.

Now, on the question of the people. As I mentioned, they are going to all come over. They will retain their existing jobs and so forth at the outset. They will have their union status.

I think there may be a little confusion running around between a question about national security determinations that allow certain kinds of jobs to be determined to be national security type jobs for the purposes of union representation.

I can give you a written answer that explains exactly how that works. We are not talking about removing union protection for Customs Department people. There is just a question as to what extent this National security authorization would be available in the case of the new department, generally.

I have here a statement from the administration, and I will just read the crucial line and we can give you this in more detail. It says, "The administration would support specific statutory affirmation of the existing rights of Department of Homeland Security employees to union representation, subject to national security authority," which was the limited authority that I was talking about before.

Actually, I believe that there are a number of departments today where portions of the activities are subject to this National security provision, which is statutory.

So there is every reason to believe that the Customs employees will be protected. If there is something special that they are engaged in which would be subject to this National security exemption, well, then that would be true. But I do not see any reason why, in general, Customs employees should have fears.

The CHAIRMAN. I appreciate that. I wonder if, for the record, you could flesh out what that "subject to" would entail.

Mr. DAM. I would be glad to do so.

The CHAIRMAN. Because I am sure the devil is in the details and many employees are wondering, well, gosh, what does that "subject to national security" mean for me?

Mr. DAM. Right.

The CHAIRMAN. So if you could flesh that out and define that more precisely for the record, I would appreciate that.

Senator Murkowski, I know you just arrived. I do not know if you are organized and ready to ask questions. The Secretary has to leave fairly quickly, but we would love to have you ask any questions you may have.

Senator MURKOWSKI. I am concerned about how we structure the Homeland Security legislation and the role of the U.S. Customs within the proposed Department of Homeland Security.

It is certainly one of the major considerations that Congress is going to have to consider in the traditional role that Customs has played in the flow of commerce into and out of the United States.

I am curious to know, Mr. Dam, in your evaluation of this role, is this going to have any restriction, this proposed inclusion, on the efficient flow of commerce in and out of the United States?

Mr. DAM. Senator, thank you for that question. We have discussed it a bit, but let me be very clear about this. I believe that it would be a mistake to separate the law enforcement and security activities at the border from the more commercial activities for the following reason.

The objective here is to meet two challenges. One of them is protecting the homeland, but another one is to ensure that the American economy remains strong and the world economy remains strong. That means we have to improve the opportunities for international trade. We have to speed up international trade.

It is possible, and I have given, in my written testimony, some examples of how we have been able to do that just since September 11th. There were a lot of concerns about the use by the automobile industry, for example, of the two bridges between Ontario and Michigan, and particularly the Ambassador bridge in Detroit itself.

What we have been able to do there, is by working with the industry, we have been able to actually speed up greatly the passage of traffic over that bridge while being able to actually increase security, because we have been able to figure out which were the trucks that had to be looked at and which could be guaranteed by the companies—many of which are not companies operating on both sides of the border—to be protected. They have been inspected at the plant.

We have various other arrangements to be sure that all of the information is passed on electronically in advance so that the inspectors at that bridge can look just at the trucks which raise the greatest reason for suspicion.

We have done the same thing internationally, which I will not go into unless you would like to look at it more carefully, with regard to containers. As we all know, we have an incredible number of containers coming into the United States. We could not possibly inspect them all.

The object in the Container Security Initiative is to look at that very small percentage which raise questions, because most of them, with the cooperation of the exporting government, can be considered to be very low risk.

So I believe that this will be one of the main—in fact I am confident—activities of the new department, is to see how we can achieve both. Because there is a synergy there and we actually can improve both functions by approaching it intelligently, working with our allies, and keeping in mind what the real objectives here are.

Senator MURKOWSKI. Well, my concern is with potentially extended delays and the matter in which cargo would come into the United States. As you pointed out, there are a huge number of containers that come in from both European and Asian trade.

If it is delayed in a way that hurts commerce, harms American workers, it is going to harm the economy and it is going to diminish our security to some extent.

We had a situation in my State of Alaska following the September 11th incident where a number of cargo flights, because of the additional time that the carriers were required to stay on the ground for inspection in Anchorage, due to new procedures put in place by Customs because of heightened security concerns, finally abandoned Anchorage and flew to Vancouver, British Columbia and did their clearance there, and found that it went very well.

These diverted flights cost some \$5.5 million in revenue to the Anchorage International Airport. We finally were able to reach con-

cordance, with Customs and the IRS and were able to mitigate the delays while maintaining a secure atmosphere.

But it points out the reality that there are other places to go. If we make unreasonable restrictions in the guise of security, why, trade will find its own way.

I have one other question, Mr. Chairman. It is my hope that this committee, the Finance Committee, can proceed with the homeland security requirement and obligation we have, and we can, as a committee, produce a bipartisan piece of legislation in a timely manner and we can avoid some of the efforts that we are seeing around here to take some of this legislation to the floor.

My last question is, Mr. Dam, could you describe how placing the Customs Service under the same jurisdiction as the Coast Guard and the INS will impact its ability to coordinate and cooperate with its counterparts in Canada and Mexico?

Mr. DAM. I am not sure I follow the full direction of the comment.

Senator MURKOWSKI. Well, putting them under the same jurisdiction proposal. Let us put it that way.

Mr. DAM. I do believe that there has been a lot of discussion earlier of whether Customs and INS should be placed together somewhere. There were thoughts about, maybe they should both be in Treasury, or more likely, perhaps, be in Justice in order to facilitate that.

I do think that, insofar as that closer, being under the same boss, so to speak, occurs, and it will occur in the new department, you will be able to achieve greater cooperation. And where there is greater cooperation on the American side, obviously it is easier to cooperate with your opposite numbers in, say, Canada and Mexico.

So I do believe that there are advantages of having all of the things that happened at the border be under one common management. That is the idea of "one face at the border."

So, I do believe there are advantages to be achieved under the new department, and putting these border agencies in one part of the new department, presumably under an under secretary who will be responsible for border activities.

Senator MURKOWSKI. Thank you. For the record, I am not convinced that the Coast Guard necessarily should be transferred over from Department of Transportation to Homeland Security. The Coast Guard has many, varied duties and to suggest that this is an appropriate role for the Coast Guard, well, I guess I am still not sure.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

Thank you very much, Mr. Secretary. You have been very cooperative and helpful. We will have many, many more questions as this unfolds.

Mr. DAM. Well, thank you, Mr. Chairman. Thank you, Senator Murkowski.

The CHAIRMAN. We appreciate you being here.

The next panel consists of Hon. Samuel Banks, Senior Vice President, Sandler and Travis Trade Advisory Services; Colleen Kelley, president of the National Treasury Employees Union; Mary Ann Comstock, UPS Freight Services, Sweet Grass, Montana; James

Clawson, chief executive officer of JBC International; Richard Gallo, national president, Federal Law Enforcement Association; and Dr. Paul Light, a Senior Fellow and Director of the Center for Public Service at the Brookings Institution.

Your statements will all be included in the record. I would encourage you to summarize your statements. We will stick to 5 minutes. Due to the large number of witnesses, I will enforce that. All right.

Mr. Banks, you are first.

**STATEMENT OF HON. SAMUEL H. BANKS, SENIOR VICE PRESIDENT, SANDLER AND TRAVIS TRADE ADVISORY SERVICES, WASHINGTON, DC**

Mr. BANKS. Thank you, Mr. Chairman. Thank you for the opportunity to testify on this proposed reorganization.

My remarks are going to reflect the perspective of having spent 28 years with the U.S. Customs Service, starting as a uniformed officer/inspector and working my way up to a senior career official as deputy commissioner until my retirement about 2 years ago.

It is my belief that the proposed consolidation of the border and transportation security agencies, including Customs, into a new Department of Homeland Security would be a positive step for the protection of the country and the American people.

It is also my belief that the reorganization, if structured and implemented properly, should not adversely impact the efficient flow of international trade at our borders, nor the enforcement of our trade laws and trade rules, and should not adversely impact the international business community or the U.S. economy.

I think that there are just a few critical points that really need to be kept in mind as you are looking at the variety of proposals that are out there. First and foremost, the Customs Service needs to be kept intact. A few proposals have been made advocating that the trade responsibilities for commercial operations of Customs could be separated and placed elsewhere in the government.

It would be a huge mistake to divide Customs into disparate agencies or to splinter the current mission, and this viewpoint is widely held within the international business community and the law enforcement community. The trade and enforcement functions of Customs are inextricably linked.

Most of Customs field officers fulfill both trade and enforcement responsibilities concurrently, and to divide these functions would diminish the focus on the entire border mission.

For information flow and everything else, in order to do both targeting and efficient processing of trade, it would be a huge mistake to sever those parts of the organization.

There are a number of reasons why it is inadvisable to split commercial and enforcement components of Customs. Trade and enforcement activities are performed by the same Customs personnel at the borders, creating multiple border agencies would cost more, be less productive, and undermine the advantages of consolidation; the linkage between trade information and enforcement intelligence could easily be lost. Customs trade experts know usual international business relationships and typical trade patterns and

this knowledge is invaluable to the border security enforcement and investigative components of Customs.

Also, the creation of a new trade border agency could create new systems, additional procedural hurdles, and redundant reporting requirements for importers, exporters, and carriers.

There are a number of reasons why it is essential that the entire Customs Service be transferred intact to the new department. Customs has successfully managed the sensitive balance of border enforcement and trade facilitation, in part, because of the dual responsibilities.

Customs receives advance, electronic data from international business to expedite shipments, but Customs also uses this same information to identify high-risk shipments.

Customs has leveraged upon the constructive relationship established with the international business community to improve border security. Customs has enlisted international carriers and businesses to tighten the security of their global supply chain, and these partnerships accomplish more than government can do alone.

Customs consolidates all border enforcement and trade information into a single database that supports enforcement against public health threats, public safety threats, and threats to our economy. This is the same database that supports enforcement against weapons of mass destruction, terrorism, and a vast array of transnational criminal threats.

The second most critical factor is that the information technology systems operated by Customs are not affected and that planned system enhancements continue uninterrupted.

Customs Automated Commercial System (ACS) operates 365 days a year, 24 hours a day. It processes 98.9 percent of all imported merchandise and is the lynchpin of an efficient and effective border for trade. The international business community and economy are highly dependent on ACS; actual experience has proven that a system slowdown can result in factory closings within hours.

The protection of our borders is equally dependent on the system, as nearly 100 percent of all imports are subject to enforcement screening and targeting by this system. These systems support not only Customs, but nearly all Federal border agencies. These systems need to be sustained and enhanced to ensure that all border responsibilities are fulfilled in the future.

Customs also operates the Treasury Enforcement Communications System (TECS) which is essential to passenger operations at the Nation's airports and land borders.

It is connected to virtually all international airlines and it permits efficient processing, while it simultaneously conducts enforcement checks on all passengers entering the country.

Customs is in the process of modernizing the trade systems and it is essential that this effort continue, regardless of whether Customs is merged into the new department. In fact, the new department should seriously consider adopting the Customs information systems as the core platform for all of Homeland Security agencies.

The third piece I think is absolutely vital, is Customs really has created some very close, constructive relationships with the international trade community and those need to be carried forward into the future.

Customs has been willing over the years to work hand-in-hand to build modernized commercial processes, to find new, innovative ways to streamline the movement of goods and to help the U.S. economy. But they have also used those partnerships with industry to improve security.

The Deputy Secretary talked about the Customs-Trade Partnership Against Terrorism, where industry is taking, at Customs prompting, measures to improve the security of their international supply chain.

Customs has also been a leader in crafting cooperative programs with industry to achieve its enforcement objectives. This began with narcotics enforcement when Customs encouraged airlines and ocean carriers to improve their internal security programs and prevent contraband from being inadvertently carried on board their aircraft and vessels.

This expanded to promoting improved security programs among the international business community to prevent contraband from being concealed within their shipments.

Customs has been willing to make a place at the table for the international business community, in the design of its automated systems to the promulgation of new rules. This partnership has served Customs and the American public well and it needs to be continued.

Mr. Chairman, I am firmly of the belief that the reorganization of the new Department of Homeland Security can be a good thing for America. Your committee can contribute significantly to its success by ensuring that the best practices and best programs that currently exist are carried forward.

We do not have to sacrifice the many positive contributions by Customs and by the other agencies destined for this new department if the reorganization is crafted carefully and thoughtfully.

Mr. Chairman, those three principles, I think, would be useful as you proceed to examine the various proposals that are out there. I think that there are some good proposals. You mentioned the Ways and Means proposals. For the most part, a lot of that language is constructive.

There are a few elements of that that I think may be a little bit misdirected, or at least some issues are misunderstood, that these three principles could serve to improve that legislation.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you very much, Mr. Banks.

[The prepared statement of Mr. Banks appears in the appendix.]

The CHAIRMAN. Ms. Kelly?

**STATEMENT OF COLLEEN M. KELLEY, PRESIDENT, NATIONAL TREASURY EMPLOYEES UNION, WASHINGTON, DC**

Ms. KELLEY. Thank you, Chairman Baucus. I appreciate the opportunity to appear before the committee today to comment on the President's proposed Department of Homeland Security and the impact on the U.S. Customs Service.

As the President of the National Treasury Employees Union, I have the honor of leading the union that represents over 12,000 Customs employees who work at 301 ports of entry around our country.

Customs inspectors, canine enforcement officers, and import specialists make up our Nation's first line of defense in the wars on terrorism, drugs, as well as the facilitation of lawful trade into the United States.

With an fiscal year 2002 budget of approximately \$3.1 billion, the U.S. Customs Service facilitates more trade and interdicts more drugs than any other agency. As you noted in your opening remarks, Mr. Chairman, the Customs Service also provides the Federal Government with the second-largest source of revenue, contributing over \$20 billion into the U.S. Treasury last year.

In 2001, Customs Service employees seized over 1.7 million pounds of cocaine, heroin, marijuana, and other illegal narcotics. Customs also processed over 500 million travelers last year, including one million cars and trucks. Over the last decade, that trade has increased by 137 percent.

Yet, despite the increased threats of terrorism, the dramatic increases in trade resulting from NAFTA, and new drug smuggling challenges, the Customs Service has confronted its rapidly increasing trade workload and Homeland Security mission with relatively static staffing levels and resources.

Unfortunately, this situation is not likely to change under the President's Homeland Security proposal. The President has stated that his proposal will not include any additional funding that will enable the Customs Service and its personnel to successfully accomplish their missions of trade facilitation and border security.

A number of these resource issues were addressed by this committee in the Customs Border Security Act of 2002, which is part of the trade package before Congress. This legislation would authorize over \$3 billion for a number of Customs priorities, such as staffing, commercial and non-commercial operations, narcotics detection equipment, child pornography prevention, the ACE computer system, and the Air and Marine Interdiction Units.

Both the American public and the trade community expect the borders to be properly defended, while at the same time being able to efficiently and safely facilitate trade across that border.

No organizational structure will be successful, no matter how good it is and how good it looks on paper, if the government does not properly fund the border agencies.

The President's Department of Homeland Security proposal, H.R. 5005, also seeks to consolidate the Customs Service, INS, Border Patrol, AFIS, the TSA, and the Coast Guard into one division entitled Border and Transportation Security. Only the Coast Guard would be maintained as a distinct entity under the President's proposal.

Each of these agencies has a unique mission. Combining each agency's fields of expertise will lead to losing that expertise. The fact that Customs would not be a distinct entity within the Department of Homeland Security would deal severe blows to three distinct missions in which the Customs Service has world-class expertise: trade facilitation, the collection of duty revenue, and as the first line of defense on the wars against terrorism and drug interdiction at our Nation's borders.

In the last 5 years, as you also noted, Mr. Chairman, Customs has witnessed a 60 percent increase in trade entries processed, and this rate is expected to grow an average of 8 to 10 percent a year.

Keeping Customs as a distinct entity within the department, as proposed in both Senator Lieberman's Homeland Security bill, S. 2452, and Representative Thornberry's bill, H.R. 4660, would help retain the emphasis on the importance of Customs' trade-related duties.

In closing, the administration has indicated that it wants new flexibility in the legislation, but will establish the Department of Homeland Security. The President's proposal would allow two political appointees, the Secretary of Homeland Security and the OPM Director, to set and to change rules affecting pay, benefits, whistleblower protection, as noted by Senator Grassley, collective bargaining, and even merit principles.

The House Government Reform Committee acted last week to protect the Title 5 rights of Federal employees who will be transferred into this new department under H.R. 5005.

I urge this committee, and the entire Senate, to do the same and to not take away the rights and benefits that are currently available to the employees who may be merged into this new department.

It is imperative that Congress work to retain the expertise of the thousands of Customs personnel and other Federal employees who could leave Federal service due to the uncertainty of their rights in the President's legislation. Before, during, and after September 11th, front-line employees have acted heroically to protect our freedom. They do not deserve to lose theirs.

Thank you very much for the opportunity to share these thoughts on these issues, and I look forward to answering any questions that the committee might have.

The CHAIRMAN. Thank you, Ms. Kelley.

[The prepared statement of Ms. Kelley appears in the appendix.]

The CHAIRMAN. Ms. Comstock? Can I remind everybody, Ms. Comstock is from Sweet Grass, Montana. [Laughter.]

Ms. COMSTOCK. Big Sky country.

The CHAIRMAN. Big Sky country.

#### **STATEMENT OF MARY ANN COMSTOCK, UPS FREIGHT SERVICES, SWEET GRASS, MT**

Ms. COMSTOCK. Thank you, Chairman Baucus and the members of the Senate Finance Committee. I appreciate the opportunity to appear before you today. I am Mary Ann Comstock, the former president of W.Y. Moberly, Inc., which was acquired by United Parcel Service in 2001, and is now part of UPS Freight Services.

UPS Freight Services is a newly-formed segment of UPS that provides freight forwarding logistics, Customs clearance, and transportation services in more than 400 locations in 120 countries and territories.

We are now the largest Customs broker in the United States, clearing over 15 percent of all U.S. imports. Moberly, now known as UPS Freight Services, as Senator Baucus has pointed out, was headquartered in Sweet Grass, Montana. The port of Sweet Grass

is the eighth largest port of entry by volume along the northern border.

I am pleased today to provide perspectives from the northern border at today's hearing on homeland security and international trade.

Canada is our largest trading partner. Over 80 percent of all Canadian exports are destined for the United States. As such, the U.S.-Canada border must be taken into account when considering the issues of border security and international trade.

I would like to make four points today. First, let me say that UPS Freight Services supports the creation of a Department of Homeland Security. With proper execution, we are hopeful that this new department will streamline current and future security efforts undertaken by various agencies now into a single organization.

We believe that the events of September 11 have forever changed the way that trade moves across borders, and we wish to be part of the solution.

Second, we believe that the facilitation of trade must remain the top priority of the United States. To accomplish this critical goal, we believe that the U.S. Customs Service should remain the lead agency that manages the flow of trade.

For over 200 years, Customs has maintained a dual mission of trade facilitation and law enforcement. There is a strong cooperative relationship at the local level and at the national level between Customs and the trade community. They really do work together. Allowing the efficient flow of legitimate trade across borders allows law enforcement to use its valuable resources to focus on potential problem areas.

Third, the dual mission of security and trade facilitation can only be accomplished with strong technology systems to manage the flow of information about the goods that are crossing the border.

The development and deployment of the Automated Commercial Environment, or ACE, is necessary to modernize information flow. ACE and other information systems will provide the needed information to Customs, making them more efficient for them to conduct risk assessment on shipments.

Lastly, I would like to touch on some important issues that affect the movement of trade on the northern border. Numerous government agencies play a significant role in the movement of goods. USDA, EPA, DOT, Fish and Wildlife, FCC, and Food and Drug are just a few.

Some of these agencies collect electronic information on imports, expediting the clearance of goods in a timely fashion. Improvements to the current process are needed, as is adequate staffing.

It is imperative that agencies that wish to examine cargo crossing our borders be there when the cargo is, 24 hours a day, 7 days a week. That is when Customs and the brokerage community are there today.

The cargo should be inspected and a determination made regarding admissibility prior to it leaving the port of entry. There are many opportunities for Canada Customs and U.S. Customs to partner and harmonize their clearance processes. Existing initiatives

should be expanded and new initiatives with the Canadians should be developed.

For the entry of goods over \$2,000, Customs requires the IRS employer identification number or Social Security number of the ultimate consignee. In practice, this is problematic in the case of our non-commercial customers, as private citizens are reluctant to reveal such personally identifiable information, especially in this day and age of identity theft.

There are many legislative proposals before Congress that would mandate new requirements for advance manifesting of cargoes. UPS Freight Services opposes any requirement that the harmonized tariff schedule number to six digits be provided prior to entry. This requirement would only impede the flow of goods, without improving our Nation's security.

It is my belief that the application of the HTS is Customs' business and should be left to licensed individuals to make that determination.

The success of our economy is dependent on the free flow of trade, and UPS supports any new free trade initiative, such as the U.S.-Singapore Free Trade Agreement.

Additionally, UPS fully supports the passage of the trade promotion authority to ensure our future position as a global leader in trade. As a member of the Customs brokerage community for over 25 years, I have witnessed many changes and improvements in the flow of trade across our Nation's borders.

As we embark on the creation of the Department of Homeland Security, I believe that we have a tremendous opportunity to streamline the flow of legitimate trade while protecting our borders.

I appreciate the opportunity to testify and I would be happy to answer any questions. Thank you.

The CHAIRMAN. Thank you, Ms. Comstock, very much. Very informative.

[The prepared statement of Ms. Comstock appears in the appendix.]

The CHAIRMAN. Mr. Clawson?

**STATEMENT OF JAMES B. CLAWSON, CHIEF EXECUTIVE OFFICER, JBC INTERNATIONAL, WASHINGTON, DC**

Mr. CLAWSON. Thank you, Mr. Chairman and Senator Murkowski. It is a pleasure for me to be here.

Let me start by thanking this committee for their continued interest and authorizations over the years, and for their support for the Customs Service.

I would ask that my written testimony be included in the record, because I plan to use my time to respond to some of the issues in the discussion we have already had here today.

The CHAIRMAN. Without objection it will be included.

Mr. CLAWSON. Thank you.

[The prepared statement of Mr. Clawson appears in the appendix.]

Mr. CLAWSON. Certainly, on behalf of the Joint Industry Group, we are supportive of the President's proposal to create a new de-

partment of Homeland Security to which the Customs Service will be moved.

I think there are some misconceptions, in some of the testimony today and in some of the things that I have heard, on the proposals we have made in the past. There is no desire to wall off or in any way create separate agencies within the new department. Part of our proposal, and what we have been saying, is that what you count, counts. It is an old adage.

If you have a commercial function that is subsumed under an Under Secretary for Border Enforcement and Transportation Security, those working for that Under Secretary will be more concerned, for whatever set of reasons, to be more responsive to the security functions and the security requirements than they would be to their responsibility to the facilitation and the commercial side.

There needs to be an equal voice at the level of the Under Secretary, for the Commercial operations within customs. It may be organized as a Commissioner or Under Secretary, similar to the Commerce Department where there is a Commissioner of Patent and Trademarks and an Under Secretary of Commerce. There are other parallels within the government—where there is a voice for the commercial side. This is necessary to guarantee consistency. So that with our 300 ports, for example, you do not have port shopping. I was very concerned as I listened to Senator Murkowski talk about heightened security at his airport and the diversion of cargo. That happens frequently.

We need to have the ability to have a voice equal to that of the physical security side in the department of Homeland Security who is going to be able to speak up for the concerns and needs of the commercial side.

So those proposals that have been put forth are not a matter of walling off and creating separate functions for customs. It is a matter of having the economies of scale and having the one border inspection agency, as is proposed. And we support that.

But it is having, at the departmental level, a voice, a Commissioner of Customs, an Under Secretary, at the same level as the security folks. He can remind the security people that there is another function for customs. That there is a parallel, equal, and dual role, and that the priorities for the protection of the employees, is as important as the protection of our Nation.

It is very hard to have equal priorities. Most people think priority means, that one is more important than the other. But this balancing act must be ensured, and it must be ensured, in my view, by Congressional action and the oversight.

We would propose that this committee retain oversight over all of those trade and commercial functions that you have heard about. You must have it overnight. That is what it is all about.

It is perfectly alright to have parallel functions. We do it in the cabinet. You have a State Department who has different views than the Defense Department, and we manage to work those out.

To suggest somehow that there will be a failure or that it will cause more trouble for the trade if, in fact, you have a separate Under Secretary who is looking out for the trade interests, I think is just a misconception and a misunderstanding.

The devil is in the details on how you do it. I totally agree with you. But I think, working together, we can find this balance within the new department where you can have a commercial function, working side by side with the security function.

There are some current stories that I think are interesting and give reason to why this must be done.

In 1994 we passed the MOD Act and we spent seven years trying to get it funded out of the department. We were always told by OMB that if trade will pay for it, even though we are paying \$1 billion a year in user fees, then they would do it.

At the same time, customs is getting new technology, new airplanes, and are spending hundreds of millions of dollars in enforcement technologies that they can implement.

Already today we have the problem within the Customs Service of continually fighting for the voice of the trade to try and keep the trade facilitation views open so that it would not be subsumed in the view that we must protect our Nation. We must protect the nation. But we need that other voice to step forward.

We do have some funding for ACE, and we appreciate Congress for providing this funding. It is there, and I agree with all of the comments that have been made regarding ACE.

But it has been 2 years since it has been funded, and the contract has been let, but we are still waiting for a lot of these things to happen. At the same time, they have implemented hundreds of millions of dollars worth of new technologies for security.

The point I am trying to make here, is that you need someone at a high level who is going to be concerned and step forward to ask they do not forget the commercial operations. It is just as important as enforcement and you have got to pay attention. Again, we would appreciate this committee's interest in making sure that that happens.

The CHAIRMAN. Thank you, Mr. Clawson, very much.

Mr. Gallo?

**STATEMENT OF RICHARD J. GALLO, NATIONAL PRESIDENT,  
FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION (ON  
BEHALF OF HIMSELF AND SPECIAL AGENT GAIL PAPURE,  
U.S. CUSTOMS SERVICE AND FIRST VICE PRESIDENT, FLEOA,  
NEW YORK, NY**

Mr. GALLO. Thank you, Mr. Chairman. On behalf of FLEOA, I thank you for holding this hearing.

We are pleased to be here to discuss the issues as identified by FLEOA's Customs agent members regarding the Department of Homeland Security and the Customs Service.

As many of our FLEOA members were present during the 1993 truck bombing of the World Trade Center, as well as the 9/11 terrorist attacks, we take this issue personally.

FLEOA is a nonpartisan professional association exclusively representing criminal investigators in all Federal agencies, and as such we do not have any one agency's turf to protect.

FLEOA has issued a white paper on the creation of the Department of Homeland Security, the executive summary of which is attached to our written testimony.

I will very briefly cover some of the points I have covered in more detail within the written testimony.

FLEOA's Customs agents are extremely concerned that, one, narcotics interdiction, and two, money laundering task forces which work with other Treasury Department criminal investigators, will be sacrificed as a mission.

Narcotics trafficking funds terrorism and we feel these types of investigations must move with Customs, but we cannot sacrifice one critical mission in exchange for another.

In addition, at the Office of Foreign Asset Control (OFAC) regulations and prohibited ITAR items (International Trafficking Arms Regulations) investigation should also move at Customs and not be lost in the transfer of responsibilities. Also, we believe any future DHS agents should have access to the current database that Treasury agents now have access to.

Problems on the northern border. A tremendous number of individuals travel across the border. But how do we track these visitors? They provide documents, but we do not know if real names are being used in the traveler-provided ID.

On a daily basis, we arrest persons whose business it is to sell fraudulent government identification. We recommend two suggestions for the committee to review: one, fingerprinting, and two, photographing those crossing the border. Without security, there will be no trade.

Another topic is clearances for U.S. Customs agents. U.S. Customs criminal investigators need to have their clearances upgraded to Top Secret from the current level of Secret.

Another issue, is the Inspector General's offices that Senator Grassley was mentioning. We are the agent's association, yet we are in favor of a strong and independent Inspector General's office. You will be doing us no favor by not providing a strong, independent Inspector General to review us. We need that.

Another topic, is overseas attache offices. There is a growing concern within the Customs overseas attaches because in recent years the FBI has opened overseas offices, despite having a domestic charter.

They currently dictate the terrorism investigative function overseas. In the past, Customs' financial investigators have been excluded from participating in these investigations, even if they have more expertise in, or information relative to, that particular investigative function.

Overseas attache offices may well be the front line in our homeland security. Therefore, the question is, who will direct investigations on homeland security matters overseas, the Department of Homeland Security, the Department of Justice, or agents of the Department of State's Bureau of Diplomatic Security, which apparently has at least one criminal investigator over 450 total, in every single one of the 205 U.S. embassies and consulates throughout the world?

FLEOA's puzzlement over this issue extends to domestic homeland security investigations as well. In the original proposal, this fantastic concept of a Department of Homeland Security is charged with protecting Americans' homeland security.

Yet, the agency within a different department retains the mission of investigation of violations of homeland security. We believe this results in a duplication of effort, and we give examples in our written testimony on this.

Keeping other agencies as the investigative agencies begs the question, will the creation of the new department just create another agency with the same problems we experience today, the lack of sharing, dissemination, and investigative cooperation?

We do not believe the turf problems existing between law enforcement agencies will be magically solved by the formation of a new department, but we do believe that, without the two-way flow of information, the mission of the new department will be seriously, if not fatally, compromised. We give examples of this non-communication between departments in our written testimony.

Recruitment and retention to pay Federal agents in high-threat metropolitan areas has led to not only the FBI, but other agencies having a very young force in high-threat metropolitan areas because these areas are synonymous with high cost of living areas.

FLEOA has been told that a majority of the FBI agents in areas such as New York, San Francisco, and L.A. have less than 5 years' experience on the job. Yet, these are the agents that work with Customs agents and other agents from other Federal law enforcement agencies.

This problem would be solved with a bill that is about to be introduced by Senator Christopher Dodd, and co-sponsored by Senators Grassley, Lieberman, Warner, Biden, among others, and we hope all of the Senators will support this law enforcement initiative.

Due to lack of time, we do not mention certain issues that we address in our written testimony, but please do not think they are of any lesser importance. We would love to answer a question on why you have great field agents doing great things in the field, yet funneling them to what seems to be a black hole in headquarters.

In closing, we see no problem with the creation of the Department of Homeland Security that is insurmountable. However, there are problems. We must not turn a blind eye and say that there are not any problems.

The bipartisanship and the knowledge that 3,000 of our fellow citizens have died, among whom were Larry Virgillo, a New York fire department firefighter who was the brother of U.S. Customs Agent Tommy Virgillo, and Patricia Kuras, the sister of U.S. Customs Special Agent Tommy Kuras; Diane Barry, the mother of U.S. Customs Agent Kevin Barry, and other relatives, including some of my own, cry out for us to respond to this. We can create a functioning department that we all can be proud of.

Thank you for your time. I look forward to answering any questions you may have.

The CHAIRMAN. Thank you very much, Mr. Gallo, for your very strong statement.

[The prepared statement of Mr. Gallo appears in the appendix.]

The CHAIRMAN. Dr. Light?

**STATEMENT OF DR. PAUL C. LIGHT, SENIOR FELLOW AND DIRECTOR, CENTER FOR PUBLIC SERVICE, THE BROOKINGS INSTITUTION, WASHINGTON, DC**

Dr. LIGHT. Thank you very much for inviting me to testify.

I am from South Dakota. My parents told me I will be always short, but I can be brief, so I will try to do so. [Laughter.]

Let me address three issues here. I was before this committee in 1997 when you did the IRS reorganization, and Senator Murkowski, I was on Senator Glenn's Governmental Affairs Committee staff when we elevated VA to cabinet status.

The IRS reorganization was designed to to reset the balance between a heavy enforcement pressure and more of a customer orientation and more of an advocacy on behalf of taxpayers. I think this committee did a number of things in the IRS bill that are instructive to governmental affairs.

Speaking as a former Governmental Affairs staffer, I read the IRS reforms and see a lot of work in there that can be easily transferrable to the Department of Homeland Security in terms of personnel exemptions that would meet Ms. Kelley's concerns, while also giving the department needed flexibilities for the future.

Let me talk about three things here. Number one, the size of the new department. It is going to be big. It is going to be about 225,000 full-time equivalent employees. That is neither good nor bad, it just is.

We ought to resist the temptation to try to put a handle or some sort of hold or tap on size as an arbitrary gesture to try to deal with the pressures to keep government small.

We have got a big mission here and we should allow the agencies, including Customs, within the new department to grow as they need for their new missions, and also to service their old missions.

Second, in the case of Customs, this is one of at least four agencies that are multi-mission agencies being moved into the department. You have got Coast Guard, you have Immigration and Naturalization, you have got FEMA, and you have got Customs.

The pendulum has been swinging back since September 11th, and appropriately so, towards more of a due diligence disciplined deterrence mode in these multi-purpose agencies, particularly INS and Customs.

But that can create a possible imbalance, and I think that is a concern for this committee. Can we go so far in the deterrence activities in letting the pendulum swing that we lose the ability of Customs and other agencies within the new department to do their other missions that are more proactive and promotional in nature.

Now, there are at least three ways to protect the Customs' mission of promoting trade and collecting revenue. One, is to split the agency up and leave its revenue collecting functions at Treasury. I think that is very difficult to do. It is difficult to do well. It is not even easy to do poorly. It is very hard to divide these babies when you start into it.

The second thing you can do, is to wall off the agency by creating a discrete entity within the new department called the Customs Service. That would be my preference. That is the Governmental Affairs' bill's preference. A directorate for Customs, possibly other

directorates that allow the agencies that are being moved to maintain their essential character.

As you did with IRS, you could create an oversight board here. You could create a trade advocate. The jury is still out on whether those two options have worked particularly well on IRS.

We do have a taxpayer advocate, we do have an oversight board, and you could easily attach those two devices to the homeland security bill to promote trade and to ensure the proper collection of revenue.

I agree with Ms. Kelly on the issue of waivers for Title 5. I believe the Secretary needs maximum flexibility to do his or her job. I believe that the civil service system is in desperate need of repair, but I also believe that the workforce at the new department should not spend its first 100 days thinking about whether it is going to be fired.

I think there are easy ways of designing flexibilities in the statute that will give the Secretary authority to move quickly with an appropriate civil service system, but that will not scare Federal employees into lower productivity during the very time when they need to be focusing most on getting this reorganization to work.

There is a waiver on reorganization authority. I think the Senators and the committee should take a look at whether or not that waiver is overly broad. It would give the new Secretary extreme authority to reorganize, with bare notification of Congress, and I think perhaps goes too far on the reorganization side.

Finally, on the issue of Presidential appointees, I am an Article 1 person. I believe that all Presidential appointees, all Assistant Secretaries, should be subject to the full review, advice, and consent of the U.S. Senate.

I do not believe that the President's proposal, which contains up to 10 Assistant Secretaries to be appointed without Senate confirmation, should stand. I think all Presidential appointees should be brought before an appropriate committee, and I believe that we can easily have the number in this bill and get just as much efficiency from the new department.

That is as brief as I can be. Thank you very much.

The CHAIRMAN. Very good. Thank you, Dr. Light.

[The prepared statement of Dr. Light appears in the appendix.]

The CHAIRMAN. I would like it if you could follow up a little bit on what you touched on. What is going to happen to the employees? I would like other people to respond to this, too.

They are very high-quality employees. They are experts in their areas at Customs. They are all getting transferred over to the new department. What is the likelihood that some of them might say, well, now it is time to retire, or take early retirement, not knowing what is in store for them at the new department.

The devil that you know is often better than the devil you do not know. There is a concern that a lot of experts, a lot of top people are going to take this opportunity to leave.

Dr. LIGHT. If I were a Federal employee right now, I would bet to stay. I think that Federal pay is going to go up. I think that Congress will, within the next year or two, address the compression at the senior executive levels of the Federal pay system and will also address pay imbalances lower down.

I am an optimist about the possibilities of pay reform in Congress, and therefore I bet that Federal employees will stay in the hopes that we will address fundamental pay issues. There are always going to be some number of employees who will take the opportunity of a reorganization to exit.

Past reorganizations, the logical comparisons being DOE, Department of Energy, Department of Transportation, did not see dramatic exits at that time, but that was during an era when we had golden handcuffs on our employees through the old CSRS retirement system. We are now operating under a new retirement system.

The CHAIRMAN. Ms. Kelley, do you have some views on that?

Ms. KELLEY. I do, Mr. Chairman. I think there are surely some employees who will fall in the category that Dr. Light describes and hope that something will finally be done on these issues that make it such a difference to them.

But the last numbers I saw indicate that 36 percent of employees in the U.S. Customs Service are eligible to retire within the next few years. Anecdotally, from talking to our members across the country, because of their concerns about a reorganization, a loss of the identity of Customs and of the recognition of the expertise of the work they do every day, they are counting the days.

So I fear that many of them—surely not all, but many of them—will take the first opportunity to exercise their retirement rights, and that will be a huge loss to the Customs Service, to the new department when it really needs it the most as they are trying to stand up a whole new organization. So, I am very worried about it.

Mr. GALLO. Actually, Mr. Chairman, speaking on behalf of the criminal investigators, what Ms. Kelley was saying is going to be throughout the law enforcement community. There are a lot of companies that are now reevaluating their own security issues with a light on what can happen to their business.

Therefore, I guess you could say this newfound respect for their security issues—where before they just had a guard at the front door—is going to be translated into dollars and in salaries and it is going to entice a lot of people in the Federal criminal investigative pool because we are allowed to retire at the age of 50 with 20 years of service.

At the age of 51, 52, if you already have 23 years in, if you speak to a financial consultant, they are telling you that you are giving back money to the government by staying employed. Again, the other option is, all these companies that are having this newfound respect are hiring someone who was a Federal agent.

The CHAIRMAN. Mr. Banks, you said you think the transfer is a good idea if three points are met, but you did not give me a reason for the transfer. Why go ahead and transfer? You say that there are three functions that should be kept where they are, some discrete functions.

The automation system is one of your conditions. You said that Customs has created good, close relationships with various other agencies. If that is the case, why should there be a transfer now?

Mr. BANKS. Well, Mr. Chairman, that is a very good question. Quite frankly, what you have today at the border, is if you look at

the northern border with Canada, you will have in one booth an immigration inspector, and in the next booth, a Customs inspector. Just even trying to do the assignments, if you put them basically under the same leadership, I think you are going to achieve greater economies of scale and you are going to achieve greater coordination between these entities.

Right now, INS is cross-designated to do certain Customs work. INS cross-designates Customs, Customs cross-designates the Coast Guard.

I mean, everybody is trying to cover everybody else right now in their own three separate departments. If you really want to get down to at least a hoped-for greater coordination and greater synergies between the departments, I really do think that there are some opportunities.

There have been two decades, probably better than two decades, of studies of just about Customs and Immigration, that they should be merged. I think virtually every one of them has come to the conclusion that it makes managerial sense to do this.

Yes, you are absolutely right. It ultimately comes down to the people. The people drive everything. But right now there are some organizational stumbling blocks that stand in the way of people trying to cooperate together.

The CHAIRMAN. I appreciate that.

Does anybody disagree with Dr. Light's Article 1 views, that is that assistant secretaries should be confirmed by the Senate? Does anybody disagree with that?

Mr. GALLO. No.

The CHAIRMAN. Neither do I.

Dr. LIGHT. Let it be noted that there was no disagreement. It happens so rarely when I say something that I would like to mark the date and time.

The CHAIRMAN. All right.

Mr. BANKS. Mr. Chairman, one thing on that.

The CHAIRMAN. Yes.

Mr. BANKS. If you go to the Ways and Means comments on 5005, it talks about establishing a 20-person organization within Treasury to kind of monitor some of the trade issues. That does not entire make sense either.

If you are going to set up a staff or have oversight to ensure that trade issues are represented, they really ought to be in the department that is going to manage the organization and that is going to deliver on those things. That should be the Assistant Secretary promise.

The CHAIRMAN. All right. My questions have been somewhat along the same vein. We have these people side by side, enforcement and commercial. Why do we need a transfer?

Mr. BANKS. Oh, I think that is simple, for the reason you describe it, because you are under one department head. I think the difficulty today is that, in different departments you have different cabinet officers who are making different arguments to the President, to OMB, and whatever else.

I think, by having them equal within the same department, you will thresh out all of those operational issues before you get up to

the highest level. I think it is just better management style to do it that way.

The CHAIRMAN. Well, you are an optimistic guy. I appreciate that.

I do not have any other questions, really. Did anybody say anything today that is either so outrageous, or almost so outrageous that it deserves a response? Anybody? Here is your chance to say something that has not yet been said which should be addressed, but which has not yet been addressed.

Ms. KELLEY. If I could, Mr. Chairman. In response to a question that Deputy Secretary Dam was asked about Title 5 and about employee rights under Title 5, one of the things that I think has gotten muddled up in this discussion is that, in spite of the comment that was read into the record of what Governor Ridge said about employee rights, that is not the language that is in the proposed legislation 5005.

The words that are in the legislation make it very clear that the Secretary and the OPM director, after the transfer occurs, could make any changes they want to anything in Title 5, including whistleblower, pay retirement, anti-discrimination, any of the things under Title 5. It is a very long list. So the language in the legislation is very clear and is not what some have said in other settings.

There was a totally separate issue about the national security issue and the question of the President's authority to issue an executive order. They are two very different things that keep getting confused in this conversation.

So, I would just like to make it clear that they are separate issues, and very real issues, and are not appropriately reflected in the language as it exists today.

If there was anything in writing that I could provide that would assist this committee with its work on this issue, I would be very glad to do that to make that distinction clear.

Dr. LIGHT. May I follow up on that?

The CHAIRMAN. Yes, very briefly.

Dr. LIGHT. Well, we had Kay James, the Director of Office of Personnel Management, over at Brookings yesterday. She said that Federal employees can expect bargaining rights and whistleblower protections, and so forth, from the new department. I have a lot of respect for her, and I trust her greatly.

But there is a great distance between what employees can expect and what they are guaranteed. I think that is what Ms. Kelley and other Federal employee unions are getting at. It is an issue of in-law rights rather than trust-me rights.

The CHAIRMAN. I appreciate that. Good point.

Mr. CLAWSON. I just had one. This is not on behalf of the JBC, it is my own view developed during my 4 years at the Treasury Department. The Federal Law Enforcement Training Center ought to be moved.

It has no business staying in the Treasury Department. I was chairman of the board of that organization while I was at Treasury. Regardless if Congress sees so fit for it to remain in the Treasury Department, for all of the reasons you described, I believe it just does not belong there.

The CHAIRMAN. Some are going to want to put it in Justice.

Mr. CLAWSON. No. It is better off in Homeland Security.

Mr. BANKS. Mr. Chairman, one other thing I would mention on the language of the Ways and Means Committee relative to 5005. One of the other things that was there, is there is a provision in there that is very good in the sense of sending the message that trade is important and they need to continue to be concerned about the commercial function and smooth international trade.

However, it says, "The Secretary may not consolidate, alter, discontinue, or diminish those functions," certain functions, and then it specifically cites certain job occupations, like import specialists and trade specialists, and all of the rest of them.

The trouble with putting that into statute is it roots Customs in the past. Customs is trying to re-engineer the way it does business. It is trying to automate, it is trying to move from a train-latching process to account processing. It is just, we do not need to handcuff the new management in order to be able to go in the direction this needs to proceed.

The CHAIRMAN. That also gets to the fundamental point of, what kind of a country are we? We are a democracy, as I like to remind myself often. Winston Churchill once said, in effect, democracy, for all of its fits and starts, delays, and in-efficiencies, and so forth, is actually the world's worst form of government, except there is none better.

We are a democracy. We have separation of powers. We want to do this right. We cannot be "too flexible" and have certain protections. But at the same time the Congress certainly has a very important role here in representing the people. The people would like to have an executive branch of government.

This hearing goes a long way towards realizing what that really means. Thank you all, very, very much.

The hearing is adjourned.

[Whereupon, at 12:00 p.m. the hearing was concluded.]



## APPENDIX

### ADDITIONAL MATERIAL SUBMITTED FOR THE RECORD

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PREPARED STATEMENT OF SAMUEL H. BANKS

Chairman Baucus, Senator Grassley, members of the Committee, thank you for this opportunity to testify on the proposed homeland security reorganization.

Mr. Chairman, my remarks will reflect a perspective of having spent 28 years with the U.S. Customs Service and ultimately serving as the Deputy Commissioner and Acting Commissioner of the agency prior to my retirement.

It is my belief that the proposed consolidation of the border and transportation security agencies, including Customs, into a new Department of Homeland Security would be a positive step for the protection of this country and the American people.

It is also my belief that the reorganization, if structured and implemented properly, should not adversely impact the efficient flow of international trade, the international business community, or the U.S. economy which is so dependant on global trade.

The U.S. Customs Service is responsible for implementing much of the trade policy and statutes emanating from the Senate Finance Committee. This should continue under the proposed Homeland Security reorganization provided that the Customs Service is transferred intact to the new Department. It seems reasonable that your Committee and the Congress should expect to exercise the same oversight over Customs-related trade issues that you do today.

Certainly, U.S. Customs has a diverse and broad mission and is responsible for more than anti-terrorism and drug enforcement at our borders. Customs collects over \$20 billion in revenue, is the source of the nation's trade statistics, and enforces numerous trade laws. Customs officers act on behalf of over 40 other government agencies at the nation's borders, enforcing some 400 laws that include public health and safety, social, economic, environmental, and other responsibilities. These activities are important for the protection of the American public and our economy, and it is essential that these functions continue in the future.

There are a few critical principles that the Committee should consider as this new Department is being formulated:

**1. The single most important factor is to ensure the Customs Service is kept intact.**

A few proposals have been made advocating that the trade responsibilities or commercial operations of Customs could be separated and placed elsewhere in government. It would be a huge mistake to divide Customs into disparate agencies or to splinter the current mission, and this viewpoint is widely held within the international business community and the law enforcement community. The trade and enforcement functions of Customs are inextricably linked. Most of Customs field officers fulfill both trade and enforcement responsibilities concurrently and to divide these functions would diminish the focus on the entire border mission.

There are a number of reasons why it is inadvisable to split commercial and enforcement components of Customs:

- trade and enforcement activities are performed by the same Customs personnel at the borders – creating multiple border agencies would cost more, be less productive, and undermine the advantages of consolidation;
- the linkage between trade information and enforcement intelligence could easily be lost – Customs trade experts know usual international business relationships and typical trade patterns and this knowledge is invaluable to the border security enforcement and investigative components of Customs; and
- the creation of a new trade border agency could create new systems, additional procedural hurdles, and redundant reporting requirements for importers, exporters and carriers.

There are a number of reasons why it is essential that the entire Customs Service be transferred intact to the new Department:

- Customs has successfully managed the sensitive balance of border enforcement and trade facilitation, in part, because of the dual responsibilities – Customs receives advance, electronic data from international business to expedite shipments, but Customs also uses this same information to identify high-risk shipments;
- Customs has leveraged upon the constructive relationships established with the international business community to improve border security – Customs has enlisted international carriers and businesses to tighten the security of their global supply chain and these partnerships accomplish more than government can do alone; and

- Customs consolidates all border enforcement and trade information into a single database that supports enforcement against public health threats, public safety threats, and threats to our economy – this is the same database that supports enforcement against weapons of mass destruction, terrorism and a vast array of transnational criminal threats.

**2. The second most critical factor is that the information technology systems operated by Customs are not affected and that planned system enhancements continue uninterrupted.**

Customs Automated Commercial System (ACS) operates 365 days a year, 24 hours a day. It processes 98.9% of all imported merchandise and is the lynchpin of an efficient and effective border for trade. The international business community and the economy are highly dependant on ACS; actual experience has proven that a system slowdown can result in factory closings within hours. The protection of our borders is equally dependant on the system as nearly 100% of all imports are subject to enforcement screening and targeting by this system.

These systems support not only Customs but nearly all federal border agencies and these systems need to be sustained and enhanced to ensure that all border responsibilities are fulfilled in the future.

Customs also operates the Treasury Enforcement Communications System (TECS) which is essential to passenger operations at the nation's airports and land borders. It is connected to virtually all international airlines and it permits efficient processing while it simultaneously conducts enforcement checks on all passengers entering the country.

Customs is in the process of modernizing the trade systems, and it is essential that this effort continue regardless of whether Customs is merged into the new Department. In fact, the new Department should seriously consider adopting the Customs information systems as the core platform for all of Homeland Security agencies.

**3. Customs has established a partnership and close relationship with the international trade community, and it is essential that this be sustained under any reorganization.**

Customs has demonstrated a willingness to work with the importers, exporters, transportation companies, etc. in promulgating new programs, new regulations, and new information systems. Customs does not relinquish its authorities nor compromise its enforcement responsibilities, but, where reasonable, it cooperates with its stakeholders to ensure that its programs and systems work effectively and efficiently.

Customs has also been a leader in crafting cooperative programs with industry to achieve its enforcement objectives. This began with narcotics enforcement when Customs encouraged airlines and ocean carriers to improve their internal security

programs and prevent contraband from being inadvertently carried on board their aircraft and vessels. This expanded to promoting improved security programs among the international business community to prevent contraband from being concealed within their shipments.

Most recently, Commissioner Bonner launched the Customs-Trade Partnership Against Terrorism (C-TPAT) which was jointly developed with the international trade community to improve security of the international supply chain, from the loading docks of foreign vendors to improved personnel screening to U.S. port facilities.

Customs has been willing to make a place at the table for the international business community in the design of its automated systems to the promulgation of new rules. This partnership has served Customs and the American public well and it needs to be continued.

Mr. Chairman, I am firmly of the belief that the reorganization of the new Department of Homeland Security can be a good thing for America and your Committee can contribute significantly to its success by ensuring that the best practices and best programs that currently exist are carried forward. We do not have to sacrifice the many positive contributions by Customs and by the other agencies destined for this new Department if the reorganization is crafted carefully and thoughtfully.

I thank you again for this opportunity to appear before you.

**Testimony of James B. Clawson**

**On behalf of the  
Joint Industry Group**

**Before  
The Committee on Finance  
US Senate**

**On**

**Homeland Security and International Trade**

**July 16, 2002**

**INTRODUCTION**

Mr. Chairman and distinguished Members of the Senate Finance Committee, my name is James B. Clawson and I am the Chief Executive Officer for JBC International. I also serve as the Secretariat for the Joint Industry Group (JIG), a coalition of more than one hundred and sixty members representing Fortune 500 companies, brokers, importers, exporters, trade associations, and law firms actively involved in international trade. The Joint Industry Group enjoys a close and cooperative relationship with the U.S. Customs Service and frequently engages Customs on trade-related issues that affect the growth and strength of American imports and exports.

It is my honor to appear before this Committee to share with you the comments of the Joint Industry Group and its membership regarding Homeland Security and International Trade. More specifically, I will address how the organization of the new Homeland Security Department can be seamlessly organized to guarantee the continued efforts of Congress and the Administration to facilitate the safe and secure flow of trade.

The JIG fully supports the Bush Administration's proposal to create a Department of Homeland Security. The trade community recognizes the need to create an integrated agency that will defend our nation's borders. We continue to stress our concern that the architects of the reorganization must be careful in their approach to anticipate the future needs of the agencies involved and the people they serve. The Administration must devote attention to the commercial interests and trade facilitation efforts within the new Department and to continue adequate funding of those activities. The U.S. Customs Service should continue with their efforts to develop and implement smarter tools for facilitation, including the Automated Commercial Environment (ACE), and they should continue to engage the support of the trade community in building better business procedures that will continue to increase compliance with our Nation's trade laws.

Like this committee, the trade is concerned with how to strike a balance between Customs' inherently inseparable role in commercial and enforcement operations after being placed within this new, single "Security Department." We hope to be able to deliver some insights and realistic solutions that will assist this committee as you consider your responsibility in protecting the physical and economic welfare of our nation. We recognize that the trade will not make the ultimate decision in the final organization of the homeland security efforts. However, we call upon this committee to guarantee the continued identity and function of Customs commercial processes and the urgency to facilitate trade for the benefit of our economy.

#### **CONTINUING EFFORTS TO FACILITATE TRADE**

In recognition of the many dangers facing the nation, the U.S. Customs Service has relied upon technology to keep pace with the volume of trade and the threats posed by transnational criminal organizations. Both Congress and the Administration have shown great support for the development of the Automated Commercial Environment (ACE). This system is used by **EVERY** government agency that has a responsibility to protect our nation at its borders. Commissioner Bonner has repeatedly assured the trade that ACE will be fully implemented within an appropriate time frame. In light of the events of September 11, the trade is fully assured by members of this Committee, Congress and the Administration that ACE will be successfully completed in a reasonable time frame.

The committee must also recognize the importance the trade places on other facilitation initiatives that are currently underway at Customs and the Administration. Many members of the trade community fear that trade facilitation will be almost entirely neglected in a department devoted entirely to security and enforcement. Trade facilitation includes initiatives to simplify current trade procedures through technology or procedural reform. It takes into consideration classification, valuation, data harmonization and all other technical issues related to trade. ACE is just a piece of the puzzle. It also calls for full implementation of the Customs Modernization Act and continuing efforts for procedural reform to ease the regulatory and administrative burdens posed on Customs and the trade. These reforms should address processing imports that arrive via differing modes of transport. They must also address predictability and reliability of the entry process between ports, minimizing defensive interpretations made by border agents that stop welcomed goods at the border.

The new Department also provides an additional opportunity to review all laws that may be revoked, reworked, or reassigned to other agencies. Any organizational changes should be done to simplify Customs administrative responsibilities. We appreciate the promises made by Governor Ridge, Commissioner Bonner, and other members of the Administration regarding trade facilitation and procedural reform. These gentlemen promise that the necessary measures to expedite the legal flow of goods will be taken. Unfortunately, the trade continues to patiently wait for the fulfillment of commitments made after the passage of the Mod Act in 1993. This committee should continue to investigate mechanisms for insuring that the trade facilitation function within Customs and Treasury is preserved and receives adequate funding in the future in the new Department.

### AUTHORITY OVER TRADE FACILITATION

The JIG agrees with those who are concerned with the disappearance of the Customs Service in an agency devoted to border security and enforcement. This committee must evaluate the impact this new agency will have on international trade and the flow of goods. The U.S. Customs Service has developed several partnership initiatives to work side by side with the trade. These programs include the Customs-Trade Partnership Against Terrorism (C-TPAT), the Container Security Initiative (CSI), and the Importer Self Assessment (ISA). Commissioner Bonner has spoken on these initiatives, claiming they will enhance the ability of Customs to target risk shipments by effectively pushing the borders back. While these programs promise to effectively secure the global supply chain, some would claim they are not able to fully address international trade facilitation.

There is no doubt that our efforts to guarantee homeland security will affect our trade processes. The post-September 11 environment has caused an increased need to secure all aspects of trade, affecting land border crossings and security at our ports. It has changed the trade's responsibility for sharing information on cargo shipments and requires U.S. companies to know their trading partners. However, as the trade steps up to join Customs, Treasury and other agencies to guarantee security, they must not forget a more pressing responsibility to facilitate and strengthen our economy.

This committee has a responsibility to take the necessary steps to guarantee that Customs commercial operations and trade facilitation efforts have equal priority with border security. I believe one option to guarantee the commercial activities in the new Department is to establish an Under Secretary for Commercial Operations whose office will ensure equal priority within the Department for those functions. This would give the commercial work of Homeland Security the same stature as Customs border security and enforcement functions.

The Under Secretary would guarantee that Customs' obligation to facilitate trade would not be subsumed within an agency whose first priority is the security of our Nation's borders. To guarantee a level of visibility, this Under Secretary for Commercial Operations would report to the Deputy Secretary within the Department of Homeland Security. Carving out the jurisdiction of this new Under Secretary could simply compare the classic revenue and taxation functions of Customs with their respective budgetary functions. The responsibilities of this new Under Secretary could include any function of Customs that is within the original jurisdiction of the appellate jurisdiction of the Court of Appeals for the Federal Circuit or the Court of International Trade.

In addition, Customs must continue to be subject to Congressional oversight by those committees with the right authority. Mr. Chairman and Members of the Committee, we believe this Committee must continue to have jurisdiction and oversight of Customs' commercial operations and facilitation initiatives. Equally as important, we believe this committee should maintain jurisdiction and oversight over Customs' commercial operations and trade-related functions within the Homeland Security Department.

Make no mistake that other government agencies have a responsibility to continue to work to facilitate trade. The Office of the U.S. Trade Representative, the Commerce Department, the Food and Drug Administration, the Transportation Security Administration, and the Bureau of Alcohol, Tobacco and Firearms all have vital roles in guaranteeing the continued flow of goods across our borders. Important trade facilitation activities that are currently thriving within the Treasury Department should not be forgotten in the transition. Congress, Customs and Treasury should continue to work on projects such as the World Customs Organization's (WCO) Trade Data Harmonization initiative. Congress should also take the necessary steps to guarantee that these agencies are accountable for these additional efforts to facilitate trade and build our economy.

#### **CONTINUED SUPPORT FROM THE TRADE**

The Department of Treasury and U.S. Customs continually engage the trade in advisory roles and forums. It is vital that the branch that retains jurisdiction over Customs' commercial operations maintain a contingent of representatives to provide advice on trade facilitation measures and administrative reform. For example, the Advisory Committee on the Commercial Operations of Customs (COAC) regularly advises Treasury and Customs on the implementation of programs that directly affect their ability to do business. They also advise Customs during implementation of trade agreements and legislative mandates.

While it is vital that the trade is continually engaged as advisors to Customs, the Treasury and the future Department of Homeland Security, it is also necessary for those who construct the rules of law to evaluate the effectiveness of such industry working groups. Some industry working groups are more effective than others, just as some of these so-called "partnership initiatives" are more effective than others. However, it is more important that Congress and the trade are guaranteed a continued role in oversight as Customs is moved to the new Department of Homeland Security. Specifically, this, and other appropriate Congressional Committees should retain jurisdiction over Customs and trade-related functions. It is essential that Customs and the trade continue to work together to guarantee that public and private interests work in cooperation to facilitate global trade.

#### **FUNDING FOR COMMERCIAL OPERATIONS**

The JIG is concerned that money earmarked for Customs' commercial operations and trade facilitation activities will be diverted to fund enforcement activities. Fees imposed in the name of Customs' commercial operations should only be dedicated to the programs that they claim to support. If the Customs Service is to continue collecting fees in the name of commercial operations, they must directly fund improvements to Customs processing, specifically for ACE and other initiatives that are greatly needed to improve the trade process. Last week, the House Committee on Appropriations showed their support by earmarking an additional \$4million for Customs Automation Modernization. We ask that this committee consider demonstrating the same level of commitment by continuing appropriate authorization levels for ACE.

It is important for Members of this Committee to authorize adequate funding for Customs commercial operations as well as their trade facilitation activities. Mechanisms should also be

developed to guarantee that user fees and appropriated funds are not included in legislation where de facto justification or revenue neutrality is not used to siphon money away from commercial activities into the security and enforcement activities. This includes funds dedicated to trade facilitation measures. Customs and the new Department of Homeland Security should be held to a standard that aims to warn against the misuse of funds.

#### CONCLUSION

Mr. Chairman and Members of the Committee, the Joint Industry Group supports the President's efforts to protect our nation's welfare. The trade community views their role as standing side-by-side with U.S. Customs and border protection officials, working as partners on the front lines to facilitate the safe and secure flow of commerce. We ask the Committee to consider the importance of the dual role of Customs and their efforts to facilitate trade. Again, this will allow the Customs Service to better fulfill its dual mission of protecting America's borders from foreign threats, while facilitating the flow of trade through our air, sea, and land ports.

We thank you for your time and consideration of these issues.

## Prepared Statement of Mary Ann Comstock

Chairman Baucus, Ranking Member Grassley, and members of the Senate Finance Committee, I appreciate the opportunity to appear before you today to discuss land border issues related to Homeland Security and the facilitation of international trade. I am Mary Ann Comstock, the former President of W.Y. Moberly, Inc., which was acquired by United Parcel Service in 2001 and is now part of UPS Freight Services, Inc. UPS Freight Services is a newly formed segment of UPS that provides freight forwarding, transportation, logistics, and customs clearance services in more than 400 locations in 120 countries and territories. We are now the largest customs broker in the United States, clearing over fifteen percent of all U.S. imports.

W.Y. Moberly, Inc. (now known as UPS Freight Services) was headquartered in Sweet Grass, Montana. My family has been involved with Moberly brokerage (n/k/a UPS Freight Services) since the late 1950s. I began working at the brokerage while I was a college student, and became its President in 1990. The volume of goods moving through Sweet Grass is coming primarily from Alberta, Canada, and for the most part it travels via truck with some rail movement. The Port of Sweet Grass is the eighth largest port of entry by volume along the northern US border. Much of the volume consists of livestock and agricultural products, fuel and fertilizers, textiles, foodstuffs, plastics, oilfield equipment and telecommunications equipment.

I am pleased to provide perspectives from the northern U.S. border at today's hearing on "Homeland Security and International Trade." As you know, Canada is our largest trading partner, with total trade between the two countries valued at over \$380 billion in 2001. Over 80 percent of all Canadian exports are destined for the U.S. As such, the U.S.-Canada border must be taken into account when considering the issues of border security and international trade.

I would like to make four points today. First, let me say that UPS Freight Services supports the creation of a Department of Homeland Security. With the proper execution, we are hopeful that the creation of this new Department will streamline current and future security efforts undertaken by various government agencies into a single organization. We recognize that the events of September 11 have forever changed the way that trade moves across borders, and we are willing to be part of the solution.

Second, we believe that the facilitation of trade must remain a top priority of the U.S. government – especially in this new era of national security. To accomplish this critical goal, we believe that the U.S. Customs Service should remain the lead agency that manages the flow of trade across borders. For over two hundred years, Customs has maintained a dual mission of trade facilitation and law enforcement. There is a strong cooperative relationship between US Customs and the Trade Community, and this should continue. Allowing the efficient flow of legitimate trade across borders allows law enforcement to use its valuable resources to focus on potential problem areas.

Third, the dual mission of security and trade facilitation can only be accomplished with strong technology systems in place to manage the flow of information about the

goods that are crossing the U.S. border. The development and deployment of the Automated Commercial Environment, or ACE, are absolutely necessary to modernize the information flow. ACE is currently being developed through a joint effort by Customs and the trade community, and this process must continue, or even accelerate, regardless of how Customs emerges from the reorganization. ACE and other information systems will provide the needed information to Customs, thereby making it more efficient for Customs to conduct risk assessment on shipments coming into the United States.

Lastly, I would like to touch on some other important issues that affect the movement of trade on the northern border:

- Numerous government agencies play a significant role in the movement of goods across our borders: the U.S. Department of Agriculture, U.S. Environmental Protection Agency, U.S. Department of Transportation, Fish and Wildlife, the Federal Communications Commission, and the Food and Drug Administration are only a few. Many of these agencies have ways of collecting electronic information on importations, expediting the clearance of goods in a timely fashion. Improvements to the current process are needed, as is adequate staffing. U.S. Customs and the brokerage community on the northern U.S. border are staffed 24 hours a day, seven days a week at the major commercial ports of entry. It is imperative that agencies that wish to examine cargo crossing our borders be there when the cargo is there – 24 hours a day, seven days a week. The cargo should be inspected and a determination made regarding admissibility prior to it leaving the port of entry.
- There are many opportunities for U.S. Customs and Canada Customs to partner and harmonize their Customs clearance procedures. Existing initiatives should be expanded, and new initiatives developed.
- For the entry of goods valued over \$2000, Customs requires the IRS Employee Identification number, or Social Security number of the ultimate consignee. In practice, this is problematic in the case of our non-commercial customers, as private citizens are reluctant to reveal such personally identifiable information.
- There are many legislative proposals before Congress that would mandate new requirements for advanced manifesting for cargo. UPS Freight Services opposes any requirement that the Harmonized Tariff Schedule number to six digits be provided prior to entry. This requirement would only impede the flow of goods – without improving our nation's security. It is my belief that application of the Harmonized Tariff Schedule is "Customs Business" and should be left to licensed individuals to make that determination.

The success of our economy is dependent of the free flow of trade and UPS supports new free trade initiatives such as the US-Singapore Free Trade Agreement. As co-chair of the US-Singapore FTA Business Coalition we believe that passage of this agreement would greatly benefit trade between these two countries. UPS supports current negotiations for a strong treaty and encourages swift passage.

Additionally, UPS fully supports the passage of Trade Promotion Authority (TPA) to ensure our future position as a global leader in trade. TPA will help the United States move forward on the international trade front and reassert its leadership by opening foreign markets to American goods and services. Selling into new markets creates additional volume for UPS and as importantly, new job opportunities for UPSers throughout the world.

As a licensed Customs Broker and member of the Customs brokerage community for over 25 years, I have witnessed many changes and improvements in the flow of trade across our nation's borders. As we embark on the creation of the Department of Homeland Security, I believe that we have a tremendous opportunity to streamline the flow of legitimate trade while at the same time protecting our borders. I appreciate the opportunity to testify and I would be happy to answer any questions. Thank you.



DEPARTMENT OF THE TREASURY  
WASHINGTON, D.C. 20220

**Statement of Deputy Secretary Kenneth Dam**  
**Department of the Treasury**  
**Before the**  
**Senate Finance Committee**  
**July 16, 2002**

Chairman Baucus, Ranking Member Grassley, and Members of the Committee. Thank you for the opportunity to testify before you today on this matter of national urgency.

Last month, the President announced a comprehensive plan to create a Department of Homeland Security to respond to the new and ominous threat of terrorism. Among other things, President Bush's proposal would move, in their entirety, the U.S. Customs Service and the U.S. Secret Service from the Department of Treasury into the new Department. As Secretary O'Neill testified last week, we in the Treasury Department fully support the President's proposal. Though it has been both an honor and a pleasure to serve alongside the dedicated Customs and Secret Service employees, we believe that consolidation within the new Department of Homeland Security will substantially enhance our ability to safeguard the American people.

The need for this new Department is clear. Today, responsibility for homeland security is scattered among many different government agencies. Lines of communication are not always open; lines of authority are not always sharply defined; and redundancies and inefficiencies are built in. The new Department, however, will have primary responsibility for all homeland security matters. It will consolidate within one Department the key entities for securing and policing our borders, ports, airports, and territorial waters. Such a Department must include the Customs Service -- an agency whose mission is entirely border-related -- and an agency who plays a front-line role in guarding our borders and confiscating illegal contraband. By consolidating these entities within the new Department, we can ensure that we have a unified, coherent plan for protecting our citizens and our borders against the new breed of threats.

But this consolidation must also be a matter of substance and not just form. I want to echo Secretary O'Neill's statements before the House Select Committee last week: to make this enterprise worthwhile, it is imperative that you grant the new Secretary substantial flexibility. We need a Department that is both accountable and creative, and this requires a new structure allowing flexibility. This structure needs to not only address the current threat, but must also be capable of adjusting as necessary when new and as-yet unforeseen threats appear. Simply rearranging current functions among departments will not capture the essential value-added that is at the heart of the President's proposal. We need flexibility to respond quickly to changing threats.

The necessity for the new Secretary to have that kind of flexibility becomes obvious when we consider numerous changes that have been implemented within the Customs Service since September 11. Customs has made averting terrorism its top priority, while still moving goods and people efficiently across the border. With their existing statutory flexibility, Treasury and Customs have been able to rearrange resources and engage in fresh thinking to address these twin objectives.

This was especially true along the Northern Border. Because we had the flexibility to reassign resources, Customs was able to immediately make nonpermanent redeployments of personnel. This ability to move manpower and resources quickly, without restrictive requirements, has been an essential element of our response effort to date, and will continue to be so. It is crucial that the Secretary of Homeland Security have similar freedom to manage throughout the new Department.

The flexibility also allowed us to develop new programs in response to the new threats. On April 16<sup>th</sup> of this year, Governor Ridge, Secretary O'Neill, and Commissioner Bonner announced the Customs-Trade Partnership Against Terrorism (C-TPAT) in Detroit. C-TPAT is a unique partnership with U.S. importers, carriers, brokers, and others to improve security along the entire supply chain while expediting the flow of legitimate commerce into the United States. Over 300 companies currently participate in the program, including some of the nation's largest.

We are working to increase that number and have opened participation to air, sea, and rail carriers. It makes a real difference. For example, at the Ambassador Bridge in Detroit, it can take up to an average of 54 minutes for a non-participating importer to be cleared across the bridge. Because of the existing flexibility to redesign processes, now, for a C-TPAT participant, the average time is 17 seconds. This benefits the importers by allowing them to have their goods processed more quickly, and benefits government by getting greater security and allowing Customs to focus on higher-risk shipments.

With the Container Security Initiative (CSI), Customs is working with foreign seaports to prescreen sea containers, targeting potentially risky containers before they are shipped to our ports. Governments in the Netherlands, Belgium, and France have formally agreed to participate in CSI. Singapore, which operates one of the largest ports in Asia, has indicated that it will also participate. In four of the top 20 mega-ports -- Rotterdam, Antwerp, LeHavre, and Singapore -- U.S. Customs and the host government soon will be prescreening all cargo containers bound for the United States. I anticipate agreements with additional governments in the near future.

In both cases, Customs has leveraged its broad duties and flexibility to make immediate changes. These programs underscore how Customs can make trade-offs and reach agreements that increase security at the borders while facilitating the flow of trade into and out of the United States.

These are important interim steps, but they are not enough for the long term. The new Secretary, with the flexibility envisioned in the President's plan, needs to be able to create even larger and more dynamic synergies to respond to the changing threats. This need is not be limited to the Customs Service, but should extend to the entire approach to border security -- the President's goal of "one face at the border" -- one-stop shopping for shipments and people seeking to enter the United States.

This illustrates the essential point behind creating a new cabinet Department. There is no other option. We cannot respond to the terrorist threats simply by rearranging the deck chairs. The dramatic reality requires a dramatic transformation in our homeland defense: one based on flexibility, consolidation, and integration of functions.

Without question, major change is never easy. Some have suggested that critical functions, particularly trade, ought to be walled off in the new Department and kept separate from other functions. The worry is that, in a department dedicated to homeland security, trade and other vital functions may get short shrift. And that's a healthy reminder for all of us: even as we secure the home front, we must also guarantee the American people that the myriad current tasks performed by the agencies moving to Homeland Security will continue.

I understand the instinct to wall off some of these vital non-security functions, or to keep them out of the new Department altogether--but such approaches ultimately miss the mark. Rather, such an approach would unduly limit the latitude and accountability of the new Secretary's ability to manage the new Department. It would also diminish the effectiveness of the non-security functions, trade or otherwise, that originally give rise to the concern, by locking current inefficiencies into place. Clearly we must find some middle ground.

Customs' widely varied trade and enforcement functions remain broad, yet wholly intertwined. Customs inspectors, import specialists, and special agents work closely together to enforce trade and anti-smuggling laws. The same is true in border-related enforcement matters. Collaboration between inspectors on the border and special agents in the field operates more smoothly as a result of Customs' dual missions. In intellectual property piracy, for instance, what begins as an infringement identification often becomes an investigative effort.

Given this vast array of functional interconnectedness, we face the substantial danger of undermining current synergies and successes if some Customs functions are split off from the others. Instead, to protect these working relationships, the President proposed that the entire Customs Service be transferred into the new Department of Homeland Security. Such a transfer will permit these close working relationships to continue and allow Customs to perform the tasks

it has carried out so ably over the years. It will protect our borders from terrorists, administer and enforce our Customs laws, and assist the flow of legitimate commerce. No mission will be left behind. The President's plan strikes the appropriate balance between enforcement and trade facilitation, both of which are critical to our nation's economy and security.

We know that you in the Congress face an exceedingly difficult task under a tight timeframe. We want to work closely with you as you develop the legislation. During the past few weeks, we have worked with several House Committees. The President's proposal will provide the Secretary of Homeland Security enough flexibility to leverage the strengths of the many component parts, provide accountability through clear and workable lines of authority, and create the most efficient possible structure. We will continue to offer our guidance, to share our experience, and to provide any assistance we can.

Thank you again, Mr. Chairman and the members of the Committee, for this opportunity to testify. I am happy to answer any questions you may have.



THE DEPUTY SECRETARY OF THE TREASURY  
WASHINGTON

July 31, 2002

The Honorable Max Baucus  
Chairman  
Senate Finance Committee  
219 Dirksen Senate Office Building  
Washington, DC 20510-6200

Dear Chairman Baucus:

Pursuant to your letter of July 23, 2002, please find attached my responses to questions submitted by Ranking Member Grassley, Senator Graham and Senator Bingaman relating to my July 16<sup>th</sup> testimony before the Senate Finance Committee regarding "Homeland Security and International Trade."

I look forward to continuing to work with you and the Committee regarding the proposed formation of a Department of Homeland Security. Please feel free to contact me if I may provide any additional information regarding this important matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Ken Dam".

Kenneth W. Dam

Enclosure

Cc: The Honorable Charles Grassley  
Ranking Member

Senate Finance Committee Hearing on  
Homeland Security and International Trade  
July 16, 2002

**Questions for Deputy Secretary Dam from Sen. Graham:**

1. In your testimony, you mentioned new Customs programs implemented since September 11 that both increase security and facilitate trade. First, let me applaud both the C-TPAT and CSI programs. These are precisely the kinds of programs that are needed to maximize our ability to provide a secure and efficient process for trade. My concern is that Customs continue to be able to make quick, creative programmatic changes such as C-TPAT and CSI. I would be interested to know how the process that established these programs at Treasury would compare to the process that would transpire at the proposed new Department. For example: Who at Treasury had the final authority to approve these new programs? How many internal reviews and approvals were required, and what interagency process was required? If this proposal were being considered at the Department of Homeland Security, based on the organizational chart as it stands now, which officials would have to approve the programs. Would you estimate that it would take more time, less time, or about the same to set a new program like C-TPAT or CSI up and running at the Department of Homeland Security as it did at Customs?

**A:** The Customs-Trade Partnership Against Terrorism (C-TPAT) and the Container Security Initiative (CSI) are central to the Customs Service's effort both to increase security against the terrorist threat, and to facilitate the movement of legitimate commerce across our borders. Both programs were quickly developed and launched by Commissioner Bonner, with the full support of Secretary O'Neill, Governor Ridge and members of the interagency community.

It is the inextricable interrelationship between border security and trade facilitation that allowed Customs to launch CSI and C-TPAT within 180 days of September 11. Transferring the entire Customs Service and placing all legal authority over border management and trade facilitation in the Department of Homeland Security will only enhance and streamline the Administration's ability to launch more such innovative initiatives.

While the staffing and procedures of the new Department have yet to be established, a main goal of the President's proposal is to increase operational efficiencies. In addition, the fundamental elements of both initiatives are prominent features of the National Strategy for Homeland Security. Therefore, these and similar programs will receive priority attention and expedited implementation in the new Department.

2. Some in the business community are concerned that moving Customs to the Department of Homeland Security will tip the delicate balance between trade facilitation and security functions. With that concern in mind, we would like to know the following:
- a) How does the Administration intend to ensure that the new Department of Homeland Security works to facilitate trade and U.S. economic security while also strengthening public security functions?

- A: The President's proposal to move the Customs Service intact recognizes the inextricable linkage between border security and trade facilitation. To ensure the new Department facilitates trade, while improving border security, section 401 of the proposed legislation includes within the jurisdiction of the Under Secretary for Border and Transportation Security a number of "primary responsibilities," including: "(1) preventing the entry of terrorists and the instruments of terrorism into the United States; (2) securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States. ... (4) administering the customs laws of the United States; and (5) in carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce."

Under the bill, Customs would continue to fulfill all of its existing functions. The new Department would continue to collect import duties and remit these funds to the Department of the Treasury. There would be no loss of revenue as a result of this reorganization.

Customs also strongly believes that any effort to improve our border security must include the direct involvement and input of the trade community. The success of programs like Customs Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT) demonstrates how Customs effectively and efficiently balances its dual missions of security enforcement and trade facilitation.

- b) How does the Administration plan to consult with business and obtain its input on new security procedures that affect international trade?

- A: Governor Ridge and Customs Commissioner Bonner have both publicly committed to working with the trade community when Customs is in the new Department of Homeland Security. In addition, the Customs Service has a number of well established outreach programs for consultation with the trade on security procedures that affect international trade. Some formal programs include the Trade Support Network (involving automation and Customs modernization issues), the Commercial Operations Advisory Committee (currently a Treasury Committee), the Business Anti-Smuggling and Security Coalition (BASSC), a business-led, Customs supported alliance under which corporate participants set self-imposed business standards to deter smuggling and security threats, and also C-TPAT which by its nature involves cooperation and consultation with the trade.

Additionally, Customs has a long history of working with and through trade associations during development and implementation of major program changes to maximize positive benefits and minimize adverse impacts.

- c) How will the new Department of Homeland Security ensure that the service functions of the customs and immigration services for businesses and travelers will be protected in a new consolidated operation?

**A:** As noted above, Section 401 of the Administration's bill proposes that an Under Secretary for Border and Transportation Security oversee these agencies and services. The Under Secretary's responsibilities would include: (1) preventing the entry of terrorists and the instruments of terrorism into the United States, (2) securing the borders, territorial waters, ports, terminals, waterways, and air, land and sea transportation systems of the United States, (3) administering the immigration and naturalization laws of the United States, including the establishment of rules governing the granting of visas and other forms of permission to enter the United States to individuals who are not citizens or lawful permanent residents, 4) administering the customs laws of the United States, and (5) ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce in carrying out these responsibilities.

The services provided by Customs and INS to businesses and travelers are inextricably linked to these agencies' security functions. In addition, Governor Ridge has publicly committed to working with the private sector to help ensure the best provision of service by the new Department while it improves security.

3. How is the Administration working to ensure that new information requirements on international shipments and travelers avoid duplication by different U.S. agencies and costly modification of existing information systems?

**A:** With respect to new information requirements on international shipments, the U.S. Government agencies involved with the trade process are re-examining their international trade data needs to create a standard data set that will support the needs of all Federal agencies involved with trade. This work is being facilitated by Customs and the International Trade Data System (ITDS) Board of Directors. The ITDS Board of Directors is an inter-agency board that has been created to resolve cross-government coordination and operational issues with the development of an integrated U.S. trade-processing environment.

OMB and the Office of Homeland Security have already convened the Chief Information Officers of the agencies which would be transferred to the new department to identify what an Enterprise Architecture should be. The goal of this activity is to maximize return on investment, and to minimize burden on the reporting entities.

4. Will the new security strategy integrate infrastructure requirements (e.g., improvements in ports; border bridges and tunnels, rail inspection yards and vehicle inspection areas) with new inspection procedures with a goal of providing the most efficient and security requirements for each mode of entry?

**A:** Yes. As reflected in the National Strategy for Homeland Security, border and transportation security must be viewed as having fully integrated requirements because our domestic transportation systems are inextricably linked to the global transport infrastructure. The Strategy, therefore, seeks to promote the efficient and reliable flow of people, goods and services across borders, while preventing terrorists from using transportation systems to deliver homeland security which would fit well within our physical and economic infrastructure and would expedite the flow of commerce while increasing security.

implements of destruction. To this end, the Strategy identifies concrete initiatives that will work to improve infrastructure and inspection at borders. One of the most significant initiatives is the creation of “smart borders” that move beyond today’s traditional, linear borders. Layered management systems will employ greater technology, visibility, and coordinated intelligence efforts. Smart Borders will increase the transparency of borders, while seeking to ensure the swift flow of legitimate cargo and travelers.

Another initiative set forth in the Strategy that seeks to integrate infrastructure and procedure is increasing the security of international shipping containers. The proposal includes an initiative to establish security criteria to identify high-risk containers, the technology to pre-screen containers before they arrive in American ports, and the personnel to carry out the plan in foreign ports. The Customs Service currently is working in this area through its Container Security Initiative (CSI).

5. What kind of mandate will the Department have for applying new technology to facilitating trade and enhanced security? Some analysts believe that applying advanced technology (e.g., electronic tags on cargo containers or transponder tracking technology) could both expedite border clearance and improve security.

**A:** The Customs Service intends to continue applying new technology in its dual role of facilitatory trade and enhancing border security when Customs is incorporated in the new Department of Homeland Security. Customs is implementing the necessary technology to carry out its dual role. An example is the Automated Commercial Environment (ACE) that facilitates these objectives. Customs is committed to the rapid development of ACE, and will continue to work with the interagency community to develop the International Trade Data System (ITDS), which will create a harmonized system for collecting, using, and disseminating international trade and transportation information. ACE and ITDS will revolutionize the way that the Customs Service and other Federal agencies collect, utilize, access and store trade and other data. Not only will ACE allow the Customs Service to streamline the importation process and offer new benefits to the trade (such as account based processing), but it could also serve as the platform for the next generation of ATS and other targeting efforts. This database system will likely be a cornerstone of the Department of Homeland Security’s information infrastructure.

USCS co-chairs with the Department of Transportation a current effort to identify and prototype, with members of industry, innovative technology that enhances supply chain security and makes good business sense. This effort looks at e-seals, tags, and tracking capabilities that will lead to smarter and more secure marine containers.

The new Department of Homeland Security also will have a science and technology function which would oversee both evolutionary improvements in current capabilities as well as the development of revolutionary new capabilities. It is anticipated that many new technologies will be developed which will facilitate trade while simultaneously enhancing security. For example, one of the new Department’s top priorities in research and development would be preventing the importation of nuclear weapons and material. New technologies would provide better detection of the transport of illicit nuclear material on the open seas, at U.S. ports of entry, and throughout the national transportation system. The new Department would develop technologies for

Senate Finance Committee Hearing on  
Homeland Security and International Trade  
July 16, 2002

Questions for the Record  
Senator Jeff Bingaman

1. Under the Administration's plan, Customs would be combined with INS, the Coast Guard, and parts of APHIS to become a single Border and Transportation Security division of the Department of Homeland Security. The rationale behind this consolidation, as I understand it, is that the Administration hopes to create a seamless integration of the agencies with responsibility for securing the border. I agree, in principle, that it makes sense to have one person and one agency ultimately accountable for border security, but I still have concerns about the Administration's proposal.
  - (A) What is the Administration's vision for the border? In other words, what would a border crossing look like under the Administration Homeland Security proposal? How would it differ from what exists at this time?
    - A: The President's legislative proposal would unify authority over major Federal security operations related to our borders, territorial waters, and transportation systems. The new Department of Homeland Security would assume responsibility for operational assets of the U.S. Customs Service, Coast Guard, Immigration and Naturalization Service and Border Patrol, the USDA's Animal and Plant Health Inspection Service's Agricultural Quarantine and Inspection Service and the Transportation Security Administration -- allowing a single government entity to truly manage the border functions as a first priority, to protect and benefit the people of the U.S.A. This is a significant change from today, when most agencies manage their resources to focus on the major priorities of their agency. This is intended to improve coordination and communication among border agencies, enhance intelligence sharing, and increase operational efficiencies.
  - (B) Placing Customs and INS together on a flow chart might appear to make sense, but what would be the practical impact of this reorganization? Does the Administration envision Customs and INS becoming a single unit in the long run?
    - A: The President's bill proposes substantial integration of many of these agencies' functions, particularly when they relate to headquarters' bureaucracies and duplicative inspection activities at our ports of entry. The President wants to create the most efficient structure possible to help ensure that our ports of entry and other critical assets are protected and combining the key components will help do so. The National Strategy for Homeland Security also proposes the completion of INS reform that would separate the agency's enforcement and service functions within the new Department, to fully enforce the laws that regulate immigration.

(C) In such a scenario, would Customs and INS personnel become "Homeland Security personnel" and, therefore, interchangeable at the ports of entry? How would Border Patrol personnel fit into such a scheme?

**A:** As outlined in the President's proposal, the principal border and transportation security agencies will be transferred to the new Department of Homeland Security. The Department will, therefore, house INS/Border Patrol, Customs Service, Coast Guard, Animal and Plant Health Inspection Service's Agricultural Quarantine and Inspection Service, and the Transportation Security Administration. The Department will coordinate their activities to ensure greater integrated effort, better information sharing, and less duplication of work. Thus, a single entity will manage who and what enters the country to prevent the entry of terrorists or their materials, while seeking to facilitate the swift, efficient, and reliable flow of people, goods, and services.

The principal advantage of transferring these agencies to the new Department is to consolidate responsibility for the inter-related tasks of border and transportation security within a single department. The Under Secretary for Border and Transportation Security will be able to address problems that have plagued Federal border control efforts to date – lack of coordination and cooperation among the numerous agencies involved in border management; overlap and duplication of efforts; fragmented authority and responsibility; and interagency rivalry. Certainly, the new Secretary will likely consider how best to organize the new Department in order to maximize efficiencies and synergies and minimize redundancies and overlapping missions.

2. Please define the concept of "distinct entity" in functional terms as applied to agencies placed under the jurisdiction of the Department of Homeland Security. How would policy be created and implemented under such an arrangement? Where does the buck stop? How does funding occur?

**A:** Those agencies which would be transferred as "distinct entities" to the new Department of Homeland Security will retain their independent identities and agency titles. Under the President's proposal, the Coast Guard and Secret Service would be transferred as distinct entities to the new Department. The other units would be integrated into the new organization, ensuring that there is one clear organization built on divisions with clear mission statements.

The Secret Service has a specialized protective mission to protect our national leadership and help ensure continuity in government in the event of attack. The Secret Service would remain intact, its primary mission would remain unchanged, and it would not become a component of other units within the new Department of Homeland Security.

The Coast Guard is the sole maritime border control agency, which is responsible for interdicting contraband at sea, securing our seaports, and preventing foreign threats from reaching our shores. The Coast Guard also has a close relationship with the Department of Defense. Current law

allows the Coast Guard to be shifted to the Department of Defense in a time of war at the direction of the President. These legal provisions would remain when the Coast Guard is transferred to the new Department.

Under the President's legislative proposal, the Secret Service would report directly to the Secretary of Homeland Security, and the Coast Guard, because of its integral role in border control, would report to the Under Secretary for Border and Transportation Security. The Secretary for Homeland Security would set policy and have responsibility for the entire Department and its components.

The budgets for the new Department and its components will be included in the President's annual budget requests and will provide Congress the opportunity to exercise its full oversight through the budget and appropriations process. The more efficient homeland security structure would provide for substantial efficiency improvements, including reduced overhead costs for duplicative functions and a unified and more effective procurement procedures.

3. The term "flexibility" has been used several times by President Bush to describe his need to approach the personnel issue in the Homeland Security reorganization. Please clarify exactly what the Administration means by this term. Please also clarify explicitly if the Administration expects redundancy and lay-offs to occur as a result of the reorganization.

A: The changing nature of the threats facing America requires a new government structure to protect against invisible enemies that can strike with a wide variety of weapons. The Department needs a management structure with enough flexibility to help meet the unknown threats of the future. The flexibility included in the President's proposal would ensure the Secretary of Homeland Security has great latitude to redeploy financial resources; the ability to recruit, retain, and develop a motivated, high-performing and accountable workforce; the flexible procurement policies to encourage innovation and rapid development and operation of critical technologies vital to securing the homeland; and the ability to manage property in a way that maximizes the resources available to the Department and the broad reorganization authority in order to enhance operational effectiveness now and in the future.

An excellent description of the term flexibility was given in testimony by OPM Director Kay Coles James, before the House Select Committee on Homeland Security. She listed the benefits that flexibility would provide to support a "Culture of Urgency" at the new Department: "The ability to bring in new talent quickly to fill vacancies in critical positions; the ability to shift gears -- and assignments-- rapidly as new threats or new enemies emerge or when science and technology open up new opportunities to protect the American homeland; and the ability to reassign those who cannot adapt to the Culture of Urgency, for whom Homeland Security is not the right environment."

Given the critical need for well-trained, talented personnel in the new Department and the changing demographics of the workforce, we expect that layoffs, if any, would be limited. Nevertheless, a key objective of the consolidation is a strengthening of the effectiveness of the Department in part through the redeployment of personnel to the front lines -- on the borders and at laboratory benches. The challenge will be to match the right people to the right job.

4. There is clearly a concern among the Finance Committee that the Homeland Security reorganization will combine contradictory functions as they apply to trade, the result being that a system designed to limit the flow of goods across borders will undercut a system designed to enhance the flow of good across borders. Please explain how the reorganization will avoid that problem.

**A:** Treasury views the President's proposal as a bold and deliberate strategy that advances the objective of increasing homeland security by consolidating in one department all agencies and bureaus that perform border-related functions. The President's plan will minimize disruption at the border and preserve a continuity of functions by moving the Customs Service intact into the new Department. Currently, the trade believes that Customs has found the balance between security and trade.

With the Container Security Initiative (CSI), Customs is entering into partnerships with foreign seaports to conduct pre-screening and more effective risk targeting of sea containers, before they are shipped to our ports. Under "Project Shield America," Customs agents monitor exports of strategic weapons and materials from the U.S. to prevent international terrorist groups from obtaining sensitive U.S. technology, weapons, and equipment that could be used in a terrorist attack on our nation. And, on April 16<sup>th</sup> of this year, Secretary O'Neil, Governor Ridge and Commissioner Bonner launched the Customs-Trade Partnership Against Terrorism (C-TPAT) in Detroit. C-TPAT is a unique partnership with U.S. importers, carriers, brokers, and others to improve security along the entire supply chain, while expediting the flow of legitimate commerce into the United States.

The success of programs like CSI and C-TPAT demonstrates how Customs seeks to balance its important dual missions of security enforcement and trade facilitation, dual missions that are inextricably linked. With C-TPAT, for example, Customs has been successful in recruiting companies to join the program and make additional investments in supply chain security solely because Customs is able to offer those companies the benefit of expedited clearance at the borders. The same is largely true for CSI, which offers expedited processing at U.S. ports for pre-screened cargo from its partner ports. These programs underscore how Customs is capable of effectively increasing security at the borders while facilitating the critical flow of trade into and out of the United States. These programs also reflect how Customs has effectively established partnerships with private industry to work together to protect our borders. Customs work in this regard will continue at the new Department of Homeland Security.

5. With specific reference to Customs, what does the Administration see as the metrics by which success will be measured at the Department of Homeland Security?

**A.** It is anticipated that the new Department of Homeland Security will move quickly to establish formal requirements for strategic planning and performance measurements. At this stage, the specific components of the new Department will be transferred with their existing budgets and metrics. The current Customs measures address outcome, output, output/workload, efficiency, and program effectiveness. The current set of Customs metrics will be evaluated by the new Department of Homeland Security, and Customs will continue to improve its performance measures and the data integrity and confidence of those measures when it is in the new Department.

Finance Committee Homeland Security Hearing Questions for the Record

*Questions for Deputy Secretary Dam from Sen. Grassley*

**Overall Reorganization**

In recent comments, Customs officials have emphasized the agency's dual role of guarding the nation's borders and facilitating trade. Customs believes that they have excelled in "maintaining a balance between border security and trade facilitation."

For example, Customs officials point to the Commissioner's statements making border security the Agency's top priority. At the same time, officials point to Customs' extraordinary efforts to act trade moving again on our northern borders in the wake of the events of 9/11.

**Questions:**

(A) Within the framework of the new Department of Homeland Security, will Customs continue to have a dual role, or will trade facilitation be moved to the background in favor of a stronger border security role?

**A:** The trade/revenue function of the Customs Service is inextricably intertwined with its border security mission. The same Customs Service personnel who ensure border security also carry out trade functions and revenue collection. The trade and revenue collection mission provides the Customs Service with information vital to border security. Finally, the Customs Service is able to develop programs that materially advance homeland security solely because it is responsible for trade facilitation and revenue collection.

Transferring Customs' trade and revenue collection functions into the Department of Homeland Security will achieve the larger objectives of President's proposal by (1) ensuring the proper balance between security and trade facilitation, (2) limiting the size of the Federal government, (3) ensuring accountability and coordinated policy making, and (4) promoting the collection and analysis of all information related to homeland security.

(B) What do you see as the biggest single challenge in balancing the two objectives of border security and trade facilitation?

**A:** Customs is currently balancing these objectives and will continue to do so. Many trade enforcement functions are carried out by the same Customs personnel who ensure border security. Customs uses the information it receives from trade compliance examinations and manifests also to assess security risks for shipments. Increasing the amount of accurate information electronically available as far in advance from when cargo and people arrive in the U.S.A. has the best return in proactive security, and is the most challenging task because of business practices. It is the trade and revenue function of the Customs Service that makes it most suitable to address this challenge.

In addition, Customs relies on the expertise of its trade enforcement personnel to recognize anomalies in their review and processing of commercial transactions information associated with the admissibility and entry of imported goods that assist law enforcement in developing targeting

criteria as well as targeting suspect shipments and initiating investigations. The success of Customs efforts with the private sector can be seen in its Customs-Trade Partnership Against Terrorism (C-TPAT) program.

**Questions:**

(A) Does Customs have a plan to incorporate this program into the framework of the new Department, thus demonstrating its commitment to making trade facilitation and private sector cooperation as much of a priority as border security?

**A:** Yes, Customs has successfully launched the Customs-Trade Partnership Against Terrorism (C-TPAT) program, a joint government-business initiative to build cooperative relationships that strengthen the security of the overall supply chain and the borders. Customs plans not only to continue C-TPAT, but also to expand this important public-private initiative when Customs is in the new Department of Homeland Security.

(B) Would Customs continue to have a role in sponsoring private sector partnership programs such as this one in a new Homeland Security Department?

**A:** Yes, Customs strongly believes that any effort to improve our border security must include the direct involvement and input of the trade community. The success of programs like Customs Container Security Initiative (CSI) and the Customs-Trade Partnership Against Terrorism (C-TPAT) demonstrates how Customs effectively and efficiently balances its dual missions of security enforcement and trade facilitation.

**Data Systems and Commercial Information**

Information about the contents of a container, as well as the importer and exporter, is key to distinguishing low-risk cargo from high-risk cargo; Currently, the private sector submits some commercial information to Customs for trade compliance and tariff purposes.

Customs uses this commercial information, as well as information from other government sources, to identify and target high-risk cargo for further inspection.

In an attempt to transform its internal import processing system and the method by which it interacts with the trade community and other federal agencies that use trade data, Customs has been acquiring the new Automated Commercial Environment (ACE) System and the International Trade Data System (ITDS).

**Questions:**

(A) What plans does Customs have to ensure that its efforts to implement the ACE and ITDS remain a priority for the new Department?

For example, does Customs have specific plans to adjust its time frames for implementation, or the scope or quality of the data in the system given its potential move to the new Department?

**A:** Customs is committed to the rapid development of ACE, and will continue to work with the interagency community to develop the International Trade Data System (ITDS), which will

create a harmonized system for collecting, using, and disseminating international trade and transportation information. ACE and ITDS will revolutionize the way that the Customs Service and other Federal agencies collect, utilize, access and store trade and other data. Not only will ACE allow the Customs Service to streamline the importation process and offer new benefits to the trade (such as account based processing), but it will also serve as the platform for the next generation of Automated Targeting Systems (ATS) and other targeting efforts. This database system has the potential to be a cornerstone of the Department of Homeland Security's information infrastructure.

(B) As information is shared with other agencies in a new Department of Homeland Security-for example, through the ACE-what plans does Customs have to assure the private sector that appropriate measures are being taken to secure the privacy of the information they submit?

**A:** The ACE architecture is being designed to support secure transactions in accordance with strict government standards. The architecture is being designed as a multi-tiered environment with each tier providing additional security. Firewalls and intrusion detection systems will provide security against unauthorized intrusions and a rigorous security architecture with several layers of defense will protect trade sensitive data from internal compromise. Importers and other trade partners will be able to view their own activity, but not the activity of other companies.

The security issues of protecting sensitive information among participating government agencies require interagency coordination and cooperation. An important step to ensure trade data security is to develop interagency agreements that address the necessary security issues. Customs is working with the ITDS Board of Directors and other government agencies to coordinate and resolve potential security issues.

(C) Will Customs retain the role of compiling and keeping commercial information in its systems and control access by other agencies?

**A:** At this time, Customs does not anticipate any changes in its mission or operations with its move to the new Department. Customs will continue to process goods and people crossing U.S. borders as mandated by law. This includes receiving and protecting commercial data received from the trade community and providing it to other agencies as required by U.S. laws and regulations. Other agencies will maintain the access to data they are entitled based on current laws. For example, Customs will continue to provide the Census Bureau with consolidated data needed to compile trade statistics.

#### **Questions on the Relationship of Narcotics to Homeland Security**

(A) Prior to discussions of a Homeland Security Agency and the events of 9-11, many of the agencies that have been proposed to be moved under the jurisdiction of HSA had narcotics enforcement as one of their primary - if not the primary-mission. With a shift in priorities since September 11, the focus on narcotics has shifted as well, but the threat posed by narcotics traffickers has not disappeared. In particular, I am thinking of the past focus of Customs and the Coast Guard. How will the historical missions of these agencies to detect and interdict illicit narcotics fit into the priorities of the new HSA?

**A:** One of our government's highest priorities is reducing the supply of dangerous drugs entering the United States. It is also one of our most difficult challenges. We are confronted by well-financed criminal organizations that adapt quickly to every advance we make in the detection of illegal drugs. Moreover, interdiction is only one piece of a comprehensive drug control strategy that includes eradication of drug production abroad, sanctions against drug kingpins, investigation and disruption of trafficking activities within the United States, treatment of drug users, and combating money launderers.

Historically, the Customs Service has played a leadership role in our nation's anti-drug efforts through its drug services at the borders and investigations of drug-based money laundering organizations. The Coast Guard has also played a leadership role in this area. This work will continue in the new Department. If anything, the narcotics interdiction efforts will be strengthened by the new ties between the various border agencies, and the new synergies that will be developed.

**(B)** Drugs kill an estimated 19,000 Americans each year. They are smuggled into our country by organizations intent on breaking our laws, with little concern about the harm their product does to their consumers. Do you believe that narcotics in and of themselves are a threat to Homeland Security? Should preventing the entry of illicit narcotics into the United States be part of the primary mission of the Homeland Security Agency or should narcotics trafficking only be a priority when it can be linked to the financing of terrorists and terrorist acts?

**A:** The war on drugs, like the war on terrorism, is a battle being fought daily on a multitude of fronts. We can only be successful against our enemies if we pool together all of our collective resources to fight against a common enemy. This was a top priority of the Administration before the creation of the new Department, and it will continue to be so.

For this reason, the President's *National Drug Control Strategy* sets forth a comprehensive U.S. effort to combat drug smuggling and consumption. This strategy fits into the framework established by the *National Security Strategy of the United States* and *National Strategy for Homeland Security*.

Domestically, disrupting drug markets has always involved the collaborative efforts of Federal, state and local law enforcement. Under the Organized Crime Drug Enforcement Task Force (OCDETF) program, law enforcement strategically identifies the most sophisticated trafficking organizations, eliminates their leadership, takes down their transportation and distribution operation, and dismantles their financial infrastructure. The U.S. Customs Service, Internal Revenue Service Criminal Investigations, and the Bureau of Alcohol, Tobacco and Firearms play an active and collaborative role within the Department of Treasury, while working closely with the Department of Justice and other Federal, state and local organizations to disrupt and dismantle high level drug traffickers. We will continue this partnership even after the creation of the new Department.

**(C)** Do you believe the trafficking and use of illicit drugs is a significant threat to the national security of the United States?

A: Certainly, the trafficking and use of illicit drugs are areas of substantial Federal concern. In his transmittal to Congress of the 2002 National Drug Control Strategy, President Bush stated that drug use threatens everything that is good about our country and it finances the work of terrorists who use drug profits to fund their murderous work. This intersection between narcotics trafficking and terrorism certainly fuels a threat to national security.

(D) Is your agency aware of any list which prioritizes the threats to the security of the United States? What threats are on this list? Is illegal drugs on this list? Where does it rank in comparison to other threats?

A: There are lists of vulnerable targets and threat assessments, which are continually updated. Due to the sensitive nature of this information, I am not able to discuss it further in open session. However, we would be pleased to arrange a briefing for you in closed session.

(E) Of the challenges that have faced the US in the past, arguably the closest is drug trafficking. Both terrorism and drug trafficking rely on international organizational with an interest in either smuggling into or creating within the United States a deadly product. Each needs financing, documentation, methods of transport, communications, and resources that can be used to avoid U.S. law enforcement. How will narcotics be addressed -- in comparison to terrorism -- as a threat to homeland security?

A: The President has developed national strategies to combat terrorism and narcotics trafficking. The President's *National Drug Control Strategy* details the Administration's plan to combat drug trafficking. As explained in the *Strategy*, the U.S. will support its international partners in their efforts to attack the drug trade within their borders, and will work through international financial and banking institutions to combat drugs and terrorism-related money-laundering activities. The U.S. will also continue to work to strengthen democratic institutions and the rule of law in allied nations under attack from the illegal drug trade. The President's *National Strategy for Homeland Security* sets forth the Administration's strategy for securing the homeland and addressing terrorist threats.

(F) Secretary Rumsfeld has been leading the effort to transform the Department of Defense, shifting from a "threat-based" strategy which focused on the known abilities of our expected enemies to a "capabilities-based" strategy, focusing less on WHO might threaten us, or where, and more on HOW we might be threatened or attacked. Do you believe a similar approach should be taken by the Department of Homeland Security? Do you believe the HSA will be primarily a preventive organization- focusing on keeping attacks from happening, or reactive organization, responding to attacks when they occur?

A: The new Department of Homeland Security would have both a proactive and preventive role, as well as a response and recovery role. Responsibilities for homeland security are currently shared among more than 100 government organizations. The President's proposal reflects his desire to establish a single lead Department with a clear and concise mission to protect America. The new Department's mission would be to counter the threats America faces today and to work overtime predicting and preventing future threats to our nation.

The President's proposal also recognizes that emergency response and recovery is a key building block of homeland security. Therefore, the Federal Emergency Management Agency (FEMA) would be incorporated as a component in the new Department which is critical to the Department's success. This arrangement would ensure that FEMA has access to the latest threat information so it can swiftly move its resources to help preemptively prepare and respond should another terrorist attack take place.

To support this dual role, the Secretary of Homeland Security will have access to all reports, assessments, and analytical information relating to terrorist threats, from every department or agency in Federal Government. The Secretary will also have access to all information in the possession of the Federal Government about our infrastructure and vulnerabilities to terrorism. These tools will help identify and assess threats to the homeland, map those threats against our current vulnerabilities, issue timely warnings, and reduce our vulnerabilities to terrorist attack. The new Department would have contingency plans ready to respond if another attack occurred.

(G) I am sure you have seen the ads that are part of the National Anti-Drug Media Campaign which claim a direct link between drug use and terrorist financing. Knowing that almost half of the international terrorist organizations identified by the State Department are involved with the trafficking of illicit drugs, how will the Department of Homeland Security target illicit drug use, trafficking, and financing? Will all drug trafficking organizations be a priority target, or will they only become a priority of HSA if a link to terrorist threats or terrorist organizations can be identified?

**A:** Narcotics and the illicit drug trade fall within the twin concepts of national security and homeland security. The *National Drug Control Strategy* lays out a comprehensive U.S. effort to combat drug smuggling and consumption. This strategy fits into the framework established by the *National Security Strategy of the United States* and *National Strategy for Homeland Security*. The United States is committed to routing out both the drug dealers and the financiers who make their illegal actions profitable, and the new Secretary of Homeland Security will fully consider the threats posed by drug trafficking organizations, and work with other partner agencies to most effectively win the battle against these organizations.

## Prepared Statement of Richard J. Gallo

On behalf of the Federal Law Enforcement Officers Association (FLEOA), we thank the Chairman, Ranking Member and members of the Committee for inviting us. We are pleased to be here today to discuss the critical issues regarding the United States Customs Service and the proposed Department of Homeland Security. As many of our FLEOA members were present during the 1993 truck bombing of the World Trade Center, as well as the September 11<sup>th</sup> terrorist attack at the Towers, we take this issue personally.

We sincerely hope the formation of the of the Department of Homeland Security will be a significant step towards making our nation safe as opposed to just a public relations gesture for the American Public.

As frontline investigative representatives, United States Customs Service Agents are one of the best sources of information on this issue. The FLEOA Customs Service agents/members are the ones investigating targets at the borders, the airports, in the harbors and ports, dealing with marine and air interdiction. They are involved in solving investigations germane to targeting, identifying and neutralizing the threats to our borders and our nation. We have first person knowledge of what hasn't changed since September 11<sup>th</sup>, and what must be done to ensure the Department of Homeland Security can effect a change of America's law enforcement obligation and ensure the safety of our country and its citizens.

Although the Federal Law Enforcement Officers Association represents criminal investigators in all federal agencies, we were asked to focus today on the United States Customs Service. However, we have various comments regarding other agencies because their actions overlap occasionally into Customs Service jurisdiction just as Custom's operational jurisdiction occasionally overlaps into other agencies. These comments cover problem areas and thus may seem to be critical, however, they are not – since for every such point there are many more areas in which the work flows smoothly. We highlight these problem areas to illustrate the impact and interrelations of other agencies' actions. Additionally, times have changed the world is a different place from years ago. The threat is real. Therefore, policies and procedures and "turf protection" acceptable prior to September 11<sup>th</sup> can no longer remain in effect.

We offer our testimony hoping it will, along with the statements of the other distinguished members of this panel, and with the bipartisan input of the Senators and Representatives, make the concept of a Department of Homeland Security a reality the American Public can be proud of. FLEOA has issued a White Paper on this issue, and its Executive Summary is attached to this testimony.

### US Customs Service Issues:

A) FLEOA's Customs Agents are extremely concerned that narcotics interdiction and the money laundering task forces they participate in with criminal investigators from the criminal investigations division of the IRS will be sacrificed as a mission; even though corroborated evidence substantiates that the narcotics trade funds terrorism. Our members believe that narco-terrorism is another form of terrorism. Therefore these types of investigations must move with Customs to the Department of Homeland Security. We cannot sacrifice one mission in exchange for another, but must increase the Agent core to enable the defense of our borders from all forms of threats our country faces from the narcotics traffickers.

B) Although the world has significantly changed politically since the Strategic program was at its prime, so the focus must be changed to meet its current threat. The Custom's Strategic program which involves the exportation of munitions and high-tech transfer must become a priority again for the U.S. Customs Service.

C) Problems on the Northern border: It is quite obvious a lot of individuals travel across the Northern border. This border crossing traffic occurs at a staggering pace, however there is no way to track these visitors. Nor do we know if true names are being used on the traveler provided identification. On a daily basis we encounter criminals whose business is to sell fraudulent drivers licenses, green cards, passports and other forms of identification used to cross the border. Just this past week, hundreds of arrests were made, of people using phony Social Security Numbers as well as other arrests made in other areas of official government identification document fraud. Add to this mix the tremendous state of disarray that exists within the Immigration and Naturalization Service and the foundation is set for a potential future disaster along our Northern Border.

This significant problem demands a solution. We recommend two suggestions for the Committee 1) fingerprinting and 2) photographing of those crossing the border. With the purchase of an automated fingerprint system which is on-line with government intel and national crime databases; a check can be made and in a timely manner a DHS Agent can get a response.

D) Clearances for U.S. Custom's agents need to be upgraded to Top Secret from the current level of Secret, - to allow access for agents involved in investigations requiring review or briefing of classified material (from any US Government Intelligence agencies). This also facilitates information sharing, and eliminates the time lapse currently experienced when upgrading an agent's clearance on a case-by-case basis.

### ***FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION***

b) The Department of State must tighten up the visa procedure and process, since this greatly impacts upon whom we have entering this country.

c) The pay of federal agents in high-threat metropolitan areas: All agencies, especially the FBI have a very young force in high-threat metropolitan areas (also synonymous with high cost of living metropolitan areas). FLEOA has been told that over a majority of the FBI agents in areas such as New York, San Francisco, and Los Angeles have less than five years experience. These are the agents working everyday with US Customs Service agents, and agents from other federal law enforcement agencies, on various task forces. Although we know these agents are committed, dedicated and are willing to do whatever it takes, do we really think they have the expertise or experience to be the premier law enforcement agency in the fight on terrorism?

Such inexperience can have terrible consequences on our success in the war on terrorism. As an example, the 1993 bombing of the World Trade Center, in which prior to the truck bombing, an informant provided information about the future plans for the truck bombing, but this information was discounted and not followed up on - until after the bombing. This is indicative of inability to evaluate intelligence and to properly use informants ... and this was by experienced agents. We need experienced agents in high threat metropolitan areas. Three connected problems prevent this: 1) our seniority system allows for transfers to lower cost of living areas, 2) the extremely high cost of living metropolitan areas force agents to seek a city in which our salaries go further, and 3) the locality pay of agents has not kept pace with the law (Boston and New York City based agents have not had a locality pay raise since the law was passed in October 1990 -- while Los Angeles based agents have had one increase of 0.05% since 1990). The solution to this is HR 3794 in the House of Representatives and a Senate bill about to be introduced by Senators Christopher Dodd, Charles Grassley, Joseph Lieberman, John Warner, Joseph Biden and several others. We graciously acknowledge Senator Grassley for his original co-sponsorship of this bill, and commend him for taking care of the street agents, while holding HQ's feet to the fire. These bills will grant partial increases to federal law enforcement criminal investigators.

d) The Nuclear Regulatory Commission must implement tighter controls on missing nuclear material and enforce accountability with heavy sanctions.

In closing, we see no problem that is insurmountable, however, we must not turn a blind eye and say there are no problems. With bi-partisanship and the knowledge that 3,000 of our fellow citizens, among who were Larry Virgillo the NY Fire Department hero, brother of US Customs Agent Tommy Virgillo, Patricia Kuras the sister of US Customs Service Agent Tommy Kuras, Diane Barry, the mother of US Customs Agent Kevin Barry, and other relatives including some of my own, cry out for us to respond, we can create a functioning department that we all can be proud of. Thank you for your time and attention to this matter.

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E) The US Customs Service has their **Internal Affairs** while the Immigration and Naturalization Service falls under the Inspector General for Justice. FLEOA is in favor of a strong and independent Internal Affairs/Inspector General, for this gives credibility to the agents and the department – but the question is: Who would be responsible for this duty under the new Department of Homeland Security.

F) **Overseas Attaché Offices:** There is growing concern within the Customs Service's Overseas Attaché Offices because in recent years the FBI has opened overseas offices, despite having a domestic charter. Currently, the FBI dictates the terrorism investigative function overseas, and in the past, Customs financial investigators have been excluded from participation in the investigations conducted by FBI overseas. This has occurred even if the Customs agents have more expertise in, or information regarding, that investigative arena, i.e. financial investigations.

In our Attaches' office on the Northern border, Customs believes it has made successful inroads in strategic investigations, as Canada is functioning as a transshipment point for currency going to the Middle East circumventing Office of Foreign Asset Control (OFAC) regulations, and prohibited ITAR items (International Trafficking Arms Regulations). We hope this function is not lost in the merger into the Department of Homeland Security.

Overseas Attaché offices may well be the front line in our Homeland Security. Therefore the big question is: Who will direct the investigations into overseas matters? The Department of Homeland Security? The Department of Justice? Or, the Agents of the Department of State's Bureau of Diplomatic Security which has, at least one, criminal investigator (over 450 total) in every single United States embassies/consulates (205 of them) throughout the world, representing the law enforcement interest of the US Government?

FLEOA's puzzlement over this issue extends to domestic homeland security investigations – as well, since in the original proposal this fantastic concept of a Department of Homeland Security is charged with protecting American's homeland security.... a different department, the Department of Justice (Federal Bureau of Investigation) retains the mission of investigating terrorism. Why?

The duplication of effort is illustrated in the following example: If a terrorist suspect enters our country at an airport, the Customs agent (soon to be a Department of Homeland Security agent) is supposed to call his/her local FBI office and ask for the duty agent. This agent will run the suspect through the computers to see if there is any trigger that would prompt a trip to the airport. If yes, the call is referred to the Joint Terrorism Task Force for assignment and someone responds to the airport. If not, the Customs/Homeland Security agent conducts an interview to have a record of the suspect. Is not our Department of Homeland Security good enough to work this case from the get-go? Aren't they supposed to have criminal investigators from Secret Service, US Customs, and INS working there? Why are we building potential turf wars into the new organization?

## ***FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION***

**G) Financial Investigations**

After September 11<sup>th</sup>, the Treasury Department, with numerous Customs Service agents, started *Operation Greenquest*, an initiative to address financial investigations connected with terrorism. The FBI's Joint Terrorist Task Force and Financial Review Groups have little or no contact with the Treasury initiative, as the Treasury Department has historically led financial investigations. Since *Operation Greenquest* had no intelligence component to establish terrorist links it can only investigate financial leads on Middle Eastern subjects in the hope of backing into terrorists. This issue should be addressed, since these types of investigations should continue in the Department of Homeland Security, and an intelligence component should be part and parcel of any such investigation.

H) **OFAC**- Office of Foreign Assets Control- Obviously, funding for terrorist organizations is crucial to their operations. Additional countries must be added, i.e. Lebanon. OFAC laws must be rewritten with clearer language; presently letters can be considered somewhat vague. The knowledge requirement should be taken out, as was outlined for 18 USC 1960 (unlicensed remitters), under the Patriot Act. OFAC must be more proactive with outreach programs to other countries/communities to publicize what constitutes OFAC violations and the resulting sanctions. The letters OFAC sends out do not quote the law and are not worded strongly enough. A strongly worded letter could be better evidence in a criminal case. One suggestion would also be to put a limit on family remittances as is done with Cuba.

**I) Communication Flow Between Federal Law Enforcement Agencies**

By keeping the FBI, CIA and NSA as the premier terrorist agencies, will the creation of the Department of Homeland Security just create another agency with the same problems we experienced today, in the lack of sharing, dissemination and investigative cooperation? We don't believe that the current communication problems will be magically solved by the formation of the Department of Homeland Security. But we do believe that without the flow of cross-departmental information, the mission of the Department of Homeland Security will be seriously, if not fatally, compromised.

An example of post September 11<sup>th</sup> communication sharing/flow, or actually the lack thereof, is best exemplified by this: there is a New York based Treasury Department task force, in which the FBI is a participant. The FBI Agents have Treasury Enforcement Communication System (TECS) access, but Treasury Agents are not permitted to have direct access to FBI data, including the fact a computer terminal can not be co-located on the same site. The FBI computer has to be kept at another site in totally different building. Is this reciprocal sharing of information?

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J) Keeping the organizational components of the Customs Service dealing with trade and revenue collection under the Treasury Department, criminal investigators would still require access to the **Treasury commercial databases** (i.e.: Automated Commercial System) to assist in Homeland Security. In addition, agents would not want to lose access to the Treasury Enforcement Communication System.

K) **Other concerns:** As mentioned before, several federal agencies have overlapping real-life operational jurisdiction, although they may appear separate on paper. We have comments regarding these predicaments, and these comments may seem critical but, again, they are not meant as such – since for every such point there are many more areas in which the operational needs mesh. We list these concerns to highlight the far-reaching elements and relationships and interconnections that other government agencies actions have on this topic. And again, we want to stress that times have changed since the 11<sup>th</sup> of September, and policies and procedures and “turf protection” acceptable prior can persist no longer.

FLEOA believes to ensure the Customs Service component of the Homeland Security Department can fulfill their mission, other agencies must:

a) INS: The integration of Customs Service with Immigration and Naturalization Service (including the INS’ Border Patrol) into one department; obviously restructuring the agencies will be an enormous job, with the different levels of managers in all the concerned agencies. One example of the opposing operational concerns will be in the area of controlled delivery of narcotic shipments. Presently the US Customs Service, working with the Drug Enforcement Administration, will allow an illegal alien, arrested at the port of entry for smuggling, to proceed into the interior of our country to complete the shipment of narcotics. This controlled delivery allows the Customs Service agents to “work up the ladder” in narcotics conspiracies. However, the Immigration and Naturalization Service is predisposed to preventing any illegal alien from continuing into the interior of our country. The policy of each organization will have to be reconciled.

Considering FLEOA has testified on Capitol Hill seven times on the issue of the separation of INS into separate agencies, one dedicated to law enforcement and one dedicated to immigrant services, and the recent House of Representatives vote resulting in 405 affirmative votes in favor of this breakup, one must think there will be a tremendous revamping of all aspects of the INS. To this FLEOA exclaims: It is about time! Accepting Trojan Horses should not be one of the functions of an agency that should be endeavoring to protect us, and this also goes for the US Customs Service in any overzealous facilitation of commerce due to NAFTA (there has always been a mission conflict with facilitating trade and the law enforcement arm of Customs – however we should not blindly sacrifice the safety of our nation’s citizens for economic reasons). Regarding INS: as one FLEOA member stated: Releasing people into the population while awaiting hearings, so that they can disappear is adding to the destruction of this nations’ security.

***FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION***

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## WHITE PAPER

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### Position on the End State Structure of Federal Law Enforcement Following Implementation of the Department of Homeland Security

#### Executive Summary

A struggle over how to structure federal law enforcement in order to proactively fight terrorism within our country has arisen in the wake of September 11, 2001. This tug-of-war discussion involves all levels of government, industry and Americans; some with competing ideas but all combining to further the debate – including the debate against each other's turf. The Federal Law Enforcement Officers Association (FLEOA), representing over 19,000 of America's federal agents, from over 55 different federal law enforcement agencies, wishes to add to the discussion our points of view relating to this debate. FLEOA believes the method needed to effectively fight terrorism within our borders is through the efficient and effective use of all of our country's assets to the best of our ability.

What is considered efficient and effective use of our assets is the pivotal question. The majority of rhetoric about fighting terrorism occurring in our hometowns, yet being planned both here and overseas, is chock full of military terms. FLEOA sees the best and most viable solution involving the use of our minds instead of tanks. If we take the time, and honestly evaluate our historical track record in regards to solving or preventing serious crime, we find our success rate diametrically linked to the quality of good, old detective work. Al Capone was not arrested for his violent crimes, but rather for his lack of math skills. Timothy McVeigh was not arrested with a detonator in his hands, but rather because of a faulty tail flight. Ted Kaczynski, the Unabomber, was not caught mailing an explosive letter, but rather because a family member realized a connection. Terrorism attacks were prevented in 1995 in New York City due to an informer who provided intelligence. These examples show how we need to address the issue of terrorism in the United States – with good, old investigative work, and long-term planning with a huge dose of common sense. The consolidation of all applicable assets in response to this global threat will be the means of our success.

The advent of terrorism on our soil presents Federal law enforcement with a significant problem. How should Federal law enforcement assets be structured to efficiently and effectively combat the problem? President George W. Bush, after numerous briefings and meetings, has proposed the creation of the Department of Homeland Security (DHS) as a solution. The BIG QUESTION is what should be the end state structure of Federal law enforcement following the implementation of the Department of Homeland Security. FLEOA contends the final solution rests with the complete revamping of the structure of Federal law enforcement to support the Department of Homeland Security mission without sacrificing the enforcement of other criminal priorities. Our current organization/structure is inadequate to meet the challenge and, must be rebuilt. An overused cliché we would like to cite is: "Think

outside the Box". In this situation, the "Box" is the way we were structured generations – even centuries – ago. Any other alternative to radical realignment we feel is unacceptable.

With this in mind, FLEOA offers the following suggestions and recommendations for consideration and inclusion into the final reorganization design:

Within the division of *DHS for Information Analysis and Infrastructure*, create a Bureau of Intelligence, staffed from agents of the FBI currently involved in the analysis of terrorist threats.

Within the division of *DHS for Chemical, Biological, Radiological and Nuclear Countermeasures* create a DHS Bureau of Enforcement, staffed from agents of the FBI currently involved in the investigation of terrorist threats.

Within the division of *DHS for Border and Transportation*, mandate the merger of all agency elements tasked with border and transportation infrastructure responsibilities. The DHS bill does not address the role of FAA or Interior elements.

Realign the Bureau of ATF Firearms, Explosives and Arson law enforcement functions to be within the Department of Justice; either as a stand-alone or as a new section/division of the FBI. ATF currently devotes 25 percent of its law enforcement resources to arson/explosives investigations and 65 percent to firearm investigations. Currently there is considerable overlap of jurisdiction and duplication of effort by ATF and the FBI in the investigations of Federal violations of the firearms, arson and explosive laws. With this realignment, primary jurisdiction for all non-terrorist related bombings, arsons and all firearms related crimes (bank robberies, car-jacking, kidnappings, armed narcotics traffickers, etc.) will thus lie with the restructured DOJ.

Within the Department of Treasury, make the IRS Criminal Investigations division report directly to the Treasury Undersecretary for Enforcement.

Grant full statutory law enforcement authority to the Inspector General agents (currently granted blanket deputation by the US Marshals Service) while consolidating the various Inspector Generals into one office of Inspector General; with all other current inspector Generals converted into Deputy IGs or Assistant IGs according to the size of the department they have supervisory responsibility for. This one IG would supervise approximately 2,000 to 3,000 agents (the current FBI Director supervises over 11,000 agents – yet is the same Executive Level as the Inspector Generals).

Standardize journey-level pay for federal agents at the GS-13 level; fully fund locality pay adjustments, and comply with law passed in 1990 to create a separate pay and classification system for federal law enforcement officers.

Create a DHS Inspector General – we realize we have tremendous responsibilities and duties, and, we recognize the need for strong and independent oversight.

Establish initial DHS cross-training curriculum / academy commensurate with reorganized mission.

Establish DHS liaisons at both the federal level (i.e.; Postal Inspection Service) as well as at the state and local levels.

Thus, these recommendations will:

- completely merge selected agencies; merge percentages of peripheral agencies with Department of Homeland Security mission-related functions into DHS immediately and expeditiously; realign "over-load" missions to remaining agencies;
- eliminate duplicative responsibilities between agencies; primary charters = lead agency; redistribute missions from overloaded agencies;
- redefine role of all Federal law enforcement authorizing the enforcement of anti / counter terrorism statutes.
- redesign all of Federal law enforcement intelligence lines of communication to include DHS for consolidation and analysis;

This is a broad overview of major realignments impacting the success of the fight against domestic terrorism taking place on our shores. We have addressed these issues with a 'broad stroke' to highlight areas we believe where realignment, consolidation and creation can make a positive difference in our just cause.

FLEOA recommends the convening of a Reorganization Task Force with members from each Federal law enforcement agency and government entity to address unique and specific concerns/needs and to ensure a smooth transition. We do believe the consolidation of our law enforcement assets is the only viable strategy. We also believe that now is the time to address and correct the other system structural wrongs within Federal law enforcement to ensure successful mission accomplishment. As mentioned, this is a time for us to truly and intelligently think outside the box. Failure to do so will decrease our ability to provide the necessary protection to the American Public.

**Statement of Senator Orrin G. Hatch (R-Utah)**  
**Before the Senate Finance Committee**  
**Hearing on Homeland Defense**  
**July 16, 2002**

Mr. Chairman, thank you for holding this important hearing today focusing on the role that the Customs Service plays in the American economy and on ensuring America's border security. I know that I join many of my colleagues on the Finance Committee when I say that I appreciate the Administration's initiative of organizing a new Homeland Security Department. I know that this work will be very difficult but I'm sure it will ultimately prove to be necessary to ensure the safety of all Americans.

Mr. Chairman, as I see it, the Customs Service plays two important and distinct roles: one, as a law enforcement agency whose role it is to prevent dangerous or illegal items from penetrating our borders; and second, a financial role - acting as a facilitator of American commerce by making sure that there is a continuous, safe stream of commerce from our international trading partners. Both of these roles are equally important as they ensure that our nation remains safe and our economy continues to be strong. The President has proposed moving the Customs Service to the new Department of Homeland Security. The Customs Service has played a significant role in our security, which is why the President has proposed its move to the new Department. We will learn more about this today from our distinguished witnesses.

We should also be mindful of the current commercial responsibilities of the Service relating to the movement of commercial goods into our country. When we slowed the movement of such goods from our foreign trading partners after September 11 to protect the nation - a move that I agree was necessary - it had a negative impact on our commercial trade and delayed many business transactions within our borders. I think that we must examine the impacts and maintain balance. We must ensure the safety of our borders all the while remaining a free trading nation and ensure that it will not have a chilling effect on the movement of commercial goods and our trade with our partners.

I look forward to hearing from today's witnesses and to learning how the new department might handle the various duties of the Customs Service. Furthermore, I look forward to working with the President and my Senate and House colleagues to ensure that the Customs Service will continue to fulfill its very important role in the American economy.

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## Prepared Statement of Colleen M. Kelley

Chairman Baucus, Ranking Member Grassley, distinguished members of the Committee, I would like to thank the Committee for the opportunity to comment on the President's proposed Department of Homeland Security and its impact on the Customs Service and international trade.

As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union which represents over 12,000 Customs employees who are stationed at 301 ports of entry across the United States. Customs inspectors, canine enforcement officers, and import specialists make up our nation's first line of defense in the wars on terrorism and drugs as well as the facilitation of lawful trade into the United States. In addition, Customs personnel are responsible for ensuring compliance with import laws and regulations for over 40 federal agencies, as well as stemming the flow of illegal contraband such as child pornography, illegal arms, weapons of mass destruction and laundered money.

With a FY2002 budget of approximately \$3.1 billion, the U.S. Customs Service facilitates more trade, and interdicts more drugs than any other agency. The Customs Service collects over \$20 billion in revenue on over 25 million entries involving over \$1.3 trillion in international trade every year. The Customs Service provides the federal government with its second largest source of revenue. Last year, the Customs Service deposited over \$22.1 billion into the U.S. Treasury.

The President's FY2003 budget requests a funding level of \$3.18 billion for the United States Customs Service. This request represents a token increase from last year's appropriations. NTEU feels that this budget is simply inadequate to meet the needs of Customs personnel, especially in light of the incidents surrounding September 11th.

In addition to appropriations, Customs also receives funds from the COBRA account. This user fee account funds all inspectors' and canine enforcement officers' overtime pay as well as approximately 1100 Customs positions across the country. This account is funded with user fees collected from air/sea passengers except from the Caribbean and Mexico, commercial vehicles, commercial vessels/barges and rail cars.

The COBRA fund will expire on September 30, 2003, unless it is reauthorized by Congress before then. However, the President's FY2003 budget does not call for the reauthorization of COBRA. COBRA must be reauthorized or Congress must appropriate additional funds to make up for the loss of the user fees.

In 2001, Customs Service employees seized over 1.7 million pounds of cocaine, heroin, marijuana and other illegal narcotics – including over 9.5 million tablets of Ecstasy, triple the amount seized in 1999. Customs also processed over 500 million travelers last year, including 1 million cars and trucks. These numbers continue to grow annually. Over the last decade trade has increased by 137%.

Yet, despite the increased threats of terrorism, the dramatic increases in trade resulting from NAFTA, and new drug smuggling challenges, the Customs Service has

confronted its rapidly increasing trade workload and homeland security mission with relatively static staffing levels and resources. In the last ten years, there simply has not been adequate increases in staffing levels for inspectional personnel and import specialists, the employees who process legitimate trade, to successfully conduct their missions. Unfortunately, this situation is not likely to change under the President's Homeland Security proposal. The President has stated that his proposal will not include any additional funding that will enable the Customs Service and its personnel to successfully accomplish their missions of trade facilitation and border security.

For example, traffic volume at U.S. land ports-of-entry has steadily increased as our shared borders with Mexico and Canada have become more open as a result of the NAFTA and other trade initiatives. The steady increase of commercial and non-commercial traffic has led to increased wait times at many land ports-of-entry, particularly those along the Southwest border. Wait times along the Southwest often extend to 45 minutes or more during peak hours. Such lengthy delays can be both irritating and costly to businesses and the traveling public. The lack of resources at ports-of-entry is also a problem along the Northern Border as well as seaports. The events of September 11 brought attention to the fact that the Northern border, the nations' seaports, and the Southwest border are still in urgent need of additional personnel and resources. In fact, Customs' recent internal review of staffing, known as the Resource Allocation Model or R.A.M., shows that Customs needed over 14,776 new hires just to fulfill its basic mission and that was before September 11.

For instance, with increased funding, modern technologies, such as Vehicle and Cargo Inspection Systems (VACIS), which send gamma rays through the aluminum walls of shipping containers and vehicles to enable Customs inspectors to check for illegal drugs or weapons of mass destruction, as well as decreasing the amount of time shipping containers are out of the supply chain, could be acquired. However, adequate and consistent funding to purchase, operate and maintain these technologies has not been forthcoming. Other technologies, coupled with proper personnel funding, such as portable contraband detectors (a.k.a. Busters), optical fiber scopes and laser range finders can be invaluable to Customs personnel protecting our borders from terrorists and illegal drugs.

Included in the modern technology possibilities for Customs is the Automated Commercial Environment or (ACE). ACE could be an integral element for trade enforcement and in preventing cargo from becoming an instrument of terrorists. The current Automated Commercial System (ACS) is a 17 year old, outdated system that is subject to system crashes and freezes that wreak havoc on trade facilitation and employees' ability to do their jobs. Although a system upgrade is necessary for Customs to meet its modernization efforts, NTEU would oppose funding a new system that shifts funds away from critically important staffing needs. A number of these resource issues were addressed by this Committee as part of the trade package currently in conference. This legislation would authorize over \$3 billion for a number of Customs priorities such as staffing, commercial and non-commercial operations, narcotics detection equipment,

child pornography prevention, the ACE computer system and the air and marine interdiction units.

As for the President's Department of Homeland Security proposal, HR 5005, it seeks to consolidate the Customs Service, INS, Border Patrol, the Animal and Plant Health Inspection Service (APHIS) the Transportation Security Agency (TSA) and the Coast Guard into one division titled, Border and Transportation Security under the jurisdiction of a newly created Department of Homeland Security. I find this proposal to be extremely troubling for a number of reasons, one of which is the fact that the Customs Service would not be maintained as a distinct entity within the proposed Department of Homeland Security. Each of these agencies' missions are unique and should remain as distinct entities in any new agency. Combining each agency's fields of expertise will lead to losing that expertise.

The fact that Customs would not be a distinct entity within the Department of Homeland Security would deal severe blows to three distinct missions in which the Customs Service has world class expertise, trade facilitation, the collection of duty revenue, and drug interdiction at our nation's borders. Each year more than 16 million containers arrive in the United States by ship, truck and rail. In the last five years alone, Customs has witnessed a 60 percent increase in trade entries processed, and this rate is expected to grow an average of 8 to 10 percent a year.

To consolidate the Customs Service with five other agencies, only one of which remains a distinct entity, the Coast Guard, would be a long-term mistake for Customs. Customs' trade facilitation mission would clearly not be the highest priority for the Department of Homeland Security. Keeping Customs as a distinct entity within the Department as proposed in both Senator Lieberman's Homeland Security bill, S 2452 and Representative Mac

Thornberry's bill, HR 4660, would help retain the emphasis on the importance of Customs' trade related duties.

Other trade issues such as textile transshipment enforcement, trade agreement circumvention, and the use of counterfeit visas to enter inadmissible goods would simply fall farther down the priority list in a newly created Department of Homeland Security. Many of these concerns have been voiced by a number of trade groups such as the National Foreign Trade Council and the Electric Industries Alliance.

The importance of keeping Customs intact as a distinct entity within a new Department of Homeland Security is even more necessary when one looks at the full interaction of Customs employees involved in both the trade facilitation and law enforcement missions of the Customs Service. Trade enforcement functions are carried out by the same Customs personnel who ensure border security. Customs inspectors, import specialists, canine enforcement officers and agents work closely together to enforce trade and anti-smuggling laws. When an inspector makes a large illegal cash seizure at a border crossing, the case is given to an agent for a follow-up investigation to determine where the illegal funds came from and where they were going. The interaction

between the law enforcement and trade facilitation missions of the Customs Service is also useful in the discovery of counterfeit goods and intellectual property piracy.

Customs also relies on the expertise of its trade enforcement personnel to recognize anomalies in their review and processing of commercial transaction information associated with the admissibility and entry of imported goods. This process assists law enforcement in developing targeting criteria as well as targeting suspect shipments and starting investigations. The Customs Service has established partnerships with private industry that are unmatched, enabling them to work together to ensure the efficient flow of goods and services into the United States together with the mission of protecting our border from terrorism and other illegal activities. To separate these two missions of the Customs Service would compromise the current effectiveness of all Customs employees.

Both the American public and the trade community expect the borders to be properly defended while at the same time being able to efficiently and safely facilitate trade across that border. The government must show the public that it is serious about protecting the borders and facilitating trade by fully funding agencies such as the Customs Service who are tasked with defending the borders and enforcing the trade laws of the United States. No organizational structure change will be successful, no matter how good it may look on paper, if the government does not provide proper funding for its border agencies.

The Administration has indicated that it wants new "flexibility" in the legislation that will establish the Department of Homeland Security. While it is unclear exactly what is meant by that phrase, I urge Congress not to take away the rights and benefits that are currently available to the employees who may be merged into this new department. Before, during, and after September 11, front line employees have acted heroically to protect our freedom. They do not deserve to lose theirs.

The House Government Reform Committee acted last week to protect the Title 5 rights of federal employees who will be transferred into the new department under HR 5005. I urge this committee and the entire Senate to do the same.

Other legislative actions that would help to ensure the retention of Customs personnel would be to grant law enforcement status for Customs Inspectors and Canine Enforcement Officers. The U.S. Customs Service Inspectors and Canine Enforcement Officers continue to be the nation's first line of defense against terrorism and the smuggling of illegal drugs and contraband at our borders and in our ports. Customs Service Inspectors have the authority to apprehend and detain those engaged in terrorism, drug smuggling and violations of other civil and criminal laws. Canine Enforcement Officers and Inspectors carry weapons, and at least three times a year they must qualify and maintain proficiency on a firearm range. Yet, they do not have law enforcement officer status. They are being denied the benefits given to other federal employees who they have been working beside to keep our country safe. Customs employees face real

dangers on a daily basis, granting us law enforcement officer status would be an appropriate and long overdue step in recognizing and retaining the Customs personnel who continue to protect our borders from terrorism and drugs. There currently is a bill before the Senate, S 1935, which would grant law enforcement status to Customs personnel. Senator Mikulski introduced this bill. I would ask the members of this committee to cosponsor this very important legislation.

Finally, I have attached to my statement an article from Newsday that features Customs Inspector and NTEU member Diana Dean, who apprehended Millenium Bomber, Ahmed Ressay in Port Angeles, Washington. It makes the case more eloquently than I could, that she is the kind of person we want in a new Department of Homeland Security. But I fear that the "flexibilities" proposed by the President will lead to many fewer such dedicated people willing to work for the new Department. That would be a shame and I hope Congress will not let that happen.

Thank you for the opportunity to share NTEU's thoughts on these very important issues. I look forward to working with the Committee on this and many other issues related to homeland security, trade facilitation, and the Customs Service.

## PREPARED STATEMENT OF PAUL C. LIGHT

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 kinds 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 part of a department that received red lights from the Office of Management and Budget in their efforts to implement 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 of 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<sup>th</sup>. 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 would need roughly 225,000-250,000 employees. This number is inherently 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 shows 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, expediting 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 finances.... 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 modernization's 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 place as much weight on revenue collection as the Treasury Department. The top priority in the new department will be homeland security, even if that comes at some cost to traditional agency missions. As much as the new secretary will argue that all missions are valued, it is not hard to imagine that any of the homeland security agencies will 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 the *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 an 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 burdensome Senate 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, a phenomenon that has already begun to occur.

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 (S. 1811) 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 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 based on recommendations 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.

**FRANK H. MURKOWSKI**  
ALASKA

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### Statement of Senator Frank H. Murkowski Senate Finance Hearing Homeland Defense and International Trade 07/16/02

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Thank you Mr. Chairman and thank you for holding this hearing today.

As the Senate moves forward in crafting legislation to create the Department of Homeland Security, I am hopeful that the views of all Committees with oversight jurisdiction will be carefully considered and that we can produce a bipartisan piece of legislation in a timely manner.

We have seen the mess that can happen on the Senate floor when Committee consideration is disregarded.

I would like to add my voice to those who have expressed their concern about the role of the U.S. Customs Service within the proposed Department of Homeland Security.

I doubt that anybody would disagree that security concerns are a top priority for this nation and concerns that this Congress must continue to address. But I would like to ensure that Customs' traditional role of providing for the efficient flow of commerce into and out of the United States is not harmed.

In the last six years, the amount of ocean-borne commercial cargo entering the United States from foreign ports has nearly doubled. 95% of international goods enter the United States through our seaports while seaborne trade accounts for 25% of the U.S. gross domestic product.

Clearly, our seaports play a vital role in this nation's economy and U.S. Customs' regulations play a large role in providing for the competitiveness of our nation's ports. The efficient movement of goods into the country allows our ports to serve as a viable port of entry for legitimate commerce.

Enacting unnecessary regulations that cause long delays in cargo inspection in the name of security will only increase the probability of cargo diversion away from U.S. ports to ports in Canada and Mexico. This is not in our best interests and will harm American workers, harm the American economy and diminish our security.

Cargo destined for the United States is going to enter the U.S. at some point. The question is, is it more efficient -- both as a security issue and as a manpower issue -- for Customs to inspect these imports in bulk at a single point of entry, or loaded on hundreds of trucks at numerous entry points?

And this is not limited to just maritime ports of entry. Let me give an example from my State of Alaska. Following September 11, a number of foreign air cargo carriers operating in-transit flights through Anchorage shifted their flights to Vancouver. The additional time that those carriers spent on the ground in Anchorage going through prolonged Customs inspections because of heightened security concerns was more costly to them than the added flying time and fuel needed to reach Vancouver.

The diverted flights cost Anchorage International Airport nearly \$5.5 million. I am happy to report that an agreeable arrangement was reached with Customs and INS to mitigate flight delays while maintaining a secure atmosphere and most of the diverted flights have returned to Anchorage, but I believe this clearly demonstrates the damage that can occur when security concerns do not work with commercial interests to create a secure environment while allowing for the expedient movement of goods.

Not only were American workers in Anchorage harmed by the initial action, but U.S. Customs was no longer able to inspect the cargo on board those planes. The result was a negative impact on Alaska's economy and on our national security.

I support the creation of the Department of Homeland Security. And I believe that the U.S. Customs Service has an important role to play within that Department.

Congress must ensure, however, that the commercial applications of the Customs Service are not diminished as the process of creating the Department of Homeland Security goes forward.

## COMMUNICATIONS

## STATEMENT OF THE AMERICAN PETROLEUM INSTITUTE

The American Petroleum Institute (API) appreciates the opportunity to provide the Committee with comments for the hearing on the proposed Department of Homeland Security (DHS). The American Petroleum Institute (API) represents over 400 companies involved in all aspects of the oil and gas industry, including exploration, production, transportation, refining, and marketing. Because petroleum products make up a significant part of the U.S. domestic and foreign trade, API and its members have extensive dealings with the U.S. Customs Service (Customs) on which they rely heavily for information and guidance.

API strongly supports the President and Congress in their efforts to combat terrorism and has actively participated in the development and implementation of many of the programs instituted since September 11<sup>th</sup>. In particular, we support the concept of a Department of Homeland Security.

**Support for the Department of Homeland Security**

An integral part of the DHS will be the U.S. Customs Service. Today, the U.S. Customs Service has the combined roles of trade enforcement and trade facilitation. The continuity and enhancement of both of these functions is critical to API's members. The trade enforcement function of Customs is identifiably aligned with the core concepts and the DHS mission, principally protecting our homeland from terrorist attacks.

The trade facilitation function of U.S. Customs within this new DHS environment is less clear. As currently formulated, DHS will primarily be an enforcement agency. API and its members want to ensure that the trade facilitation functions of the U.S. Customs Service continue and are expanded during this transition. The trade facilitation function is critical to:

- ensure that legitimate trade thrives,
- creation of jobs in America,
- allowing competition in a global economy, and
- fostering a strong American economy.

The trade facilitation function of Customs has led to innovative programs such as the Trade Support Network (TSN) and the Treasury Advisory Committee on Commercial Operations of the Customs Service (COAC). This function has been critical during the planning and implementation phases of programs such as the Customs-Trade Partnership Against Terrorism (C-TPAT), the Automated Commercial Environment (ACE), and the Importer Self Assessment (ISA) program.

All of these efforts have freed up constrained Customs resources to focus on other critical programs, such as the halting of illegal trade, performing drug interdiction, and enforcing import/export restrictions.

#### **Proposed Solution to Ensure Continuing Trade Facilitation**

API and its members believe that the critical role that trade facilitation plays in our economy should be formalized within DHS through a Trade Advisory Council (TAC). This council, comprised of representatives from the various trade communities, would provide input directly to the Under Secretary for Border and Transportation Security. The council would be critical to ensuring that views, needs, and concerns of the importing and exporting communities are communicated at the appropriate level. This council would also play an important role in ensuring that trade facilitation does not become a second tier priority behind enforcement in the new DHS environment. We believe that the TAC structure and responsibilities should be included in the DHS authorizing legislation.

Further, we propose that either through legislative language included in the DHS authorizing legislation or through the legislative history of the bill, that Congress express its intent that current Customs programs that seek input from the trade community must continue without disruption in the new DHS environment. These programs include, but are not limited to the Trade Support Network (TSN) and the Treasury Advisory Committee on Commercial Operations of the Customs Service (COAC).

The establishment of the formal structures outlined above will ensure that trade facilitation does not become a lesser priority in a department that will be heavily weighted in enforcement activity. The current legislation includes five (5) functions that the Under Secretary for Borders and Transportation Security "shall" perform. None of the listed functions specifically identify trade facilitation. The enforcement emphasis with DHS, while appropriate, could over time lead to a diminish role for trade facilitation. Congress, from the point of creation of DHS, must ensure that trade facilitation continues to be an important and core responsibility of the department.

#### **Movement of Certain Export Promotion Programs to the Department of Commerce**

API and its members believe that certain export promotion programs that are currently managed by the U.S. Customs Service do not properly align with the goals of the DHS and should be transitioned to other appropriate government agencies. In particular, the duty drawback program is an export promotion program that does not naturally align with the DHS stated mission of protecting our homeland. The drawback program allows for the recouping of duties paid when an eligible export has occurred. Since its inception, the program has been a critical tool in developing and supporting American export activity. Congress should review the drawback program and other export related programs in order to determine a more appropriate department or agency than DHS for these programs.

In particular, the drawback program naturally fits within the Department of Commerce's stated mission of "job creation, economic growth, sustainable development and improved living standards for all Americans by working in partnership with business, universities, communities

and workers to build for the future and promote U.S. competitiveness in the global marketplace by strengthening and safeguarding the nation's economic infrastructure." We appreciate the committee's consideration of these comments and concerns. API and its members are willing to assist the committee in whatever means possible during these important times. Should you wish to discuss the concepts outlined herein, please contact Michael Platner at 202/682-8418

**NATIONAL ASSOCIATION OF MANUFACTURERS****Statement on Homeland Security and International Trade**

**Submitted for the printed record of the July 16, 2002, hearing before the Finance Committee, United States Senate**

The National Association of Manufacturers (NAM) represents 14,000 companies engaged in manufacturing in the United States. Manufacturing plays a critical role in the U.S. economy. The manufacturing sector accounts for about 20 percent of all goods and services produced by the U.S. economy and directly supports 56 million Americans—the 18 million men and women who make things in America and their families.

Trade is of great importance to NAM member companies. More than 80 percent of U.S. merchandise exports are manufactured products. About one fifth of manufactured products are exported, and for many industries the proportion is much higher.

*The core message of the NAM statement is that trade is vital for the economic well-being of the American people and the new Department of Homeland Security should, in its mandate and organizational structure, give priority attention to facilitating the international movement of goods and people as it seeks to improve the security of U.S. borders.*

**Americans' Right to Public and Economic Security**

The tragic events of September 11, 2001, have underscored the importance of maintaining our guard against terrorists and other groups hostile to the United States. Homeland security cannot be taken for granted or taken lightly. Americans have a right to expect that both their physical and personal security and their economic security will be protected from terrorist threats.

Protecting the American homeland, however, has many dimensions. Preventing terrorists from entering the United States and bringing instruments of terror with them are two important dimensions. Protecting our economic security by securing our air, land and sea transportation systems and facilitating commerce and lawful travel is another important dimension. Both dimensions need to be effectively addressed in our homeland security operations. And indeed both functions can complement and reinforce one another. Improved security need not come at the expense of greater efficiency in expediting international trade. They can and should go hand in hand.

**Importance of International Trade for Manufacturers**

Over the past decade global trade has expanded rapidly as a result of trade liberalization, improvements in telecommunications and reduced transportation costs. International trade now accounts for approximately 28 percent of U.S. gross domestic product (GDP)

compared to only 18 percent in 1990. U.S. manufacturers have benefited from these positive developments although less so in recent years because of the appreciation of the dollar against other major currencies by approximately 30 percent between 1997 and 2001.

Rapid trade expansion has led to a huge increase in the flow of goods and people across our borders, straining customs facilities and the personnel needed to process them. The following data illustrate this point.

- Trade in goods increased from \$885 billion in 1990 to nearly \$2 trillion in 2000.
- Approximately 16 million shipping containers enter the United States every year.
- Over 200,000 vessels are processed in U.S. ports annually.
- There are approximately 11 million truck crossings at the U.S.-Canadian border in the course of the year. The value of the goods transported exceeds \$400 billion.

Facilitating the international flow of goods and people by land, sea and air carriers is critical to the health of the U.S. economy. And indeed this requirement is even more important now given the fragile state of the economy. The U.S. manufacturing sector has only just begun to recover from an 18-month recession that has cost 1.8 million jobs. Manufactured exports are also still recovering from a \$140-billion decline that began in August 2000.

Clearly, the appreciation of the dollar and cyclical economic trends have played a major role in depressing manufacturing activity in the United States. But border security measures have also had a direct and sharp impact on manufacturers.

Following the terrorist attacks on September 11<sup>th</sup>, for example, automobile assembly lines from Michigan to as far away as Kentucky were temporarily shut down because security inspection-related delays temporarily halted the transit of parts across the U.S.-Canadian border. Under "just in time" delivery systems, even a few hours delay in the shipment of parts can result in input shortages and production stoppages. While border transit times at the northern border have returned to more normal levels, they are still highly sensitive to changes in inspection procedures and traffic flows. The possibility of unexpected transit delays at the northern border and other borders remains a serious concern for many manufacturers.

As we seek to improve homeland security, therefore, we need to do so in a way that enables legitimate commerce to continue to grow. Even under heightened security procedures, only a very small percentage of shipments entering the United States can undergo individual screening or inspection. To improve the efficiency and effectiveness of border security procedures, we need to employ new approaches that make use of advanced technology, better information sharing and more effective coordination among government agencies, businesses and our foreign trade partners.

**Good Start with Smart Border Accords**

Homeland Security Director Thomas Ridge and U.S. Customs Commissioner Robert Bonner have already made a good start on developing a new approach to border management with Canada and Mexico. As a result of their efforts, the United States now has in place with both countries "Smart Border" Agreements that seek to improve both security and efficiency at our northern and southern borders.

A key feature of the "Smart Border" Agreements is to segregate out low-risk shipments and travelers and give them expedited treatment. Increased information sharing and new technology will play a key role in making this possible. In this way, low-risk trade can be facilitated, and the governments' limited resources can be focused on goods and people that pose a greater threat to the United States. We believe that this is the right approach and urge that U.S. authorities proceed as quickly as feasible to implement the plan at both borders.

**Care Needed on Cargo Security Initiatives**

The United States is taking a similar approach to improve the security of cargo arriving by ship. In February 2002 the U.S. Customs Service introduced the Container Security Initiative that seeks to pre-screen shipments and segregate high-risk items for closer scrutiny. Customs is seeking the cooperation of major foreign port operators and foreign governments to implement this plan on a global basis. The United States and Canada have already begun performing joint risk assessments at U.S. and Canadian ports. Agreements have also been reached with several port authorities outside of North America, including Le Havre, Rotterdam, Antwerp and Singapore. At the recent G-8 summit, the leaders of France, Germany, Italy, the UK, Japan, Canada and Russia committed to join the United States in improving cargo security through increased information sharing and pre-screening of high-risk containers.

While the NAM agrees that greater efforts should be made to improve cargo security, we also believe that the government should carefully assess the impact of new measures on trade and business operations and ensure that the security benefits are commensurate with the economic costs. We urge the U.S. Customs Service and the Office of Homeland Security to maintain an active dialogue with manufacturers that rely on maritime containers to transport their products. Given the large volume of shipping containers entering the United States (approximately 16 million each year), even relatively minor delays could have major effects on the flow of shipments to businesses and consumers.

**New Department of Homeland Security Requires Clear Economic Security Mandate**

The NAM has given its strong support to the creation of a new federal department specifically dedicated to homeland security. "It is our fervent hope," said NAM President Jerry Jasinowski in announcing the NAM position, "...that President Bush's

plans will result in a more efficient and effective homeland security operation across the board, to protect our country, citizens and our economy.”

Consolidation of homeland security functions in a new department can help to minimize threats from terrorists by more effectively coordinating resources, sharing information and applying new technology and methods. In undertaking this consolidation, however, the Administration and Congress need to take care to ensure that the new department protects our economic security as well as our physical and personal security. Facilitating international commerce and domestic business activity should be a high priority of the department.

The NAM firmly believes that the two goals of improving security and expanding trade and business activity can reinforce each other. But these goals will only be achieved if there is careful planning and implementation of the new organizational structure. Adherence to the following principles will, in our view, be critical for to the mission of the department.

- **Clear economic security mandate.** The new Department should have a clear and explicit economic security mandate, and this should be reflected in its organizational structure. The economic security mandate should include how best to facilitate the speedy, orderly and efficient flow of lawful traffic, travel and commerce consistent with the department’s public security mission. Facilitating the movement of both goods and people is critical for fulfilling this mandate.
- **Efficient and effective information collection.** The department should seek to harmonize U.S. government requirements for customs and immigration information and facilitate information sharing among U.S. agencies to avoid duplicative requests. The department should also keep in mind the costs to business of creating new information systems and meeting differing information requirements.
- **Advanced technology as key component.** The department should make use of advanced technologies to facilitate the processing of goods and persons. The application of advanced information, tracking and identification technologies offers the possibility of dramatic improvements in the levels of both efficiency and security at U.S. borders. In assessing new technologies, however, the department should seek to balance the benefits of increased efficiency with the costs to business and the public.
- **Importance of international cooperation.** We need the cooperation of our trading partners to improve the security of goods and people crossing our borders. The department should, therefore, consider the impact of customs and security requirements on U.S. trading partners and actively solicit their cooperation with a view to harmonizing requirements and avoiding disruptions in trade. The “Smart

Border" Agreements, particularly the accord with Canada, could serve as a model of effective cooperation.

While these principles are critical to improving security and facilitating trade, they are not all-encompassing. Future communications to the committee will provide a more detailed review of principles that should be applied to homeland security and trade.

**International Trade as Vital Component of U.S. Economic Security**

International trade plays a vital role in the U.S. economy, creating jobs, raising living standards and stimulating economic growth. America increasingly depends on trade for its prosperity and economic well-being. We cannot protect our economic security, therefore, unless we can also find ways to facilitate the flow of goods and people across our borders. Our homeland security strategy must, and indeed can, address both economic and public security concerns. The NAM stands ready to support this endeavor and welcomes the opportunity to contribute its views to the work of the committee.