

**CREATION OF HOMELAND SECURITY  
DEPARTMENT**

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**HEARING**  
BEFORE THE  
**COMMITTEE ON WAYS AND MEANS**  
**HOUSE OF REPRESENTATIVES**  
ONE HUNDRED SEVENTH CONGRESS  
SECOND SESSION

—  
JUNE 26, 2002  
—

**Serial No. 107-74**

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**WEDNESDAY, JUNE 26, 2002**

HOUSE OF REPRESENTATIVES,  
COMMITTEE ON WAYS AND MEANS,  
*Washington, DC.*

The Committee met, pursuant to notice, at 5:22 p.m., in room 1100 Longworth House Office Building, Hon. Bill Thomas (Chairman of the Committee) presiding.

[The advisory announcing the hearing follows:]

# ADVISORY

## FROM THE COMMITTEE ON WAYS AND MEANS SUBCOMMITTEE ON OVERSIGHT

FOR IMMEDIATE RELEASE  
June 19, 2002  
No. FC-20

CONTACT: (202) 225-1721

### **Thomas Announces Hearing on Creation of Homeland Security Department**

Congressman Bill Thomas (R-CA), Chairman of the Committee on Ways and Means, today announced that the Committee will hold a hearing on the President's proposal to create a U.S. Department of Homeland Security including the transfer of all assets and authority of the U.S. Customs Service to the new Department. **The hearing will take place on Wednesday, June 26, 2002, in the main Committee hearing room, 1100 Longworth House Office Building, beginning at 2:00 p.m.**

In view of the limited time available to hear witnesses, oral testimony at this hearing will be from invited witnesses. Any individual or organization not scheduled for an oral appearance may submit a written statement for consideration by the Committee or for inclusion in the printed record of the hearing.

#### **BACKGROUND:**

Since 1789, the Customs has been a separate Federal agency under the U.S. Department of the Treasury. Virtually all Federal Government revenue was originally collected by Customs through duties. Today, Customs collects about \$20 billion of revenue and ensures that all imports and exports comply with U.S. laws and regulations. Customs collects and protects the revenue, guards against smuggling, and is responsible for the following:

- Assessing and collecting Customs duties, excise taxes, fees, and penalties due on imported merchandise.
- Interdicting and seizing contraband, including narcotics and illegal drugs.
- Processing persons, baggage, cargo and mail, and administering certain navigation laws.
- Detecting and apprehending persons engaged in fraudulent practices designed to circumvent Customs and related laws.
- Protecting American business and labor and intellectual property rights by enforcing U.S. laws intended to prevent illegal trade practices, including provisions related to quotas and the marking of imported merchandise; the Anti-Dumping Act; and, by providing Customs Recordations for copyrights, patents, and trademarks.
- Protecting the general welfare and security of the United States by enforcing import and export restrictions and prohibitions, including the export of critical technology used to develop weapons of mass destruction, and money laundering.
- Collecting accurate import and export data for compilation of international trade statistics.

Today, in addition to its own laws, Customs enforces well over 400 other provisions of law for at least 40 agencies. A number of these statutes are quality of life issues that relate to the environment, such as motor vehicle safety and emission controls, water pollution standards, pesticide controls, Freon smuggling, and the protection of endangered wildlife. Other laws safeguard American agriculture, business and public health, and consumer safety.

On June 18, 2002, President Bush proposed to transfer all of the authority and assets of Customs, as well as any other Federal agencies, to a new Homeland Security Department. Specifically, Customs would be placed under an Under Secretariat for Border and Transportation

Security along with the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, the U.S. Coast Guard, and the Transportation Security Administration.

In announcing the hearing, Chairman Thomas stated: "Customs has long performed the critical balancing act of assuring the security of our ports and borders while also ensuring that vital international commerce continues to flow. Our Nation's long-term defense rests equally upon the protectors at our borders and the engine of our economy. During this hearing, I hope we can examine how these dual functions would continue to be performed if Customs were transferred entirely to a new Homeland Security Department."

**FOCUS OF THE HEARING:**

The President proposes to create a new Homeland Security Department, the most significant transformation of the Federal Government in over a half-century by transforming and realigning current government activities into a single department whose primary mission is to protect our homeland. The creation of the Department is a key step in the President's national strategy for homeland security. The hearing will focus on details of how this realignment will affect Customs and its core functions such as collection of duties and trade facilitation.

**DETAILS FOR SUBMISSION OF WRITTEN COMMENTS:**

**Please Note:** Due to the change in House mail policy, any person or organization wishing to submit a written statement for the printed record of the hearing should send it electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, by the close of business, Monday, July 8, 2002. Those filing written statements that wish to have their statements distributed to the press and interested public at the hearing should deliver their 300 copies to the full Committee in room 1102 Longworth House Office Building, in an open and searchable package 48 hours before the hearing. The U.S. Capitol Police will refuse sealed-packaged deliveries to all House Office Buildings.

**FORMATTING REQUIREMENTS:**

Each statement presented for printing to the Committee by a witness, any written statement or exhibit submitted for the printed record or any written comments in response to a request for written comments must conform to the guidelines listed below. Any statement or exhibit not in compliance with these guidelines will not be printed, but will be maintained in the Committee files for review and use by the Committee.

1. Due to the change in House mail policy, all statements and any accompanying exhibits for printing must be submitted electronically to [hearingclerks.waysandmeans@mail.house.gov](mailto:hearingclerks.waysandmeans@mail.house.gov), along with a fax copy to (202) 225-2610, in Word Perfect or MS Word format and MUST NOT exceed a total of 10 pages including attachments. Witnesses are advised that the Committee will rely on electronic submissions for printing the official hearing record.

2. Copies of whole documents submitted as exhibit material will not be accepted for printing. Instead, exhibit material should be referenced and quoted or paraphrased. All exhibit material not meeting these specifications will be maintained in the Committee files for review and use by the Committee.

3. Any statements must include a list of all clients, persons, or organizations on whose behalf the witness appears. A supplemental sheet must accompany each statement listing the name, company, address, telephone and fax numbers of each witness.

Note: All Committee advisories and news releases are available on the World Wide Web at <http://waysandmeans.house.gov/>.

The Committee seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202-225-1721 or 202-226-3411 TTD/TTY in advance of the event (four business days notice is requested). Questions with regard to special accommodation needs in general (including availability of Committee materials in alternative formats) may be directed to the Committee as noted above.

Chairman THOMAS. The hour of two having arrived—  
[Laughter.]

Chairman THOMAS. For those of you who have not had a chance to take a look at the document that is spread out on the table, courtesy of the National Archives, to try to set the tone of our discussion about the changes that may or may not be made in creating a new Department of Homeland Security, dealing with those areas that have traditionally been under the Committee on Ways and Means jurisdiction, what you have in front of you is the fifth act of Congress. That's correct. There were four previous acts. This

was the fifth act, which created the U.S. Customs Service, the first agency of the U.S. Federal Government to be created.

It was signed more than 220 years ago.

This fifth bill passed by Congress was to create the agency to implement the first act of Congress, which was the Tariff Act of 1789.

So when we talk about making some fundamental decisions, the idea that the first and fifth act creating the Tariff Act to produce revenue, which was the sustaining revenue source for the U.S. Government for some time, along with excise taxes, and the agency to carry it out, means that, since Alexander Hamilton as the Secretary of the U.S. Department of the Treasury, the Customs' mission has always been, primarily, to collect revenue and to ensure that imports flow smoothly across the border.

Perhaps one of the reasons we are holding the hearing today is to examine the "primarily" aspect of it and to see what might be done in creating a greater degree of security for our homeland.

Today, Customs collects more than \$20 billion in revenue each year. However, obviously, Customs over the years has taken on many other functions, because of its unique presence on the border: fighting against illegal drugs; illegal transshipment of T-shirts; illegal Rolex knockoffs; and you could go on and on and on.

And one of the reasons we need this hearing is to understand the changing priorities and the Administration's current point of rethinking our border security.

I just thought, in engaging in this discussion of change, it might be useful to reflect briefly on what has been constant. Obviously, the fundamental questions, as we move into the 21st century, are: What is Customs? What is the new role for Customs? To what extent is it a continuation of the old role? And to what extent, notwithstanding the fact of Customs physically being relocated somewhere else, should it maintain the long-term ties of revenue through Treasury and back to the Committee on Ways and Means?

So some of the fundamental questions we should be looking at are:

If we combine Customs with several more entities and have them answer to a Homeland Undersecretary in some way, will former Customs' inspectors start doing Coast Guard or Immigration and Naturalization Service (INS) or other work that is being pulled together under Homeland Security, or would they be somewhat moved but essentially the same in terms of the responsibility and the jurisdiction?

Are they going to be more specialized, more generalized?

Will they combine two or three different functions currently performed by other agencies' inspectors at the border?

Just how will the generation of information be shared between these disparate groups now pulled together?

And I guess the bottom line for this Committee is: Give us the vision that explains Customs first task, the collection of revenue, in this new department and 21st century.

So I look forward to the testimony. My guess is that we will have more questions than there are answers. But we have a very tight schedule. The leadership on both sides of the aisle have asked us to, by July 12, report the Committee's reflections on what ought to

be done, for the purpose of putting a bill together to move it through the House. July 12 is our deadline.

And I now recognize the Ranking Member, the gentleman from New York, Mr. Rangel, for any comments he may have.

[The opening statement of Chairman Thomas follows:]

**Opening Statement of the Hon. Bill Thomas, a Representative in Congress from the State of California, and Chairman, Committee on Ways and Means**

In front of us today is a historic document courtesy of the National Archives. It is the fifth Act of Congress creating the United States Customs Service, the first agency of the United States Federal Government ever to be created. It was signed more than 220 years ago by President George Washington in 1789. Customs was empowered to implement the first Act of Congress, the Tariff Act of 1789. Earlier this month another AGeorge W.@ proposed changes, which the Congress and American people welcome, to reorganize the government and create a Department of Homeland Security by transferring other agencies, including Customs, to that new department.

Since Alexander Hamilton first oversaw the fledgling Customs Service, its mission has always been primarily to collect revenue and to ensure that imports flow smoothly across the border. Today, Customs collects more than \$20 billion in revenue each year. Over time, however, Customs has taken on many other functions because of its unique border presence. Fighting against illegal drugs, illegal transhipped t-shirts, and illegal Rolex knockoffs are just a few of these other functions. This hearing is about how changing priorities have led us to the point of rethinking our border security in a dramatic way. In so doing we should remember why Customs was created in the first place.

This hearing will focus on fundamental questions as we rethink the role of Customs in the 21st century, recognizing the historic and significant role of the Customs Service while exploring options and the effects of these options on a new department and the customers it serves. A group of people, now at Customs, fulfills many missions, often on an impromptu or ad hoc basis, that then become permanent. As we examine this further, we should ask ourselves fundamental questions: (1) If we combine Customs with several more entities and have them answer to the same Homeland undersecretary, will former Customs inspectors start doing Coast Guard or INS work or continue as they have been doing? (2) Will it be more effective to have each specialize or generalize? (3) Will the information generated by one entity more easily be shared with the others? (4) And what will happen to Customs' first task—revenue collection? (5) What do these changes mean to a small or large American business that relies upon imported component parts in order to manufacture something? (6) What do they mean to the American retailers and consumers?

I look forward to the testimony of our witnesses today as we consider legislation by our July 12 deadline.

The Chair would like to now recognize the Ranking Member, Mr. Rangel.

Mr. RANGEL. Mr. Chairman, I do not like to talk about our differences publicly, but you know that the minority has pledged to the leadership and to the President to try to set up this Homeland Security on a bipartisan basis as soon as we can, and that is why I was so pleased that you were one of the first to have hearings on this very important subject.

But I do not know how in the world you expect—is this the only hearing we are going to have on this before we—

Chairman THOMAS. I will tell the gentleman, if it is necessary to have additional hearings, we will. And I have put a request in that Governor Ridge speak with us. As you might imagine, he is very much in demand. I believe he has 18 different committees he is appearing in front of. He could not be here today, but he said he would make himself available at a future date.

And I do not think that it would be absolutely necessary, unless the gentleman from New York believes it to be the case, that we would need to meet in another public hearing. We could, as we

have done in the past, perhaps meet bipartisan in the library or some other location to continue to ask questions from someone who, if he is not named the Secretary following the formation of the Cabinet, would certainly have most of the precise information about how this Cabinet would be structured.

Mr. RANGEL. Well, I would assume that our responsibility is not just to have a bipartisan meeting in the library but to get answers to serious questions that Americans and the rest of the House would have. They rely on us to a great deal. Customs is such a very important part of Treasury. And it is kind of hard for me to see why we do not have the Secretary of Treasury here, we do not have the Customs Commissioner, or anyone representing Customs. And, of course, I can see why we will not have Tom Ridge, because, actually, we do not know what role he is going to play with Homeland Security.

Chairman THOMAS. Will the gentleman yield briefly?

Mr. RANGEL. Yes, sure.

Chairman THOMAS. One of the things that we tried to do, given the demands on everyone's time, is to get someone who will be able to provide us with answers. The answers to the gentleman's questions would perhaps be better responded to at the end of the hearing, to see if in fact we have gotten some questions answered. And to the degree we have, then we can make additional decisions. To the degree that we have not, then I think we can go forward.

But one of the things we need to do is to have the hearing. And then we will decide if in fact the questions have been answered or not. It is harder for me to do it a priori.

Thank the gentleman for yielding.

Mr. RANGEL. Let me ask you this, could you at least tell me the thinking of the Chair in putting together the panel as to how the questions that I would have for Secretary O'Neill or the Customs Commissioner or a representative from Customs or Tom Ridge—you know the questions that Republicans and Democrats would want to ask. Just tell me the thinking of why you put together this panel, that's all.

Chairman THOMAS. The answer is, you have to begin somewhere. One of the things that I want to make sure there is a public record on is exactly what Customs' officials do. There is still a lot of failure to understand that diverse role. In looking at the way in which the structure was initially presented in discussions with a number of people who have interactions with Customs' officials in many different capacities, we thought it might be a pretty good idea to at least lay on the record what Customs' folks do today.

I know the gentleman wanted the representative of the Treasury employees, because we have had a number of discussions about the work hours, the locations, some of the difficulties in terms of the kinds of work hours that Customs' representatives carry out. That I think also has to be appreciated. I was pleased to have that individual on the panel at the gentleman from New York's request.

Mr. RANGEL. Well, Mr. Chairman, these people have waited for 3.5 hours, and if you are having this hearing in order to find out what Customs does, and not "where do we go from here" with Secretary O'Neill and the Customs Commissioner and how they see the split-up, they could have sent us an official document as to

what Customs does. We want to find out what impact the President's recommendation is going to have on Customs when we make this move for them.

But let me thank the panel and everyone else for your patience with us.

But I just wish, Mr. Chairman, that you would see your way clear to have me to encourage more of my Members to be here to participate in something like this, because they had every reason to believe that, if we are talking about the Homeland Security, the President's new Cabinet position, that this Committee, just because of who we are, to be quite frank, would have the Secretary in front of us to see how it impacts on Internal Revenue Service (IRS) enforcement, on Alcohol, Tobacco, and Firearms (ATF) on a variety of things.

But this is the hand that you dealt us, and I pass.

Chairman THOMAS. I will tell the gentleman, you asked me about the panel that will follow the presentation of Mr. Gurulé, who is the Undersecretary for the Office of Enforcement. At the time the Committee was structured, at 2 p.m., Mr. Ridge was scheduled to appear before the Judiciary Committee. I perhaps would not dismiss the Undersecretary of Treasury until you have heard his testimony.

And I understand that the gentleman would much rather be in my seat than his, so I appreciate the concerns.

With that, the gentleman from Treasury, Mr. Gurulé, if you will give Mr. Rangel—and I will be listening very intently—an understanding of the current vision and direction of Treasury as this homeland security issue moves through, especially with emphasis on Customs.

**STATEMENT OF THE HON. JIMMY GURULÉ, UNDERSECRETARY FOR ENFORCEMENT, U.S. DEPARTMENT OF THE TREASURY**

Mr. GURULÉ. Thank you. Chairman Thomas, Members of the Committee, thank you for the opportunity to testify. Let me at the outset say that we want to work closely with you, Congressman Rangel, and the Members of the Committee to address your questions and concerns as we move through the legislative process on this very important issue.

We appreciate the Committee's historical role on trade and tariff matters, which, along with Customs itself, dates back to 1789. We also recognize the highly compressed schedule you are operating under, and we will make every effort to be responsive to you and do so in a timely manner.

I am proud to be here on behalf of the Administration to discuss President Bush's proposal to create the Department of Homeland Security. It includes moving the entire U.S. Customs Service into the new department, which is the subject of today's hearing.

Secretary O'Neill, Customs Commissioner Bonner, and I fully support the President's proposal and strongly believe that the new Homeland Security will play a key role in safeguarding the American people.

In his June 6 address to the Nation, President Bush called for the creation, and I quote, of "a single, permanent department with an overriding and urgent mission: securing the homeland of Amer-

ica and protecting the American people.” The President also stated, and I quote, “The reason to create this department is not to increase the size of government, but to increase its focus and effectiveness.”

Two days ago, President Bush toured Port Elizabeth, New Jersey, and commended employees of Customs, the Coast Guard, and the New York/New Jersey Port Authority for their vital work in keeping dangerous cargo from entering our country. The President told the employees that his proposed Homeland Security would make their jobs easier. President Bush said, and I quote, “It’ll make our Federal Government more responsive. It will allow us to communicate better, to more effectively secure the homeland.”

Since September 11, at the direction of the President, the top priority bar none at Customs has been responding to the continuing terrorist threat at our land border, seaports, and airports. The Customs is working diligently to protect homeland security by keeping terrorists and terrorist weapons from entering the United States, while at the same time enhancing our economic security by moving goods and people efficiently across the borders.

The Customs has implemented several key programs since September 11, and I just want to touch on a few of them briefly. These are initiatives that respond to the new threat our country faces.

First there is Operation Green Quest, a Customs-led multi-agency initiative that targets terrorist financing. This task force has already initiated hundreds of investigations, aggressively moved against terrorist funding sources, and led to the seizure of suspected terrorist assets.

Then there is the Container Security Initiative, CSI. Customs is entering into partnerships with foreign seaports to conduct prescreening and more effective risk targeting of sea containers before—and I stress “before”—they are shipped to our ports.

And there is Project Shield America, where Customs’ agents monitor exports of strategic weapons and materials from the United States 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.

On April 16 of this year, Secretary O’Neill, Governor Ridge, and Commissioner Bonner launched the Customs-Trade Partnership Against Terrorism, or C-TPAT, in Detroit. The 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.

Another example of how Customs’ trade and enforcement functions are intertwined can be seen in the way Customs’ inspectors, import specialists, and special agents currently work closely with

each other to enforce trade and anti-smuggling laws. I cannot stress enough the importance of these dual missions and the interconnectedness with respect to the duties and functions of these important components of Customs.

When Customs' inspectors make a substantial bulk cash seizure at the border using resources such as canine enforcement teams and non-intrusive inspection equipment, they hand the case over to Customs' special agents. These agents then conduct a follow-up investigation, such as an investigation into the source of the funds or the destination of the funds. This cooperative effort between inspectors and special agents is a seamless one precisely because of Customs' dual missions. The same is true with other border-related enforcement matters, such as intellectual property piracy. What begins as an infringement identification is often directly turned into an investigative effort.

There are three additional points that may be self-evident but cannot be overlooked in describing the link between Customs' dual missions. First, many trade enforcement functions are carried out by the same Customs' personnel who ensure border security. Second, Customs uses the information it receives from trade compliance examinations and manifests also to assess security risks for shipments; this information is the cornerstone of many of Customs' anti-terrorism efforts. And third, 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.

Mr. Chairman, Treasury is proud of the vital role the men and women of Customs have played and will continue to play under the President's plan in defending our homeland.

Thank you again, Mr. Chairman and the Members of the Committee, for this opportunity to testify. And at this time, I would be happy to answer any questions you might have.

[The prepared statement of Mr. Gurulé follows:]

**Statement of the Hon. Jimmy Gurulé, Undersecretary for Enforcement, U.S. Department of the Treasury**

Chairman Thomas, Members of the Committee, thank you for this opportunity to testify. Let me at the outset say that we want to work closely with you, Congressman Rangel, and the Members of the Committee to address your questions and concerns as we move through the legislative process on this important issue. We appreciate the Committee's historical role on trade and tariff matters which, along with Customs itself, dates back to 1789. We also recognize the highly compressed schedule you are operating under, and we will make every effort to be responsive to you and do so in a timely manner.

I am proud to be here on behalf of the Administration to discuss President Bush's proposal to create a Homeland Security Department. As you know, President Bush's proposal includes moving the entire U.S. Customs Service into the new Department, which is the subject of today's hearing. Secretary O'Neill, Customs Commissioner Bonner and I fully support the President's proposal and strongly believe that the new Department of Homeland Security will play a key role in safeguarding the American people.

In his June 6th address to the Nation, President Bush called for the creation of "a single, permanent department with an overriding and urgent mission: securing the homeland of America, and protecting the American people." The President also stated, "The reason to create this department is not to [increase] the size of government, but to increase its focus and effectiveness."

After the President's announcement on June 6th, Treasury Secretary O'Neill applauded President Bush for his bold plan to concentrate our homeland security resources in a single Cabinet department. The Secretary said, "The President has demonstrated real leadership, recognizing the new challenges we face and redesigning our system to rise to those challenges. I fully support for this plan to integrate our resources into one collaborative, efficient and nimble structure to focus solely on protecting the American people."

Two days ago, President Bush toured Port Elizabeth, New Jersey, and commended employees of the Customs Service, Coast Guard, and the New York/New Jersey Port Authority for their vital work in keeping dangerous cargo from entering our country. The President told the employees that his proposed Homeland Security Department would make their jobs easier. President Bush said, "It'll make our Federal Government more responsive. It will allow us to communicate better. It will allow all of you to make sure that the hard hours you're putting in are able to more secure the homeland."

For over 200 years, the U.S. Customs Service has defended our country's borders and facilitated legitimate international trade and travel. Since September 11th, at the direction of the President, the top priority of Customs has been responding to the continuing terrorist threat at our land borders, seaports, and airports. The Customs Service is working diligently to protect homeland security by keeping terrorists and terrorist weapons from entering the United States, while enhancing our economic security by moving goods and people efficiently across the borders.

The Customs Service has implemented several key programs since September 11th that respond to the new threat our country faces. "Operation Green Quest," a Customs-led multi-agency initiative that targets terrorist financing, has already initiated hundreds of investigations, aggressively moved against terrorist funding sources, and led to the seizure of suspected terrorist assets. 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.*

On April 16th of this year, Secretary O'Neill, 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.

Another example of how Customs' trade and enforcement functions are intertwined can be seen in the way Customs inspectors, import specialists, and special agents currently work closely with each other to enforce trade and anti-smuggling laws. When Customs inspectors make a substantial bulk cash seizure at the border using resources such as canine enforcement teams and non-intrusive inspection equipment, they hand the case over to Customs special agents. These agents then conduct a follow-up investigation, such as an investigation into the source of the funds or the destination of the funds. This cooperative effort between inspectors and special agents is a seamless one precisely because of Customs' dual missions. The same is true with other border-related enforcement matters, such as intellectual property piracy. What begins as an infringement identification is often directly turned into an investigative effort.

There are three additional points that may be self-evident, but cannot be overlooked in describing the link between Customs' dual missions. First, many trade enforcement functions are carried out by the *same Customs personnel who ensure border security. Second, Customs uses the information it receives from trade compliance examinations and manifests also to assess security risks for shipments. This information is the cornerstone of many of Customs' anti-terrorism efforts. Third, Customs re-*

*lies 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.*

Recognizing these links, the President has proposed that the Customs Service as a whole be transferred intact into the new Department of Homeland Security. In the legislation for the new Department, the President noted that the Department will "ensur[e] the speedy, orderly, and efficient flow of lawful traffic and commerce."

Therefore, under the President's plan, Customs will continue to administer and enforce our Customs laws, protect our borders from terrorists, and facilitate the flow of legitimate commerce. The President's plan strikes the appropriate balance between enforcement and trade facilitation that is so critical to our nation's economy and security.

Mr. Chairman, the Department of the Treasury is proud of the vital role the men and women of the Customs Service have played, and will continue to play under the President's plan, in defending our homeland. Thank you again, Mr. Chairman and the Members of the Committee, for this opportunity to testify. I would be happy to answer any questions you may have.

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Mr. CRANE. [Presiding.] Thank you very much, Mr. Undersecretary.

Governor Ridge has stated that the Homeland Security will have a single mission, the most important job of the Federal Government, namely to protect the American people and our way of life from terrorism, and it will have a single, clear line of authority to get the job done. It will bring together everyone under the same roof, working toward the same goal, and pushing in the same direction.

In what way do you see Customs and, in particular, the collection of duties by Customs, fitting into the overall mission of the new agency?

Mr. GURULÉ. That is a very important question. And, again, I think it goes to the decision the President has made to move the entirety of Customs to this new department, this proposed Homeland Security.

First, it is clear that the enforcement efforts of Customs are inextricably linked with its trade and revenue functions. It is very difficult to split out those responsibilities. If you have Customs' inspectors at the border on the one hand inspecting cargo and conveyances for contraband, these same inspectors are likewise looking to determine trade compliance, looking to follow up on issues involving evaluation and certification of goods. And this information is shared both with Customs' agents and offices such as the Office of Regulations and Rulings. It is shared with import specialists.

So, again, this dual mission of Customs cannot be overstressed, overemphasized. And, again, it is very difficult to simply just carve out the trade and revenue collection function, because it is so closely linked to what Customs does on the enforcement side.

Mr. CRANE. Will there be a reorganization within Customs after the move?

Mr. GURULÉ. Well, the President's proposal, as you know, provides for the transfer of the entirety of Customs. It does provide, however, for a transition period after the legislation is enacted, with respect to when different functions of Customs or any of these other border security agencies would be transferred over. So there

is some time there for looking at some of these complex issues and evaluating them and deciding when these functions will be transferred over.

And at the same time, the new Secretary of Homeland Security would have the authority to reconfigure or consolidate in a unique way or a different way, I should say, some of these agencies. But those decisions with respect to any reconfiguration or consolidation have not been resolved at this point in time. But at the same time, because these are complex issues, complex questions, we certainly welcome the opportunity to work with Members of this Committee, and we are certainly open to considering any concerns that you have.

Mr. CRANE. Can you describe how Treasury reviews revenue regulations and rulings prepared by Customs now and how that will change when Customs goes to Homeland Security?

Mr. GURULE. Well, it is envisioned that when Customs is transferred over to this new department, that its mission will be transferred intact as well. So there is not any sense, at least at this point, that there is going to be some major change with respect to its mission involving, for example, the promulgating of regulations for Customs that the Office of Regulations and Rulings is engaged in, or the issuing of binding rulings on matters such as classification valuations and such.

So the same mission transfers over as well.

Mr. CRANE. What can and will Treasury do if it disagrees with Customs' post-reorganization on such matters as classification, revenue collection, or transshipment?

Mr. GURULE. Well, I think that the President's bill is clear on this point. Those responsibilities transfer over. Those responsibilities become the responsibility of the Secretary of Homeland Security. So these operational functions that the Secretary of Treasury currently maintains would transfer over to the new Secretary of Homeland Security.

Mr. CRANE. Thank you, Mr. Undersecretary.

Mr. Rangel?

Mr. RANGEL. Thank you.

Mr. Undersecretary, the exchange I had with the Chairman in no way meant to infer that you and the panel that follows you are not qualified to do what you do.

But I love the work of this Committee, and I have worked very closely, for 35 years, with the oversight of Customs. And it just seemed to me that we should have the Secretary of Treasury before us, or the Commissioner of Customs, since we are very sensitive as to what is going to happen, not what is going to be envisioned or what you hope is going to happen. But we cannot protect these line outfits as Members of Congress unless we really know the concerns of the people who work every day with Customs.

And with all due respect, you have not worked with Customs, have you?

Mr. GURULÉ. Well, I have. In fact—

Mr. RANGEL. How long have you?

Mr. GURULE. My oversight responsibility includes oversight responsibility for Customs. The Commissioner of Customs reports to the Undersecretary for Enforcement. I, in turn, report to the Dep-

uty Secretary, and the Deputy Secretary reports to Secretary O'Neill. So I work very closely with Customs, and have worked very closely with Customs since I was confirmed in August. Granted, that is a—

Mr. RANGEL. August of last year?

Mr. GURULÉ. That is true. In that sense, it is a short time.

I would add one other point. My relationship with Commissioner Bonner goes back 15 years, when he and I worked together in the U.S. Attorney's office in Los Angeles. I have great respect for him. We have a very good working relationship, and we have worked very closely, shoulder to shoulder, on important issues involving terrorism, especially post-September 11.

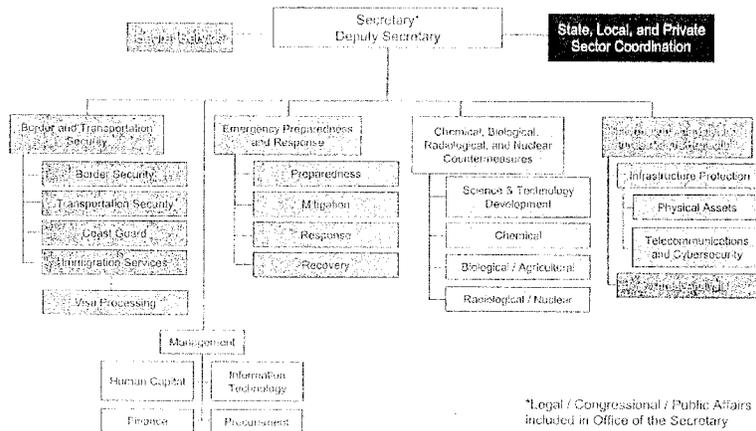
Mr. RANGEL. I am not challenging your commitment. I am challenging the fact that I think the Commissioner of Customs could do a better job in terms of telling us the concerns that he may or may not have as we work our way through this legislation than you who he reports to.

But having said that, I have a chart that came from the Secretary of Treasury's office on the organization of Homeland Security, and Customs is not even on it. One of my staff wrote in "Customs" next to "Border Security."

Something like this, a table of organization, are you familiar with that?

[The chart follows:]

Organization of the Department of Homeland Security



Mr. GURULÉ. I cannot see the chart.

Mr. RANGEL. No, but it says, "Organization of Homeland Security." On top is "Secretary." There is a "Deputy Secretary." Then to the left of it is "Secret Service." To the right is "State, Local, and Private Sector Coordination." Then it goes down and the umbrella has four departments under it, and one of the departments is "Border and Transportation Security." Another is "Emergency Preparedness and Response." Another is "Chemical, Biological." And the other is "Information Analysis."

And under all of these hangars, all of these nice, rectangular boxes, the list that I am looking under is "Border and Transportation Security."

Under that hangs "Border Security," "Transportation Security," "Coast Guard," "Immigration and Visa Processing."

Mr. GURULÉ. I do have it in front of me now.

Mr. RANGEL. And Customs is not even in a box.

Mr. GURULÉ. Well, it is envisioned certainly that the border security function, that Customs would fall in the box here for border security. And as I have stated, Customs plays a very important, crucial role.

Mr. RANGEL. No matter how important the role is, it was not important enough even to give them a box. And we do not have the Secretary of Treasury to reaffirm the fact that, if they have every reason to believe that the Committee on Ways and Means that provides oversight over Treasury and over Customs, that if we are not going to be certain that in this transfer, that they do not have someone to look after their interests, besides just hoping that we do the best by the them—I do not think it is fair for us not to have the Customs Commissioner or the Secretary of Treasury or Tom Ridge here before us.

Do you know when this change is supposed to take—how many employees are there in Customs?

Mr. GURULÉ. In Customs, there are—let me tell you exactly.

Mr. RANGEL. Roughly.

Mr. GURULÉ. I will tell you exactly. There are 19,628, so approximately 20,000 employees.

Mr. RANGEL. When do they move over to the Homeland Security?

Mr. GURULÉ. The bill that the President has submitted to Congress provides that within—there is a transition period. After the legislation is enacted and signed into law, there is a transition period of up to 12 months. And within that 12-month period of time, the President has discretion to decide which particular functions and offices and agencies transfer over during that period of time.

I think that is a very important point to highlight, because it does provide time for addressing some of the more complex issues that are implicated by the creation of this new department. And it does afford an opportunity to work closely—

Mr. RANGEL. I am on a clock, and my time is about to run out.

Will we have a Customs Commissioner under the new program? Will that be his title?

Mr. GURULÉ. Again, the entirety of Customs would go over—

Mr. RANGEL. Will the union status and civil service status of the Customs' office as it exists now be the same?

Mr. GURULÉ. Yes. At this point, it is envisioned that—

Mr. RANGEL. No, no.

Mr. GURULÉ. They will transfer with the union status, with their—

Mr. RANGEL. It's a mean gavel. "Yes" is good for me.

Mr. CRANE. Thank you.

Mr. RANGEL. I have time. Don't I have a little time? Just one last question.

Can you say with some degree of accuracy that Customs, as we know it, with all the functions as we now know it, will be transferred intact with the Commissioner under the present setting without any changes that we should be concerned about?

Mr. GURULÉ. The initial transfer, it is intended that it be transferred over in its entirety and with the same mission, with the same responsibilities that it currently possesses.

Mr. RANGEL. Could you write and tell me why Customs just didn't make the organizational chart?

[The information follows:]

Under the proposed bill, the new Department would continue to fulfill all of the existing functions of the Customs Service. While not specifically designated by name in the organization chart, as you point out, the President proposes to transfer the entire Customs Service—its border security, trade/revenue, and investigative missions—into the new Department of Homeland Security.

To recognize the importance of Customs' functions, section 401 of the proposed legislation specifically 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."

Certainly, the new Secretary will consider how to best organize the new Department in order to maximize efficiencies and synergies and minimize redundancies and overlapping missions. It is anticipated that there will be integration of many of the border security functions—particularly when it comes to headquarters bureaucracies and duplicative inspection activities at our ports of entry. The President wants to create the most efficient structure possible to ensure that our ports of entry and other critical assets are protected and combining key components will help do so.

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Mr. GURULÉ. Sure. It may not have a separate box, but certainly what is most important is in the President's bill that has been submitted to Congress, it is very clear that the entirety of Customs is transferring to this new department, to address and to enhance security at the border.

And then lastly, I would just like to comment with respect to Commissioner Bonner's absence, and he does send his regrets. He is in Europe working on a very important initiative, the CSI. And he is presently, as we speak, negotiating agreements with the governments of the Netherlands and Belgium to implement this important initiative with respect to containers and, in essence, moving our border back to the point of origin with respect to containers, so that the inspections can be conducted in those foreign ports.

So it is a very important trip that he is on at this time.

Mr. CRANE. Thank you. Ms. Dunn.

Ms. DUNN. Thank you very much, Mr. Chairman.

And, welcome, Secretary. It is good to have you here, because I think a lot of us are seriously interested in exactly how this whole situation will work. And as you told our Ranking Member, in fact in the legislation covering homeland security, there is a statement that the entire operation of Customs and its responsibility to the Secretary of Treasury will be transferred over to Homeland Security. That is helpful.

I have been hearing from numerous carriers, people from my hometown, which is a port city, Seattle, Washington—shippers, truckers, express air service—about Customs' efforts to require more information on their manifests for security reasons that are obvious to all of us. Many of the carriers are, though, very concerned about the information they have to provide, the degree of it, the depth of it, as well as when they have to provide this information.

The additional requirement applies to both outbound and inbound flow of products, and we are, of course, looking for a balance between security and trade, because we do not want to slow down the passage of product and want very careful security to come out of this new relationship that we are forming.

Let me ask you a couple of questions that perhaps you can provide either general answers to or maybe even something more particular.

Is the Administration intent to collect information on the manifests of all types of carriers before the cargo is loaded or submission of the manifest prior to departure? If so, how will you accommodate carriers like trucking lines and air couriers who are often delivering within hours of receipt of cargo?

Airborne Express is an example of the kind of company that I represent that does overnight mail. I am sure that FedEx and others are in this same category.

Can you tell me how this is going to work? Are they going to have to measurably change their way of doing business?

Mr. GURULE. I would say that since September 11, we have certainly learned and appreciate the value and importance of information. I think that perhaps information is the most valuable weapon against terrorism and terrorist attacks. And it is information that must be shared if we are to prevent future terrorist attacks. It must be information that is shared on a real-time basis.

But at the same time, we have to be sensitive to this important balance of security and the facilitation of trade. I have had numerous conversations with Commissioner Bonner on the subject, as well as Secretary O'Neill. And they both feel strongly, as I do, that we must maintain that balance.

With respect to the sharing of information on a timely basis, and, as you stated, in some cases it is literally within hours, we want to get that information in advance. I think that the Automated Commercial Environment (ACE) system certainly is very important to achieving that end in terms of facilitating the easy collection of information, because when ACE is up and running, we will have an electronic filing system, where businesses can file electronically, not in paper form, but electronically, information with respect to manifests and goods that are being shipped.

So, again, that emphasizes the importance of the ACE system and its value both to trade facilitation as well as security.

Ms. DUNN. Would the Administration support a staggered implementation of data collection based on the type of carrier? And would, for example, the Administration support different implementation periods for outbound and inbound traffic?

Mr. GURULE. I think on that point, certainly we would be, and we always are, interested in your views and concerns on these

types of issues. And so if there is a particular issue or concern here, we would like to hear it. We want to work with you.

We, obviously, want to do this right. We want to do it in a way that, again, addresses these important dual missions of Customs.

Ms. DUNN. That sort of consultation would be very useful. I would like to take you up on that offer.

There seems to be unanimity among carriers and importers that information that Customs needs should be shared directly with the government rather than requiring that importers send sensitive commercial information to a carrier which then sends the information on to Customs. Do you support allowing importers and shippers to deal directly with the government?

Mr. GURULE. That is a question, if I might, I would prefer to get my response back to you in writing, so that I am accurately communicating the Commissioner's views on that particular issue.

[The information follows:]

This issue involves the level of reporting detail which is required on cargo manifest reports—the reports which carriers file to notify Customs of the cargo they are bringing to the United States. For security targeting it is desirable to have the most detailed information that can be practicably provided in the manifest report. The issue you raise is that it is not the carriers that have the most detailed information about the cargo, but their clients, importers and exporters who do not necessarily want to share those details with the carriers because the details involve confidential business information.

One method to address this issue, and the method that is embodied in the G-7 standardized electronic customs messages that the U.S. Customs Service is incorporating in its ACE design, is to build links between the carriers' manifest report and the importers' and the exporters' reports that would allow the government to combine the information received from both. This approach can provide detailed information to the government while shielding confidential information, and not requiring carriers to report information that the government can obtain from another source. In the interim, it is critical that the carriers improve the level of detail above that which had been provided in the past. Descriptions such as "freight, all kinds" are no longer acceptable.

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Ms. DUNN. Thank you, Mr. Undersecretary.

And last, on the function of Customs, it sounds to me like you are envisioning a new Homeland Security that pays very careful attention to balancing the agency's core functions relating to trade and their new law enforcement functions, and that pleases me. I hope we can continue to stay in touch with you and make sure that it ends up that way.

I have great regards for Customs, because it was a very alert Customs' agent who was able to catch for us Ahmed Ressam, who you recall is the foreign terrorist who moved from Canada to the United States through one of our ports in Washington State, with a trunk loaded with potential bomb materials that he was going to transport down to blow up the LA airport.

And so, it is very important to us that we continue to operate very well in the areas of security with Customs on our borders and on our two ports in Washington State. But also, our State depends on trade for one out of three of its jobs these days. And so it also very important to us that that balance take place, because we want the transport of people and product to continue in the way that it has so successfully in the past.

Mr. GURULE. Well, I am here to reassure you and every Member of this Committee that the Administration is committed to that

balance of responsibilities. And that commitment will carry over with equal vigor to this new Homeland Security.

Ms. DUNN. Thank you for being here.

Mr. CRANE. Mr. McCreery.

Mr. McCRERY. Thank you, Mr. Chairman.

Mr. Gurulé, you talked about the ACE computer system. Can you give us an update on the status of that, and tell us if it is going to follow Customs into the new Homeland Security? And will Customs have control over that computer system once the transfer is made?

Mr. GURULÉ. First, the Administration strongly supports ACE. Again, there are many things that we have learned following the terrorist attacks of September 11. And as I stated before, the importance of information and information-sharing is certainly one of those.

And I think ACE is even more important today than it was prior to September 11, because of the enhanced ability that we will have to engage in better targeting of high-risk shipments and high-risk containers.

So we see ACE as being important to identifying high-risk cargo on the one hand, and expediting low-risk trade on the other hand.

Yes, it will carryover. That responsibility will remain within Customs, as Customs is transferred to the new department. And it is our intent to work aggressively to get ACE up and running as quickly as reasonably possible.

Mr. McCRERY. So there is no danger that the funding is going to be delayed during this transfer?

Mr. GURULÉ. Absolutely not. The Administration remains fully supportive of ACE.

Mr. McCRERY. Let's talk about one of the specific functions of Customs, and that is revenue-raising functions. It seems to me that this is a function unique to Customs, unique among those departments that are to be transferred to the new Homeland Security. Aren't there some offices within Customs that do nothing but raise revenues?

Mr. GURULÉ. Well, there are certainly some offices that are more heavily engaged in trade functions and trade revenue-related functions than enforcement. But having said that, at the same time, there is a strong nexus between those office functions and the enforcement function, the sharing of information for dual purposes.

And one example of that, if I might, is the Office of Strategic Trade, or OST. It has two principle purposes. One is to analyze trade data for trans-anomalies in compliance, and second, it oversees the regulatory audit function. So it engages in onsite audits of companies to make sure that they are in compliance.

Well, that certainly has a revenue-related function, to ensure that these audits are not highlighting anomalies or revenue that should be collected that is not being collected. But at the same time, once these anomalies and trends are identified, this information is shared with Customs' inspectors. And a Customs' inspector may be asked, "Well, with respect to this particular company, there is a shipment coming across the border on this date, and we want you to target it for close inspection." Or the information may be

shared with a Customs' agent to conduct an investigation into possible trade fraud.

So, again, there is a very strong synergy between these enforcement functions and trade revenue-collection functions.

Mr. McCRERY. Well, while there may be a synergy, still, those functions seem to me to be unique, again, among the departments that are going to be transferred. So I just wish that you all consider the special needs and circumstances of those offices within Customs that are primarily if not wholly trade-related or revenue collecting-related, and make sure that those functions get all the resources they need in that new department.

Mr. GURULÉ. I certainly do not want to suggest that anything in my comments that we would do other than that. In fact, we recognize, certainly, the importance of the Office of Strategic Trade, the importance of the ORR, the Office of Regulations and Rulings. And it is certainly envisioned that those functions will continue. They will continue with Customs. They will transfer over with Customs. And we need to preserve them. We need to preserve the work that they are currently engaged in.

Mr. McCRERY. Thank you.

Mr. CRANE. Mrs. Johnson.

Mrs. JOHNSON OF CONNECTICUT. Thank you, Mr. Chairman.

In your work on this matter, and I assume that you have been in on some of the discussions about the development of the new department, what exactly do you think might be the consequences of having Customs, the Coast Guard, and Immigration in the same department?

Mr. GURULÉ. Well, certainly, it is envisioned that the consolidation, bringing together these different agencies that have related functions, will enhance cooperation with respect to border security, and will enhance information-sharing and coordination.

Mrs. JOHNSON OF CONNECTICUT. I can generally see that. Could you give us examples? I can see that there might be some good cross work there, but can you give some examples of INS at the border, of you guys at the border? How will these missions complement one another so that actually you could each do your job more effectively? Or will it make any difference, you will just be side-by-side?

Mr. GURULÉ. No, I think it definitely will make a difference. And I think one way is that there is accountability here. There is a streamlining of the chain of command. So instead of these different agencies reporting to different departments with different secretaries, different leadership, now we have these agencies that are in the same department. And in the case of the division for border and transportation security, they will report to a single Undersecretary. And the single Undersecretary will be overseeing the coordination of these important functions and responsibilities.

So it is a streamlining of the information chain, if you will, and the complementing and the targeting and concentrating of resources.

Mrs. JOHNSON OF CONNECTICUT. Do you foresee cross-training at any level?

Mr. GURULÉ. Well, it is certainly a possibility. And it could be that it would make sense to have that done. But that is a decision that the new Secretary for Homeland Security will make and I think will certainly make with the objective of enhancing security and enhancing good government, because, again, that is another important objective of the President's bill, to reduce the redundancies, reduce the overlapping of responsibilities, to make these agencies work more effectively and efficiently. So certainly, I could envision that happening.

Mrs. JOHNSON OF CONNECTICUT. Thank you.

Mr. CRANE. Ms. Thurman.

Ms. THURMAN. Thank you, Mr. Chairman.

Mr. Undersecretary, we welcome you and thank you for being here today.

And I think as you know, all of us are wanting to see the Homeland Security Bill passed and implemented. But I do also think that we need to be concerned.

And I would kind of want to pick up a little bit on what Mr. Rangel and this box thing. I do not know if you had an opportunity to look at Colleen Kelley's testimony that she is going to be giving today. She really does make some very good points as to having Customs kind of as their own entity instead of being folded in as one large entity, because we are not doing it with Coast Guard, we are not doing it in some other areas, but just talking about what they have to do and what they have been doing in protecting our borders, interdiction of drugs, all of the other kinds of things. And so I am a little bit concerned that they are going to lose identity.

And you can respond to that, and I hope that you will get a chance to look at this and give us some response back to what they have said. And hopefully, as we go forward, we do in fact take into consideration those that know the job out there every day and why they feel so strongly in their commitments to their jobs. On the security issue, I think we do need to be listening to those people that are on the frontlines.

The second thing that I would bring up, and I do not know if you remember this, but last year we had a Customs' bill before this Committee, and we had a huge fight over the benefit issue, particularly as it dealt with how they were paid and the differential pays that they received for nighttime work and those kinds of things. And according to some work that has been done by our staff, one of the things that they looked at is saying that section 730 of the proposal appears to remove all Homeland Security employees from the existing statutory framework governing employment of Federal employees. Specifically, section 730 removes all employees transferred to the new Homeland Security from existing Title 5, which governs the employment of Federal workers by creating new chapter within the title. So section 730 then leaves it to the discretion of the Secretary of Homeland Security and the Director of the Office of Personnel and Management (OPM) to decide what rules and regulations to apply to Homeland Security employees.

What comfort can you give us here today, as those Members of this Committee who have been through this fight over the last couple of years, and certainly was taken out of the bill in changing it, what comfort can we get that these employees will be treated as

they have been and certainly considered and given the rights that Federal employees are given?

Mr. GURULÉ. First, let me publicly state what I have stated personally and directly to Customs' employees, and that is that this country owes a great deal of thanks and gratitude to the hard work, the dedication, and the professionalism of Customs' employees who have worked tirelessly, certainly since September 11, who are working 12 hours and in some cases longer—

Ms. THURMAN. Absolutely.

Mr. GURULÉ. And 6 days a week and so on. It is remarkable, and we owe them a great debt of gratitude.

I think it is interesting to note that the important contribution that Customs' inspectors are making to make this country safer for all Americans was recently recognized by Commissioner Bonner when he went ahead and changed or upgraded their GS status from a GS-9 to a GS-11.

Ms. THURMAN. But could that change if they were transferred over?

And let me ask, before my time runs out, second, and being recognized and doing that is great, but in the development of this plan, how much have we counted on those people on the frontlines to give us input into this, into the President's proposal?

Mr. GURULÉ. Let me respond to your first question. You asked about the change of status and such. It is envisioned that these Customs' employees, when they would transfer over to the new Homeland Security, would carry with them their current, present GS status, their pay status, their benefits, even including their union status. What this bill seeks to do is provide the new Secretary of Homeland Security with some flexibility to retain employees, to promote employees, to make sure that we have the right people with the right expertise to ensure that this new department gets up and running effectively and as quickly as possible. That is the objective. And I think that, if anything, Customs' employees seek to benefit and benefit in a very significant way from this legislation.

And second, I'm sorry, was?

Ms. THURMAN. And how much input have we used from those employees on the front line, in putting this together?

Mr. GURULÉ. Well, I think certainly, in kind of a democratic process, it is the senior staff that obviously have been engaged, and extensively, in discussions about this proposal. And then it is dependent upon the senior staff to engage their supervisors and such. And so in that way, I think that has been an opportunity for input.

Mr. CRANE. Mr. Portman.

Mr. PORTMAN. Thank you, Mr. Chairman.

And thank you, Mr. Gurulé, for being here today and getting us started on what will be a major undertaking, but one that we are all committed to, because it is so critical to try to better protect, in the case of Customs, our borders and ports and ports of entry, many of which are inside the United States, including Cincinnati, Ohio, that I represent, from terrorism.

I guess a couple quick questions. One would be, if you were arriving in the greater Cincinnati airport and going through Customs

and Homeland Security was in charge of Customs rather than Treasury, what difference would it make?

Mr. GURULE. Well, that, in terms of what difference it would make, is a decision that ultimately is going to be decided by the new Secretary of this new department. And as I stated, there is this 12-month transition period that the legislation provides, with respect to the functions being transferred over. But at the same time, there is a transition period—and, actually, beyond that 12-month period, for the new Secretary to decide how these agencies are going to be configured or reconfigured or how they are going to complement one another.

And so I think it is a very thoughtful and a very deliberate plan, because I think it does three things that are very important. I think, first, it advances the President's goal with respect to consolidating quickly these very important border agencies. Second, I think it does so in a way that is least disruptive to the border security functions, because it transfers over Customs intact. And then, third, it provides for this transition period to work through some of the more difficult and complex issues, issues that, again, we welcome input and consultation with the Members of this Committee in resolving and working out.

Mr. PORTMAN. A couple of quick questions.

One, do you all have a sense that you have lost any employees to the new Transportation Security Administration?

Mr. GURULE. Oh, we have. It is not even a question of—I mean, clearly, clearly we have. There have been Secret Service Uniformed Division officers that have been—

Mr. PORTMAN. How about Customs?

Mr. GURULE. That have left.

Less so. Less so with Customs. I think for me, and I have oversight responsibility not only for Customs but Secret Service, I have seen the exit more so with Secret Service. There have been some instances with Customs, but I do not think the numbers have been all that high.

Mr. PORTMAN. I ask that because we have seen that here with Capitol Hill police, and you have seen that with the UD guys at Secret Service, and other law enforcement. And I think it just makes the point that there are different rules that now pertain to the roughly 100 agencies and departments and offices that would be consolidated.

And getting to the earlier question about flexibility, it would seem to me that there would be the need not just to give the Secretary some flexibility on hiring and firing, to be sure that he is able to retain good people and attract the kind of people we need for this function, but also that there be some leveling of some of the pay and benefits so that you don't have one agency robbing another, robbing Peter to pay Paul, within the same department. It would be particularly acute within the same department, I would think, given that your goals will now be to work together.

I have read your legislation, and you do not have much specificity with regard to your personnel issues, but you do ask for some flexibility, which I hope that you will have, in part to be able to level out some of these issues, so that you don't have that kind of competition.

Mr. GURULÉ. I think that is important. It is certainly important for continuity of operations, for enhancing efficiencies, and for these agencies to work even more closely.

Mr. PORTMAN. Do you have pay bands at Customs?

Mr. GURULÉ. Well, that is an issue that—there has not been a decision reached on that. I think the legislation provides some flexibility. We are seeking flexibility there. But with respect to pay banding, that is a decision that is better left and will be left for the new Secretary.

Mr. PORTMAN. Do you provide intelligence information from Customs currently?

Mr. GURULÉ. Do we provide intelligence? Certainly there is intelligence information that is being shared on a regular basis between Customs and the intelligence communities. We see that through Operation Green Quest. Operation Green Quest is collecting information, enforcement information, intelligence information, and sharing it regularly with the FBI and working closely with the intelligence community.

So I think we have made some significant and substantial progress to breaking down stovepipes and engaging in a free flow or certainly a much freer flow of information and information exchange.

Mr. PORTMAN. I think that is an important point to make, that part of the advantage of this agency is not just FBI and CIA information that can now be more readily collected, synthesized, and hopefully matched with vulnerabilities or risk, but that many of these entities, including Customs, have valuable information, some of which may be integrated already, some of which may not. And the same would go for the INS, even the inspections and the Coast Guard. And this could be a valuable advantage to us and a more efficient way to get that information where it needs to go.

Mr. GURULÉ. And I would add that this is one other important reason for moving forward and moving forward aggressively with ACE, because ACE has the potential of being the IT platform for multiple law enforcement agencies that are involved in tracking goods and personnel across the U.S. borders. So they would be able to access this information, including the INS. And in a very expeditious way, it would be accessible.

Mr. PORTMAN. Thank you, Madam Chair.

Mrs. JOHNSON OF CONNECTICUT. [Presiding.] Thank you. Mr. Doggett.

Mr. DOGGETT. Thank you very much.

Mr. Secretary, the President has of course urged the Congress to move swiftly in enacting this legislation. If that occurs, how soon after enactment is it realistic to expect that these Customs' employees will be over working as a part of the new Homeland Security?

Mr. GURULÉ. Well, there is no question that, first of all, the legislation is very specific on this point. These functions, these agencies and responsibilities, will transfer over within a 12-month period of time, so within that period of time. Twelve months is the outside limit. But it is certainly envisioned that these agencies could transfer over sooner than that. But, again, the actual timing will be decided by the Secretary working closely with the President.

Mr. DOGGETT. But the outside limit is not more than a year after it is signed.

Mr. GURULÉ. That's correct.

Mr. DOGGETT. It was quite natural, of course, to see Customs transferred. I was surprised that the agency within your department that has principle responsibility for keeping tabs on explosives and guns that could fall into the hands of terrorists, that that agency was not transferred. Does the department oppose the transferring of the ATF agency to this new department?

Mr. GURULÉ. Well, the President made the decision based on what needs to be done quickly to secure the homeland. I recognize that there are other ideas out there about other law enforcement agencies and whether they should be included as part of this new department. But this proposal is designed to cover the changes that need to be made now to enhance security.

Mr. DOGGETT. And the President does not think that dealing with explosives is something that needs to be done now?

Mr. GURULÉ. No. Certainly, dealing with explosives not only is something that needs to be done now, it is being done now. And it is being done quite effectively by ATF. In fact—

Mr. DOGGETT. Does ATF have a key role in the war on terrorism?

Mr. GURULÉ. They are playing a very important role, especially with respect to inspection of facilities that house and store explosives. So the answer is yes.

Mr. DOGGETT. The department does not oppose their being transferred there, the Treasury Department?

Mr. GURULÉ. The Administration has not made a decision with respect to ATF.

Mr. DOGGETT. I guess it has made a decision not to transfer it in that it is not included in the bill.

Mr. GURULÉ. It is not included. That is correct.

Mr. DOGGETT. But Treasury has taken no position itself of opposing the transfer?

Mr. GURULÉ. The position that Treasury has taken is to support fully the Administration's position at it stands.

Mr. DOGGETT. And what reason is there to separate out the key role that ATF plays in opposing terrorism from this Homeland Security?

Mr. GURULÉ. The only thing that I can say is that this was certainly considered by Homeland Security, considered by Governor Ridge, and the President. The decision was made to not include ATF. A decision was made that the current organizational structure that is proposed is sufficient to provide the enhanced security that the President is seeking.

Mr. DOGGETT. Thank you.

Mrs. JOHNSON OF CONNECTICUT. Thank you very much, Mr. Gurulé.

Mr. Rangel, do you have any additional questions?

Mr. RANGEL. No, but I really did not understand the last answer, as to why ATF was not included in Homeland Security. I mean, if we all agree that they are doing a terrific job in terms of protecting our great Nation, and if this is Homeland Security, get them all under the same umbrella, what was the thinking in not

just automatically including them as a part of that? Just what is the thinking? We support you, and we support the President, just why did you not do it?

Mr. GURULE. Again, as I stated, there are certainly different views with—

Mr. RANGEL. Just give us one.

Mr. GURULE. Respect to which agencies should be included, should be excluded. The President made a decision with respect to these particular agencies and believes that including these particular agencies in this new department will enhance security and will enable us to do so, enable the Administration to do so in a very timely, very timely way.

Mr. RANGEL. So it doesn't matter how many different ways I ask the question, you will not tell me why they reached that conclusion, right?

Mr. GURULE. I believe I responded to the question the best that I am able to.

Mr. RANGEL. Thank you.

Mrs. JOHNSON OF CONNECTICUT. Thank you very much for your testimony. We apologize for keeping you so late. And we will move on to the next panel.

Mr. GURULE. Thank you. It was a pleasure. Thank you.

Mrs. JOHNSON OF CONNECTICUT. I would like to welcome Timothy Farrell, Deputy Executive Director of the Port of Tacoma in Washington; James Clawson, the Chief Executive Officer of JBC International and Secretariat of the Joint Industry Group; Jerry Cook, Vice President of International Trade, Sara Lee Branded Apparel, Winston-Salem, North Carolina; and Colleen Kelley, National President of the National Treasury Employees Union.

Welcome to all of you.

And thanks very much to our national Archives for bringing this fine document for our observation today. Thank you.

Mr. Farrell, if you will proceed?

**STATEMENT OF TIMOTHY FARRELL, DEPUTY EXECUTIVE DIRECTOR, PORT OF TACOMA, TACOMA, WASHINGTON**

Mr. FARRELL. Thank you. I would like to thank the Committee for the opportunity to speak with you this evening.

As you mentioned, my name is Tim Farrell. I am the Deputy Executive Director of the Port of Tacoma, Washington.

Among the responsibilities that I oversee at the port is the integration of security into the free flow of trade through our port. And since September 11, we have dedicated more resources and greater vigilance to that task. And certainly we have had great partnership and help from the Federal Government and its various agencies, including Customs, as well as our private sector customers and partners.

I want to focus on three messages tonight. First, as you know, Customs is a very important player in both international trade and border security and, as such, has a major role to play in the economic vitality of the United States. As you heard earlier from Representative Dunn, Washington State is the most trade-dependent State in the Union, with one in three jobs related to international trade.

Second, as Customs integrates new security programs and standards into its operations at border crossings and ports, Customs needs to take care to assure that uniform application of these procedures at all border crossings and ports takes place. A non-level playingfield, from a regulatory standpoint, impacts both security and commerce, as I will explain a little bit later.

And third, continued cooperation and coordination with Canadian Customs to assure comparable security protocols is essential in averting the risk of diversion of U.S.-bound cargoes from U.S. ports to Canadian ports.

Let me give a little bit of background on the Port of Tacoma, which operates on 5,000 acres of tide lands on Puget Sound about 30 miles from Seattle.

Tacoma along with Seattle comprises the third largest container gateway in the United States. The two combine to handle nearly 3 million containers each year. Most of those containers move through our ports into other parts of the country. In fact, 70 percent of imported containers move on to places such as the U.S. Midwest and Northeast. The Port of Tacoma handled \$20 billion in international trade in 2001, and \$3 billion in domestic trade as the gateway to Alaska.

The Port of Tacoma is also one of the U.S. Maritime Administration's 13 strategic ports, based on its proximity to major military installations and its ability to load military cargoes out from those installations.

As I mentioned, Tacoma is close to the Canadian border, and that has an impact on our activities and on the regulatory framework in which we operate.

Finally, the port generates directly and indirectly over 100,000 jobs within the State of Washington. And as such, we take regulation and security matters very seriously because trade is a major part of our economy in Washington State.

A little bit about what we have done in the ports, particularly in Puget Sound, about security since September 11: Ports of Seattle, Everett, and Tacoma jointly filed an application for Federal funding under the grant program that came out earlier this year. As far as we know, we were the only port range that submitted a joint application. We work closely together because you are only as secure as your neighbor. That grant program focuses much on target hardening, as it is called, fencing, barriers, cameras, officers, lighting, that sort of thing.

In addition, the Ports of Seattle and Tacoma are working together on a version of Operation Safe Commerce; Secure Maritime Asian Routes for Trade, SMART is our acronym for it, but essentially, it is similar to what you have heard about going on in the Port Authority of New York and New Jersey.

This program is designed as a way to determine best practices in securing the container logistics chain from the point of origin to the point of destination. It is based on the principle that if we find a weapon of mass destruction in a container in a U.S. port, it is too late. And so the critical information that we need to know is whether or not a container is loaded in a secure environment. And then from that point to its destination, is it secure, has it stayed en route, has it stayed on schedule, has it been tampered with?

And the Ports of Seattle and Tacoma, along with the other two major gateways for containers in the country, Los Angeles and New York-New Jersey, are working to determine some best practices for how we might consider and determine that containers are loaded and moving in a secure fashion.

We are looking forward to Federal assistance and partnership in making that process go forward.

With regard to Customs, it is critically important that in this time, where we consider changes to Customs and where its reporting relationships lie, that we do not compromise the non-security-related functions of Customs while at the same time we pay very close attention to security.

Customs, as you heard earlier from the Undersecretary, does have trade and revenue functions, as well as security functions.

I would call on the Congress to assure that, as we go forward in this security environment, that not only do we pay very close attention to security but that those things that Customs does to help the flow of commerce, including the development of the ACE system, be continually funded and supported.

I mentioned briefly in my introductory statement about our proximity to Canada and balanced implementation of regulation. There is a concern in our part of the country, in the Pacific Northwest, as well as some other places, including New York-New Jersey and Boston, that implementation of security regulations could have the negative impact of diverting cargo to foreign ports, foreign in this case being Canada.

This is an instance where we want to be very careful not to do the terrorists' jobs for them and use our security system to slow down commerce to the extent that commerce chooses to go in other directions.

Should that happen, two things occur. One is the obvious, immediate economic impact. I mentioned 100,000 jobs rely on the Port of Tacoma. The second is security. If cargo moves through another country, then we face the potential of a lower level of scrutiny in that Nation. So Customs has a very delicate balancing act that it accomplishes quite well, and that is the movement of trade, the facilitation of trade, as well as safeguarding our country from that trade.

One of the impacts that we could see, if we do not do this quite right, is steamship lines and other entities that report to Customs reporting to multiple agencies for their information. And we do not want to see that. That is a way of creating greater work for our customers in terms of reporting their information. If we keep Customs in its singular grouping with both sides of the house, we can serve those companies that generate trade and keep our economy flowing.

I want to commend Customs on its new programs: the CSI and the C-TPAT program. I think those are both strong initiatives, creative initiatives, in the direction of securing trade while continuing to make it happen. I think it is incumbent upon us and Congress to make sure that those programs are properly funded.

So just to summarize, I would like to issue a couple of challenges. One is to Customs, and that is to maintain balanced application of the regulations that it puts forth to the business community; and

second, to Congress, to oversee Customs to ensure that, again, the focus on security doesn't overshadow the commercial functions of Customs, and also to support Customs in each of those areas, to make sure that it is properly funded to do so.

So I thank you for the opportunity again. And I am happy to take any questions you may have.

[The prepared statement of Mr. Farrell follows:]

**Statement of Timothy Farrell, Deputy Executive Director, Port of Tacoma, Tacoma, Washington**

Good afternoon, Chairman Thomas and Members of the committee. My name is Tim Farrell and I am here today representing the Port of Tacoma. As the Port's Deputy Executive Director, balancing security with the efficient flow of cargo across our docks is one of my paramount responsibilities and concerns. Though ports have always devoted resources to safety and the protection of cargo, the industry now shares an especially keen sense of responsibility with Congress and other governmental entities in these challenging days since September 11th, 2001.

Before I begin my formal remarks, let me first put my comments into context by describing some of the Port's key attributes. The Port of Tacoma moved more than 1.3 million containers across its docks in 2001 and, when combined with the Port of Seattle, represents the nation's 3rd largest intermodal gateway. Each year, the Port of Tacoma handles more than 15 million tons of cargo, amounting to more than \$20 billion in international trade. Seventy percent of these international containers—holding products ranging from shoes to machinery—are transferred from ships to trains and are headed for markets in the Midwest and East Coast. Additionally, the Port of Tacoma handles an additional \$3 billion worth of trade as the Gateway to Alaska, with more than 75 percent of all consumer goods bound for Alaska transported through Tacoma on the CSX and TOTE ships.

Another important distinction Tacoma has is serving as one of the U.S. Department of Transportation Maritime Administration's 13 national "strategic ports"—a designation based on the load-out capabilities the Port of Tacoma provides to Fort Lewis. With nearly 102,000 jobs in Washington State related to activities at the Port of Tacoma, the Port serves as a major economic engine for the Pacific Northwest.

The Port of Tacoma appreciates the opportunity today to share its perspectives on the proposal to incorporate the U.S. Customs Service into a new Department of Homeland Security. The U.S. trade policies are built on democratic principles of free and fair trade, and competition. The U.S. Customs Service capably faces the daunting responsibility of safeguarding this free flow of trade and has embraced the elevated challenge of allowing trade to continue to be free and fair in a heightened security environment. Ports also recognize the trade landscape has been forever altered, and that we must find new ways to continue doing business while integrating enhanced security. The Port of Tacoma is engaged in several initiatives on this front, including development of a "Operation Safe Commerce" model program called SMART (Secure Maritime Asian Routes for Trade) that would ultimately track containers from the point of origin and through the United States.

Though the need for including U.S. Customs in the proposed Homeland Security Department is logical, Congress should not let this enhanced focus on security compromise the traditional responsibilities of U.S. Customs. It is imperative that Customs' activities such as: tracking merchandise entering the country, air and sea surveillance and interdiction, and fighting drug smuggling continue to receive ample priority and funding. In my brief time with you this afternoon, I would like to convey three primary messages:

- **U.S. Customs is an integral link in our nation's economic chain of commerce. Ensuring the secure, legal and expedited movement of goods into and out of our country is essential to our economic vitality.**
- **As U.S. Customs integrates new security standards into its traditional cargo inspection and tracking methods through ports across the country, care must be taken to keep procedures uniform and proportional from one port to another.**
- **Continued cooperation and coordination with Canadian Customs, in establishing comparable security protocols, is essential in averting the risk of cargo diversion out of U.S. ports.**

Now, let me expand upon these points. As a port in the Pacific Northwest, we are especially aware of the vital role U.S. Customs has always played in protecting our country's land and sea borders. We consider Customs to be a primary partner in safeguarding the flow of trade through our port and we work closely with our local agency officials. It must be recognized, though, that not only does Customs have the power to ensure that cargo is legal and safe, it also has a direct impact on a port's ability to be competitive. In these challenging times for the world's economy, steamship lines are placing even greater emphasis on doing business with ports that can accommodate their need to move goods quickly onto and off of ships. If a port cannot provide efficient service, our customers (steamship lines and shippers), may decide to call elsewhere. In the case of ports along the Canadian border, this may mean jobs that would have resulted from ships calling at the ports of Seattle, Boston or New York/New Jersey, may instead end up going to workers in Vancouver, B.C., Montreal or Halifax.

These competitive and security realities require all ports to focus on ensuring each step in the economic trade chain is operating efficiently. For example, what we have long heard from our customers—but even more pronounced since September 11th—is that the procedures U.S. Customs is employing in Tacoma are more time-consuming and costly than at other West Coast ports. There have been numerous instances where steamship lines report cargo to and from Eastern Asia is inspected at a much higher proportion in Tacoma than at other West Coast ports.

Another recent concern expressed by our customers is whether Customs is requiring a standard percentage for “devan” to be consistently carried out at all ports. (The term devan refers to the physical unloading process of the container's contents for inspection.) If U.S. Customs officials devan 100% of a container at one port and only 25% per container at another port, this would result in dramatic differences in efficiency and the cost of moving cargo through ports. For the shipper, this means lost revenue and time associated with having the cargo wait a day or more on the docks for the inspection, since a 25% devan typically takes 30–60 minutes and a full devan can commonly require six or more hours. The shipper also bears the direct expenses associated with labor's additional handling of this cargo which can range per container from \$287 for a 25% devan up to \$673 for a complete devan. By way of comparison, it is like an airline passenger missing a flight because their luggage was searched and then receiving a bill afterwards for the service.

We are working with Congresswoman Jennifer Dunn and other Members of our congressional delegation to gather data from U.S. Customs quantifying these assertions of disproportionate inspections and non-uniform methods. I share these examples with you in order to illustrate Custom's influence on the efficient handling of cargo through all ports. The fine points of policy making in Customs, such as employing consistent inspection methods, must not be lost in the much bigger and important mission of Homeland Security.

Coordinating consistent inspection and security protocols with Canada must also be a priority. Given our proximity to the Port of Vancouver, B.C., the ports of Tacoma and Seattle have long been sensitive to the threat of cargo diversion. Onerous policies like the Harbor Maintenance Tax, which add extra charges to containers bound for U.S. ports, create an incentive for steamship lines to offload their cargo in Canada. Congress must be vigilant in making sure that cargoes face the same level of scrutiny in Canada, as they would face if those goods were shipped directly into our country. Should the perception develop that it is easier to move goods into the U.S. through Canada, not only would our nation's ports be disadvantaged, but our country would face a greater security risk. We recognize the efforts that U.S. Customs has taken thus far to work with Canadian Customs on programs such as Smart Boarder and the innovative CSI (Container Security Initiative) and the C-TPAT (Customs Trade Partnership Against Terrorism) effort.

As Congress explores the inclusion of the U.S. Customs Service into a Department of Homeland Security, we believe it is critical to not lose sight of the importance of this agency's traditional mission. We look forward to working with the Congress, Customs and other critical U.S. agencies in integrating the enhanced requirements for security in concert with maintaining our nation's efficient flow of trade. On behalf of the Port of Tacoma, thank you for this opportunity to share these issues before this Committee.

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Chairman THOMAS. [Presiding.] Thank you, Mr. Farrell.

And since you were the first Member of the panel, prior to going to Mr. Clawson, as we move across the panel, we would like to get

the horse before the cart, so it is my pleasure to call on the gentlewoman from Washington to introduce you.

[Laughter.]

Ms. DUNN. Thank you, Mr. Chairman. I appreciate you letting me step in here. We had a mixed message going on there, but you have already heard from Tim Farrell.

Tim of course is the Deputy Executive Director for the Port of Tacoma. These are two terribly important ports to us, not in but near my district, the Port of Tacoma and the Port of Seattle. In Washington State, one out of three jobs are related to trade, so it is no coincidence that the Port of Tacoma plays a vital role in our economic viability and in the competitiveness globally of our region.

The Port of Tacoma, as Mr. Farrell has told you, handles more than 15 million tons of cargo, amounting to about \$20 billion a year in trade. Seventy percent of the containers that arrive in the port are bound for markets in the Midwest or East Coast, so you can see that we are a gateway to the rest of the United States. And what is done under the Customs' jurisdiction is, therefore, terribly important to us.

Tim has extensive experience in port management. He is responsible for a variety of port departments there in Tacoma, including finance, human resources, information technology, security, and risk management. Before he came to us at the Port of Tacoma, he worked for 7 years at the Massachusetts Port Authority. He is a native of Massachusetts. He graduated from Middlebury College. However, since he took his master's degree at the University of Washington, we do consider him a native of the Pacific Northwest.

Mr. Farrell has already brought out some very important points that have to do with competition between our ports and ports in other Nations. And I look forward to bringing some more points out from him as we go through questioning.

Thank you, Chairman.

Chairman THOMAS. Thank the gentlewoman.

The next panelist, thank you for coming. James Clawson, Chief Executive Officer of JBC International, who is here for the Joint Industry Group. Your written statement, if you have one, will be make a part of the record. You have 5 minutes to address us in any way you see fit, Mr. Clawson.

**STATEMENT OF JAMES B. CLAWSON, CHIEF EXECUTIVE OFFICER, JBC INTERNATIONAL, AND SECRETARIAT, JOINT INDUSTRY GROUP**

Mr. CLAWSON. Thank you, Mr. Chairman and Mr. Rangel and Members of the Committee. As usual, it is a pleasure to be here again.

Chairman THOMAS. Mr. Clawson, let me tell you, these microphones are very unidirectional, so you need to really talk directly into the end of it.

Mr. CLAWSON. Thank you very much. I just wanted to thank you and Mr. Rangel and the Members of the Committee.

In the interests of time, you have my written testimony. I thought that since I have been here enough on behalf of the Joint Industry Group and others for the last 20-plus years, I would like to just tell you some of our thoughts about where we are.

We fully support the proposal. We recognize that there are issues about it that are difficult to understand, and we are still looking forward to clarification. But we do support it for all of the reasons that have been described by the Undersecretary.

We also think that Customs ought to be kept together. There was discussion about splitting it. And, again, we support it for the reasons that were given, that Customs' dual mission is inextricably combined and cannot be separated.

Let me tell you the two things that I want to recommend to this Committee and to Congress that I think are very important. We have made the same recommendations to the Administration, and we will see where it goes. We totally agree with those who are concerned about the disappearance of Customs. We think there ought to be created within that chart that has been talked about a sixth Undersecretary for Customs Commercial Operations, just like the U.S. Department of Commerce has an Undersecretary and Commissioner for the Patent and Trademark Office. There is absolutely no reason why there cannot be an Undersecretary for the commercial work and the commercial side of the Homeland Security, giving it the same stature as the border security.

In the early seventies, I worked in Treasury. We tried then to get a single border agency. It needs to be there, make no mistake, for all the reasons that are described. But I think it is critical that the commercial functions and all of the things that we talk about, from quotas to intellectual property protections, all the things mentioned in the Chairman's opening remarks, that they not be subsumed under some Undersecretary whose first priority has been given that of the security of our Nation's borders from terrorists and other security issues. I think that that is the critical nature of the recommendations that we make, to have that level of visibility, if you will, within the new department, reporting to the Deputy Secretary.

And then equally as important, we believe this Committee, which has had oversight for many years over those issues, ought to continue to have jurisdiction and oversight over that portion of the work of Homeland Security, which would be the Commercial Operations/Customs, if you would call it that.

And then there are some other suggestions that we are concerned about that haven't been addressed in this discussion. I am referring to ACE. We have been very active in getting the funding for ACE. There are over \$600 million that has already been appropriated. We are way into it; 8 years after the Customs Modernization Act (MODACT) and the trade is still waiting for a lot of the implementation to be done. And I think there is a real concern that ACE will be put on the back burner again, even though all the assurance is to the contrary.

It is interesting that Customs has had 8 years to do ACE and has not done it. But it has deployed and put into place in less than 10 months enormous amounts of technology with regard to the security of our country. And I think it speaks to our concern over the fact that, when there is a priority—and I am not arguing that we shouldn't be concerned about the security our country. What we are concerned about is providing this commercial role sufficient priority

with the other functions with regard to the economy of our country. And that is quite important.

In closing, I think it is important that, for budget discussions within the government in the future, and for the whole idea of coordination, there ought to be equal standing between the commercial side and the enforcement-security side, from that dual role.

And I am happy to take any questions that you might have.

[The prepared statement of Mr. Clawson follows:]

**Statement of James B. Clawson, Chief Executive Officer, JBC International, and Secretariat, Joint Industry Group**

**INTRODUCTION**

Mr. Chairman and distinguished Members of the House Ways & Means 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 President Bush's proposal to create a U.S. Department of Homeland Security. More specifically, I will address the transfer of all assets and authority of the U.S. Customs Service to the new Department.

The JIG recognizes the daunting task that lies ahead in the creation of the Department of Homeland Security. The architects of the reorganization will need to take a careful approach to anticipate the future needs of the agencies involved and the people they serve. They should fully evaluate the effectiveness of including or excluding the enforcement functions of additional agencies. In addition, they should not rush to meet any deadline that is essentially chosen for the purposes of public relations. It is essential that U.S. Customs and the Administration not lose sight of their role to facilitate the flow of trade during the reorganization. Customs 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.

For years, U.S. Customs has been the agency on the front line, serving a dual role to defend our nation's borders and to facilitate the flow of trade. Governor Ridge and Commissioner Bonner have taken into consideration this dual mission as they look to move Customs out of Treasury and into the new Department of Homeland Security. However, many Members of the trade community continue to have concerns over how this new department will balance Customs' commercial and enforcement operations after being placed within a single "Security Department." There are those Members of the JIG who feel that certain branches of Customs would best remain with the Treasury Department while several other agree with the opinion of Commissioner Bonner that Customs' dual role is inherently inseparable.

We recognize that the trade will not make the ultimate decision to incorporate Customs into the new agency or to leave it in one piece. However, we are in a position to state our concern for the continuation of attention to commercial interests, trade facilitation efforts and continued funding of those activities.

**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. The JIG has worked with Congress and the Administration to emphasize the importance of the U.S. Customs Service and its efforts to modernize its systems. Both Congress and the Administration have shown great support for the development of the Automated Commercial Environment (ACE). This system is not Customs' system alone but part of the nation's border enforcement system. It is the FBI's system, the State Department's system, the Food and Drug Administration's system, and the system of every agency of government 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. By arming U.S. Customs officials with information, this modern and efficient system will not only facilitate trade, but will also strengthen the government's ability to secure our nation's borders.

We applaud the support that the Committee on Ways and Means, specifically Chairman Crane and his Subcommittee, has demonstrated for understanding that ACE facilitates U.S. exports and imports, while enhancing Customs ability to protect America's borders from illicit narcotics flows and terrorist activities. 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. However, the committee must also recognize the importance the trade places on other facilitation initiatives that are currently underway at Customs.

It is the worst fear of many in the trade that trade facilitation will be almost entirely neglected in a humongous department devoted almost entirely to security and enforcement. Trade facilitation includes an initiative to implement fully the Customs Modernization Act (Mod Act) and simplify current trade procedures through technology or procedural reform. ACE is just a piece of the puzzle. Trade facilitation takes into consideration classification, valuation, data harmonization and all other technical issues related to trade. While not all trade facilitation initiatives fall under the direct jurisdiction of Customs, most operate successfully within Treasury. In a new Department of Homeland Security, Congress, Customs and Treasury should continue to work on projects such as the World Customs Organization's (WCO) Trade Data Harmonization initiative and should continue current efforts to minimize the backlog of pending cases within Customs' Office of Regulations and Rulings. Specifically, the JIG acknowledges Commissioner Bonner for his initiative to deliver rulings within ninety days. However, without sufficient budgetary support, this promise cannot be met.

Trade facilitation also includes procedural reform to ease the regulatory and administrative burdens posed on Customs and the trade. For example, Commissioner Bonner has committed to investigate mechanisms for duty drawback reform. We are committed to work with the Commissioner in his efforts to simplify current drawback procedures. The JIG believes that pending legislation will simplify and clarify ambiguities and assist the U.S. Customs Service administer a complicated program by making drawback procedures consistent with continuing congressional changes to trade laws. In addition to drawback reform, the new Department 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 the 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. While perhaps an unpopular or minority view, 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.

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

The Department of Treasury and U.S. Customs continually engage the trade in advisory roles and forums. For example, the Treasury Department has engaged a smaller group of companies and trade associations to participate in an Advisory Committee on the Commercial Operations of Customs, more commonly known as the COAC. 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. The COAC currently provides regular, quarterly review of Customs. This body advises Treasury and Customs on the implementation of programs that directly affect their ability to do business. This includes partnership initiatives such as the Importer Self Assessment (ISA) and Customs Trade Partnership Against Terrorism (CTPAT). 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. 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. This can be illustrated in the current debate over the proposed extension of the Merchandise Processing Fee (MPF). Although the MPF is not the topic of this hearing, many parallels can be drawn from this debate. The MPF is a so-called "user-fee" paid by importers to cover the cost incurred by Customs to process commercial imports. The MPF money collected by Customs, however, does not directly fund Customs operations. Instead it is placed in the general revenue fund where it is used for any number of government programs that may or may not be related to Customs operations.

The JIG supports current legislation that provides for revenue generated by the Merchandise Processing Fee (MPF) to be used only to fund programs related to the work of the commercial operations of the U.S. Customs Service. On several separate occasions in the 107th Congress, bills have been introduced which attempt to use this fee to fund unrelated programs, such as the Patient's Bill of Rights. We strongly oppose any extension of the MPF, or any user fee, that does not earmark those funds exclusively to offset the costs of Customs commercial operations. This also excludes the use of MPF funds for Customs' Homeland Security activities.

In addition, the JIG supports provisions in the Trade Act of 2002 that require accountability for use of MPF funds. If the Customs Service is to continue collecting this user fee in the name of commercial operations, it **MUST** directly fund improvements to Customs processing, specifically for ACE and other initiatives that are greatly needed to improve the trade process. JIG is greatly optimistic that this approach will allow user fees to be applied to the commercial operations of the U.S. Customs Service for which they are intended and needed.

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.

Mr. Chairman and Members of the Committee, we believe this Committee must continue to have jurisdiction and oversight of the commercial operations of the Customs function in the new department. I believe one option for continuing 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.

It is also important for Members of this Committee to authorize adequate funding for Customs commercial operations as well as their trade facilitation activities. For example, Customs needs continued funding to staff 301 ports of entry and to build its arsenal of tools to aid in border inspections. Customs also needs funding to continue development of smart tools, such as ACE, and to develop processes to facilitate the flow of trade. This will allow Customs to defend our physical and economic well being.

### 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 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.

I agree with Chairman Thomas when he stated, "Our Nation's long-term defense rests equally upon the protectors at our borders and the engine of our economy."

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

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Chairman THOMAS. Thank you very much, Mr. Clawson.

Jerry Cook, Vice President, International Trade, Sara Lee, looking at trade from both inside the United States and outside.

Mr. Cook, your testimony will be made a part of the record. Address us in any way you see fit.

**STATEMENT OF JERRY COOK, VICE-PRESIDENT OF  
INTERNATIONAL TRADE, SARA LEE BRANDED APPAREL**

Mr. COOK. Thank you, Mr. Chairman, Mr. Rangel, and Members of the Committee. I will just summarize my written testimony, for time's sake.

Most importantly, the focus for us with Customs has been fairly successful, particularly this past year. Customs managed 23 million entries and related cargo, both from an enforcement and from a commercial facilitation. Important to note, is Customs maintain the primary data repository for over 40 other government agencies, as well as enforcing 400 laws, ranging from public health, safety, social, economic, environmental, and transportation, and all in a very timely and sensitive manner. The ability to execute these respective activities is not only critical for our public safety but also in fostering our economic security. With the advancement of the MODACT, the essential ingredients of combining trade facilitation along with the enforcement were critically linked to improve security, compliance, and, for us, a very predictable business solution. The successful trade programs that this Committee crafted, and the subsequent legislation have created economic opportunities in the United States and around our borders. The economic development of trade has decreased security threats to the United States, and the sustained economic development of regions like the Caribbean basin and the Sub-Saharan have placed an ongoing development of those regions totally dependent on an efficient Customs. To delink the Customs' enforcement from the business facilitation, in my mind, would likely have unintended consequences to the business community and to the respective agencies trying to manage the trade and business.

While the full development and implementation of Homeland Security is being contemplated, we need to ensure that the hard work and the leadership of this Committee and others ensures the timely implementation of ACE. The ACE system envisioned a very robust environment that can both facilitate risk assessment and reduce the cost burden of paper documents and the repetitive reloading of data in our current trading systems.

If the two roles were separated based purely on enforcement versus commercial, the definition of what constitutes enforcement versus commercial would likely lead to an endless level of appeals while trade is idled. By adopting ACE as the core platform for Homeland Security, the respective process necessary to exchange commercial and enforcement data will be incorporated on day one.

I believe trade advice to the senior management of Homeland Security will be vital in assessing what is working and what is not working going forward. The Customs receives valued input, problem identification and problem-solving via the trade support groups like the Commercial Operations Advisory Committee and the Trade Support Network. The willingness of Customs and the industry to jointly work together to identify issues affecting the commercial sides of trade along with enforcement and co-develop workable solutions is the cornerstone that exemplifies Customs versus other customs' services around the world.

The Customs provides valued input into other countries to advance their management of risk to our country. The joint role of en-

forcement and commercial facilitation is crucial to better develop models of trade prior to arriving to the United States.

As we move forward in Homeland Security, we should consider making some beneficial changes that would both enable the trade and Customs to better achieve border and economic security: 1) elimination of reconciliation for all entries that provide only statistical updates but no impact on revenue, 2) simplify and reduce the size of the harmonized tariff schedule; 3) provide total electronic interface for all required data; 4) eliminate any paper document requirements; 5) eliminate the releasing of confidential and trade-sensitive data to nongovernment agencies; 6) operate ports 24 hours, 7 days a week; and 7) reduce the required data for exports and imports to a single set as conceived under the ITDS model.

Mr. Chairman, Mr. Rangel, I want to thank you for the opportunity and, most importantly, for your leadership on fostering trade and fostering a modern trading system. I appreciate the opportunity to comment on this transfer of Customs to Homeland Security. In closing, the continued advancement of Customs' role in Homeland Security can provide a valuable baseline. Commercial success is achieved in concert with enforcement via an efficient and balanced Customs' process.

Thank you.

[The prepared statement of Mr. Cook follows:]

**Statement of Jerry Cook, Vice-President of International Trade, Sara Lee Branded Apparel**

**Introduction**

Mr. Chairman and honored Members of the Ways and Means Committee, my name is Jerry Cook and I am the Vice-President of International Trade for Sara Lee Branded Apparel. Some of our better-known apparel brands include Hanes, Champion, Bali, Wonderbra, Playtex and Just My Size. I am an active member in various trade groups including AAEL, JIG, AAFA, BACM and a former member of the Advisory Committee on the Commercial Operations of U.S. Customs.

I am presently a member of the ISAC-15 as well as a member of the Trade Support Network. Sara Lee Branded Apparel is a charter member of the Customs-Trade Partnership Against Terrorism (C-TPAT) and a member of BASC (Business Against Smuggling Coalition.) Thank you for this opportunity to testify today on the proposal to create a U.S. Department of Homeland Security and the transfer of all assets and authority of the U.S. Customs Service to this new Homeland Security Department.

Mr. Chairman, my remarks are based on my experiences working with the U.S. Customs Service and the various regulatory agencies that manage our exports and imports. It is my belief that the proposed transfer of the U.S. Customs Service and consolidation of the border security agencies into a new Homeland Security Department can only be beneficial if enforcement and commercial operations remain together.

The U.S. Customs Service is an integral partner in our supply chain strategy. In addition to the U.S. Customs mission to manage anti-terrorism and drug enforcement along our nation's borders, Customs successfully managed last year:

- Over 23 million entries
- Over 472 million passengers
- Over 300 ports of operation
- Over 142 million conveyances
- The collection of over \$23 billion in duties and fees

Customs achieved this milestone while seizing over 1.7 million pounds of narcotics. Their achievement was accomplished with 19,000+ employees and in partnership with the business community. In addition, Customs continued to forge ahead with the development of the ACE system and to began building a new critical partnership with the business community known as C-TPAT (Customs-Trade Partnership Against Trade.)

Additionally, the U.S. Customs Service maintained the primary data repository for over 40 other government agencies and enforced over 400 laws ranging from public health, safety, social, economic, environmental, and transportation in a time sensitive environment. The ability to execute these respective activities is not only critical for our public safety, but in fostering our economic security.

**Critical to the Business Community—The Totality of the U.S. Customs Service Must Be Transferred Together**

With the advancement of the MODACT, the essential ingredients of combining trade facilitation along with enforcement were critically linked to improve security, compliance and predictable business execution. The U.S. Customs Service has served for many years in this dual role. During their 200+ years of operating, the U.S. Customs Service has developed a series of rules, regulations, but most importantly a process in which commerce is executed in a transparent and predictable environment.

The successful trade programs that the Ways and Means Committee crafted into legislation have created economic opportunities. The economic development of trade has decreased security threats to the United States beyond our borders. The sustained economic development of regions like the Caribbean Basin, Mexico, Sub-Saharan Africa and the Mid-East have placed the on-going development of those regions dependent on an efficient Customs Service.

To delink Customs' enforcement from the business facilitation would likely have unintended consequences to the business community and the respective agencies involved in managing trade and managing enforcement.

In short, the process of enforcing trade laws has advanced a hybrid solution that both informs the trade community of the respective programs and seeks joint ownership in critical areas. Given the "hands-on" management style required to manage the operational and enforcement aspects of trade, I believe it is critical that those respective missions stay together to provide the balance, insight and agility necessary to work through issues we jointly encounter.

**Accelerate and Insure A Robust And Fully Integrated Electronic Exchange Solution—ACE (Automated Commercial Environment)**

While the full development and implementation of the Homeland Security Department is contemplated, we need to insure the hard work and leadership of this Committee and others to develop the ACE system in timely achieved. As a member of the Trade Support Network, Customs repeatedly seeks insight and inclusion on the development of the new Automated Customs Environment. U.S. Customs strives to insure that it not only incorporates the trade community's needs, but to also insure that ACE is able to facilitate the key roles of enforcement, risk assessment, centralized data repository for the U.S. Government and Account Management.

It is important to note that as the blueprints for the Homeland Security Department are drafted, resources are provided to insure that the vision of ACE is fully achieved and the benefits to trade are incorporated. U.S. Customs has fostered a model to gain the voluntary support of the trade community for key enforcement initiatives by their genuine understanding and interest in assisting valid trade to enter efficiently, challenge unknown shipments to determine their validity and thwart illegal trade from gaining access to the USA.

The ability to rapidly move data within the agency begins with source data populated once into one repository. The ACE program envisioned a robust environment that can both facilitate risk assessment and reduce the cost burden of paper documents and re-loading data.

Within the trade role of Customs, the determining factors for shipment admissibility are more often commercial related than anti-narcotic or anti-terrorism. The ability to determine and advise correct classification, valuation, country of origin, trade preference program, trade mark and status of an entry or release are all aspects that affect the same agent/inspector examining a shipment.

If the two roles were separated based purely on enforcement versus commercial, the definition of what constitutes enforcement vs. commercial would likely lead to an endless level of appeals while trade is idled. The U.S. Customs Service has incorporated not only the traditional law enforcement issues, but manages to understand the complex commercial issues. The separation of these two roles will likely leave trade in an unmanageable environment.

The advancement of the U.S. Customs systems and the associated modernization efforts are critical to the new Homeland Security Department. By adopting ACE as the core platform for the Homeland Security, the respective process necessary to secure economic exchange will be incorporated the first day. I realize that the ultimate decisions will be decided jointly between Congress and the Administration, but I en-

courage you to assure the full trade community that the intended benefits of ACE are a high priority of the Homeland Security Department.

**Homeland Security Needs Trade Advisory Input to the Senior Level**

Perhaps the single biggest issue facing Homeland Security would be the unintended consequences of separation of the enforcement efforts from the commercial role.

In the development and implementation of the Homeland Security Department, input from the trade on trade specific issues and concerns is crucial. As a former member of the COAC (Advisory Committee on the Commercial Operations of Customs), I believe trade advise to senior management of Homeland Security will be vital in assessing what is working and what is not.

The U.S. Customs Service receives valued input, problem identification and problem solving via trade support groups like TSN (Trade Support Network). The willingness of the U.S. Customs Service and industry to jointly work together to identify issues, opportunities and co-develop workable solutions is one of the cornerstones that exemplifies the U.S. Customs Service advancements versus other nations' Customs Service. The ability to interface directly with the trade has advanced the joint partnership programs vital to enforcement like BASC and C-TPAT.

Customs has a successful record of engaging the trade community to achieve enforcement, trade programs, issue identification and development of effective problem solving solutions. The U.S. Customs Service has facilitated our joint success in both enforcement and commercial advancement.

The U.S. Customs Service provides valued input to other countries to advance their management of risks to the USA. The U.S. Customs provides assistance for other nations to develop their trading solutions. The joint role of enforcement and commercial facilitation is crucial to develop better models prior to trade arriving at the U.S. borders.

**As We Advance Homeland Security-We Need to Focus Our Efforts**

We are facing this challenge together. Our ability to achieve cross-border operational effectiveness will ultimately determine if we succeed or fail. As design and functionality are developed, we should consider making some beneficial changes that would enable both the trade and Customs Service to better achieve border and economic security.

1. Elimination of reconciliation for all entries that provide statistical updates only and have no impact on revenue.
2. Simplify and Reduce the Harmonized Tariff Schedule.
3. Provide a total electronic interface for all required data to eliminate paper documents.
4. Eliminate the releasing of confidential and trade sensitive data to non-governmental agencies.
5. Operate ports 24 hours/7 days a week.
6. Reduce the required data for exports and imports to a single set of data to satisfy both transactions as conceived under the ITDS model.

**Closing**

Mr. Chairman and Members of the Ways and Means Committee, I want to thank you for your continued leadership on trade and fostering a modern trading system. I appreciate the opportunity to comment on the transfer of all of the U.S. Customs Service to the Homeland Security Department. In closing, the continued advancement of the U.S. Customs Service role into Homeland Security can provide a valuable baseline. Commercial success is achieved in concert with enforcement.

Thank you.

Chairman THOMAS. Thank you very much, Mr. Cook.

Ms. Kelley, your written statement will be made a part of the record. You can address us in any way as you see fit. And you are here as the National President of the National Treasury Employees Union. I am very interested in what you have to say.

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

Ms. KELLEY. Thank you very much, Mr. Chairman, Ranking Member Rangel, and distinguished Members of the Committee. I

very much appreciate the opportunity to present NTEU's views on the President's proposed Homeland Security and the impact on Customs of that proposal.

As the President of the National Treasury Employees Union, I have the honor of leading a union that represents over 12,000 Customs' employees who provide the front line of defense to our country every day and trade facilitation. The 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 facilitating lawful trade into the United States.

With a fiscal year 2002 budget of approximately \$3.1 billion, Customs facilitates more trade and interdicts more drugs than any other agency. The Customs also provides the Federal Government with the second largest source of revenue. As you noted, Mr. Chairman, Customs deposited over \$22 billion into Treasury this past year.

In 2001, Customs' 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 1 million cars and trucks. Over the last decade, trade has increased by 137 percent.

In addition, there are increased threats of terrorism, dramatic increases in trade resulting from the North American Free Trade Agreement, and new drug smuggling challenges. And yet, Customs has confronted its rapidly increasing trade workload and homeland security mission with relatively static staffing levels and resources.

Unfortunately, this situation is not like 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 Customs 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 H.R. 3129, the Customs Border Security Act of 2002, which is part of the trade package before Congress. This legislation would authorize over \$4 billion for a number of Customs' priorities such as staffing, commercial and noncommercial activities, narcotics detection equipment, child pornography prevention, the ACE computer system, and the air and marine interdiction units.

Both the American public and 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 Customs who are tasked with defending the borders and enforcing the trade laws of the United States.

No organizational structure 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 President's Homeland Security proposal seeks to consolidate Customs, INS, Border Patrol, Animal and Plant Health Inspection Service, the Transportation Security Agency, 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 agency's missions are unique. Combining each agency's field of expertise will lead to losing that expertise.

The fact that Customs would not be a distinct entity within Homeland Security would deal severe blows to the distinct missions in which Customs has world-class expertise: trade facilitation, the collection of revenue, and as the first line of defense in the wars on terrorism and drugs on our Nation's borders.

In the last 5 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.

Keeping Customs as a distinct entity within the department, as it is proposed in both the Lieberman and the Thornberry Homeland Security bills, would help to 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 that will establish Homeland Security. The President's proposal would allow two political appointees, the Secretary of Homeland Security and OPM Director, to set and to change the rules affecting pay, benefits, whistleblower protection, collective bargaining, and even merit principles. I urge Congress not to take away the rights and the 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.

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

[The prepared statement of Ms. Kelley follows:]

**Statement of Colleen M. Kelley, National President, National Treasury Employees Union**

Chairman Thomas, Ranking Member Rangel, 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.

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 border 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 in HR 3129—The Customs Border Security Act of 2002, which is part of the trade package before Congress. This legislation would authorize over \$4 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, 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 juris-

diction 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 agency's 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 the Lieberman and Thornberry Homeland Security bills 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.

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.

On a final note, 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.

I have attached to my statement an article from Newsday that features Customs Inspector and NTEU member Diana Dean, who apprehended Millennium Bomber, Ahmed Ressam 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.

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Chairman THOMAS. Thank you very much, Ms. Kelley.

If we focus on the language difference that the gentleman from New York pointed out, in terms of the Coast Guard being a distinct entity, I think most people could kind of rattle off, "Well, they're the ones in the uniforms. They've got white ships and planes with an orange stripe. And they do X," and so on. So if you turn then to Customs and you use that same yardstick in terms of Customs, if we want a distinct entity in there, what would be the cement that would hold that distinct entity together?

When we look at it historically, it was probably obviously tied to those historical papers in terms of revenue. They collect revenue, but they do so much more. But they do it in conjunction with the collecting of the revenue.

So the line of questioning I would like—and some of you will see Customs from only a particular viewpoint.

And I agree with you completely; if we really want to have a secure border, Mr. Clawson, that getting ACE up and running and facilitating the smooth across the border, so there are no bottlenecks, hiccups, or problems, is significant and important in terms of security. So getting ACE up and running is in fact, as far as I am concerned, easily made a security argument.

But if we are going to try to argue that they are a distinct entity, the question is, is revenue enough cement? Could you actually look at Customs today, and notwithstanding some people are virtually wholly revenue associated, others are primarily revenue associated, some are somewhat revenue associated, and some are not revenue associated at all, if you used revenue as the cement, that is probably not a good argument because people could go in and show divisions.

So if we are going to rally around “keep Customs a distinct entity,” what is it that is tangible that we could use to identify them?

And I guess the primary thrust of the question would go to you, Ms. Kelley, because you get see all of them together. These folks see pieces of them.

So that would be, I think, the first thing we would have to ask. And then secondly, is the rationale for wanting to keep it a distinct entity sufficiently strong to outweigh the counterarguments, that if you really want a seamless, integrated security approach, there are areas of Customs that could be shifted, that make some sense, so that you just don’t parachute a distinct entity without ever doing some of the merging and restructuring.

And then last, if you look at it, is there a way for us to build a distinct entity out of a piece of Customs or most of Customs or with slight modifications, which is not attackable, because it is tied to revenue? Because this Committee’s primary concern would be to follow the money.

Ms. KELLEY. Well, I think that Customs’ mission is distinct from the other agencies, and I think that each of the pieces of those, while maybe it could be argued that the revenue doesn’t touch each and every one employee, I believe that the mission of Customs and the way they have delivered on it over these past 200 years puts them in place as a very definable, distinct entity. One of the risks, of course, is losing the expertise that they have in each of these aspects of their mission.

And one of the things that concerns NTEU, and as I have traveled around the country and watched the Customs’ employees do their work, is that there are some, I think, who believe that Customs and the other agencies that they see working side-by-side on the borders are interchangeable, and, therefore, they can each do each others’ jobs. And that just is not the case.

They complement and supplement definitely, but they have distinct skills and expertise, which will risk being diluted if that distinction is not maintained.

The Customs as it operates today, with the different facets of what it does, have all been linked and successfully linked and delivered as a part of Treasury obviously for years, for hundreds of

years. And I see no reason why that should be changed in the future, even in a new department.

Chairman THOMAS. I understand you don't see a reason. Some of us may not see a reason. But that does not mean it is not going to happen. And so I appreciate your 100-percent defense of keeping it the way it is. We may need to look at how we could create a core structure which is undeniably tied to revenue, which maintains sufficiently a distinct entity, that we could run the tie through Treasury because of the revenue, and back to us.

We would not have had this discussion 2 years ago. We would have been arguing about hours and why you pay time and a half and that sort of thing, for 1 p.m. in the afternoon. Put that behind us. We are under siege right now, in terms of coming up with a rationale that keeps Customs, Customs, or most of what Customs is Customs, rather than trying to present arguments to keep it the way it is.

I think the momentum is not to keep it the way it is, because somebody decided not to write in "distinct entity." As my friend from New York was pointing out, they also didn't bother to write in Customs on the flow chart. So it tells you that some folk are not looking at it the way we think it should be looked at. And if we cannot get them to completely, 180 degrees reverse their argument, we better be coming up with a way in which we have a very strong argument that this is something that makes sense and works and this is how we would want it, and that we can defend it. That is all I am saying.

Ms. KELLEY. If I could say this, Mr. Chairman, it is not clear to me why the Coast Guard was designated as a distinct agency, from a policy standpoint. And I have not thought about the question as you framed it, of cement running through it. I will do that, and I will be glad to share those thoughts with you within the next week or so, in writing, if that is acceptable.

Chairman THOMAS. As soon as you can get back to me, because to me our strongest argument we make is—that is why I brought these documents—it started with money, it follows the money, Treasury is money, we are the tax Committee, it is revenue. That is, I think, our strongest argument. And let's see what Customs looks like if we use that as the cement to build whatever the new model is. And I appreciate some help on that, because I do think that is an argument that I would very much like to make.

Ms. KELLEY. Okay.

Chairman THOMAS. But I do not know that we can make: "Don't touch a hair on the child's head. It is perfect the way it is," because some folks have said it may be perfect.

We have a new problem, and we have to rethink the way we do things.

Ms. KELLEY. I will be glad to provide you with my thoughts. I appreciate the opportunity.

Chairman THOMAS. Thank you very much.

Anybody else have a reaction to that? You don't have to.

Mr. CLAWSON. I was going to say, we would like to also supply something, because I agree with your analysis that we do need—there are parts of Customs that I respectfully disagree, that are very similar. There is a degree of interchangeability. When you do

a land border crossing, you do not see Immigration and Customs at the land border crossing; they are doing each other's work right now and have been for years.

So I guess what I am saying is, I agree totally with you. We need to figure out a way to craft where we are, and we will help you with that.

Chairman THOMAS. And interestingly, the involvement of commerce I think would be, with the revenue collected by that, would be one of those aspects. And then take a look at what people in terms of enforcement, to what extent, is it primarily enforcement, secondarily collection or primarily collection—some discussion along that line.

And I will not share your thoughts with anyone, Ms. Kelley. Let's see how much is left or not left.

Ms. KELLEY. Okay.

Chairman THOMAS. Because I think that is something we need to do fairly quickly so this Committee can recommend a firm position that we feel very comfortable defending, so that we can make sure what all of us want is at least maximized under the new structure.

Ms. KELLEY. Okay.

Chairman THOMAS. Thank you.

Mr. COOK. Mr. Chairman, one comment that is worth considering. When you look at the composite of international trade, a lot of it is component manufacturing moving about. And you are looking at duty revenue, but there is a tax revenue on the other side. The successful ability of U.S. corporations in this country to be engaged in trade, if it stops, it impacts our business and has a significant impact on the IRS side.

So if you are looking at the flow of the money, that commercial viability becomes very important, being in this country altogether, if you are going to have problems moving products in and out. I would think from a policy perspective, you would not want to lose vision of that in homeland security, because it really is about securing our economic independence.

Chairman THOMAS. You are absolutely correct. And I think, at least in the short run, we have not focused on the fact that as fundamental as anything is the economic security and viability, to be able to allow for some of the other activities as well.

The gentleman from New York.

Mr. RANGEL. Mr. Chairman, I do not know if additions of Customs over the years, it seems to me that they should be protected intact unless there is reason why the flexibility that the Secretary would have would require in our national defense that it should be changed.

But if this is the hearing, all it has done is to raise the questions. And clearly, the Undersecretary, who just got on this job last summer, had indicated in his testimony that the bill is the thinking of the President. But we do not know why Customs was dropped off. We do not know what changes they intend to have with Customs. And if Customs is dismantled, I assume somewhere along the line, since we have congressional oversight, we are going to have to explain why the changes were made. I do not know how you intend to proceed, if this is it.

I know Ms. Kelley is going to send us a lot of questions, but how are we going to have answers to her questions? And what do we do? Ask Ms. Kelley to come back and have this exchange?

That is why I thought, since we have jurisdiction over the Secretary of Treasury, that it is so important, one, to have the questions raised by those people that believe that they may be adversely affected, to lock in, as the other Committees have—because I am convinced that is why some of these people have their own rectangle and that is why Customs fell off at the end, because someone insisted on it.

And I am not saying, in the final analysis, that whoever drafted the legislation did not put a lot of thinking into it, but how do we find out why they set it up as they did? How do we know that role they intend for Customs to have in the future?

It is one thing to say it is going to be intact. It is another thing to say they want maximum flexibility.

Chairman THOMAS. If I might respond?

Mr. RANGEL. Yes, sure.

Chairman THOMAS. If the gentleman is coming to the conclusion that this hearing perhaps raises more question than it answers, then I think this will be a very valuable hearing, because it is very difficult for this Committee to proceed unless we get answers to those questions.

And if the gentleman assumes that those boxes were created on that piece of paper with significant interaction by other Committees, and the laxity of this Committee's involvement did not get us a box, I can assure you, in my conversations with other Committee chairmen, they do not believe that is the case. I believe there is a significant amount of "there but for the grace of God" in a number of Committee jurisdictions.

However that was created, I believe that we need to go forward in an orderly fashion, ask the questions. And if we do not get answers, then we are either going to have to have another hearing or we will craft what we believe to be the appropriate response based upon our attempts to answer the questions that are created. And we will then move forward with what we believe is our solution.

Frankly, without having Customs in a particular box and already determined tells me we have an excellent opportunity to offer a solution to the problem, because if they already thought they had a solution to the problem, we would have to talk them out of their solution into ours. So I do not see it quite the same way the gentleman from New York does. I see this as an opportunity to shape where and how Customs is placed in this new structure far more than if they had told us they made up their mind, here's the box, and that's where it is.

I thank the gentleman for the time.

Mr. RANGEL. Well, Mr. Chairman, I have the utmost respect of the union representative of Customs, but it just seems to me that the Customs Commissioner may have a lot of questions as well, and as we heard those who use the services of Customs. So, yes, we can draft and decide what we want to do, but then where do we take it?

In other words, it just seems to me that you cannot do this unless you have those people who work with Customs every day. And clearly, the Undersecretary does not. They report to him. But Ms. Kelley is on the frontline representing her Members. The Customs Commissioner is someplace else. We have to do this before the election, or whatever the President wants.

And so it just seems to me, and you know how reluctant I am to get in the back room with you to work this thing out, which you are suggesting, but—

Chairman THOMAS. No, I am not suggesting that. Does the gentleman yield further?

Mr. RANGEL. Yes, but you said that we will have—

Chairman THOMAS. If the gentleman's concern is that he is disappointed that middle management is not here, so they can freely criticize upper management in the way in which this project is moving forward, he is probably not going to be happy.

One of the reasons that I was pleased that the minority asked union representation is that I believe they could be a bit freer about looking at the way in which structures could be made. And I do believe there is, if the gentleman is serious about why someone who is in a middle management position is not here so they can criticize the structure under which they are supposed to be moving, then we have a great gulf between us.

Mr. RANGEL. Mr. Chairman—

Chairman THOMAS. I believe the recommendation—

Mr. RANGEL. Mr. Chairman—

Chairman THOMAS. I just want to say this: I believe the recommendation of this Committee as to how this is handled will carry enormous weight with the leadership as they put the package together. We should focus more on the way it ought to be than the fact that we do not have somebody here that we can embarrass because you know they cannot answer—

Mr. RANGEL. Mr. Chairman—

Chairman THOMAS. In a way that either they want to or they won't.

Mr. RANGEL. It was you that brought the person here that could not answer the questions.

Chairman THOMAS. I believe that is upper management, not middle management.

Mr. RANGEL. Well, let me ask, Ms. Kelley, before you testified, did you have the opportunity to share your views with the Commissioner of Customs?

Ms. KELLEY. I spoke briefly with him last week on my concerns about the fact that Customs is not a district entity, does not have appropriate resources, and the risk of losing the expertise.

Mr. RANGEL. I would like to see whether or not—I am going to make a recommendation to the Chair that the Customs Commissioner and you, Ms. Kelley, would get together, because like any family, you can dispute with wages and hours and all of those things, but then when you find out that Customs itself may be under some type of attack, I am certain that you and the Customs Commissioner might have more in common in terms of making recommendations as to what would be effective than somebody who is just including you in an organization chart.

If the Chair cannot find a way for that type of a meeting to take place, so that we can be helpful to the Customs Commissioner, so that we can be helpful to the rank and file, then I might be reaching out to you and to the Customs Commissioner in asking: what do you think about this idea; how do you think it can be improved; what recommendations would you make? I am certain that that would be more helpful to me than what I have been able to get from this hearing.

So if there is no other scheduled hearing where I can ask these questions, then I would ask, in a very informal way, on behalf of the minority, that we can meet and meet with the Customs Commissioner and see what we can do to be helpful to our Nation, to the new department, and to Customs, that I think deserves this type of oversight.

Ms. KELLEY. I will pleased do whatever I could to help.

Mr. RANGEL. Thank you, Mr. Chairman.

Chairman THOMAS. I thank the gentleman. Does the gentleman wish to inquire?

Ms. DUNN. Thank you very much, Mr. Chairman.

I wanted to ask Mr. Farrell to clear up a couple of things that have concerned me. In your testimony, Mr. Farrell, you refer to concerns being raised by your customers, the folks that you do business with at the Port of Tacoma, about the lack of uniformity in the process of physically inspecting container cargo, and I am assuming that is among the ports in the United States. I am wondering if you could give us your thoughts on this.

The concerns that I have heard have to do with the fact that there are added costs and there are time delays that are being experienced by shippers in dealing with ports where there is, for example, 100-percent inspection of containers selected out of the numbers that are shipped into the port. I am wondering if you can just give us your thoughts on what is happening.

Mr. FARRELL. I can indeed. In the various ports, Customs' inspections take place at different levels and different volumes. In other words, percentage of the cargo that comes through the port and then percentage of the cargo in an individual container that actually is inspected. I am given to understand, from my conversations with Customs, that these numbers are based on their own rules and determinations about which cargoes to inspect and to what extent.

However, what we haven't been able to communicate is the basis on which those decisions were made and gather actual data from what those impacts are. What I can tell you is that we have anecdotal evidence from our customers that there is a difference in the intensity of enforcement of regulations across the entire West Coast port range, and that when a container is detained for an inspection, that container comes offline, it may be delayed anywhere from a half day to 3 days, and they carry additional costs for the actual physical unloading and inspection of the cargo.

It is as if while getting on an airplane, or attempting to get on an airplane, your bag is taken aside for inspection; you miss your flight; and for the privilege, you are sent a bill at the end.

The concern that we have, again, I mentioned diversion. Tacoma and Seattle, as well as New York-New Jersey, Boston, and others,

are close enough to international borders to be effected by this type of activity. And it is important that we be able to communicate with Customs clearly and definitively about what actually is happening, what is the data, and how are these decisions being made.

We are the port are in close communication with our local Customs' people, and I also have spent time with people here in Washington at Customs, and have spent some time with Members of our delegation to try to gather that data and try to improve those communications in such a way that our anecdotal evidence can either be shown to be correct or shown through the data to be incorrect and why.

Ms. DUNN. Well, we are going to have to watch over that. Do you feel that you have had adequate opportunity to share that with the Customs Commissioner?

Mr. FARRELL. I have had opportunity to share it with the higher levels of Customs, and I am optimistic that we may have some results that come from that.

Ms. DUNN. Wonderful. Let me ask you a last question here, and it has to do with your testimony that alluded the competitive disadvantage that certain ports have with other Nations. Of course, our being close to Canada means that the ports in Washington State, but also those on the East Coast, and actually along our whole western coast, are disadvantaged by a number of things, including the payment of the harbor maintenance tax, which affects several of us on this Committee, where we believe we get very little out of the payment of that tax. It is a tax on a container that does not occur at the Port of Vancouver in Canada, for example.

I am now concerned because I am hearing regularly about the threat of cargo diversion to ports in Canada, and I know also that they have made major gains over the last few years in market share, taking directly away from the ports that we have on the West Coast.

I am wondering if you could quantify for us your view of this growth for the Port of Vancouver that detracts from our ports on the West Coast and the East Coast, and tell me if there is something that we need to be doing about this, and how it is exacerbated by the problems we are running into now with the time delays.

Mr. FARRELL. Thank you for your question. I can give you a couple of ways of looking at this question. The first and clearest is the Port of Vancouver. In 15 years, since the institution of the harbor maintenance tax, container volume at the Port of Vancouver has increased by 414 percent. Over the same period of time, the container growth in the Port of Tacoma has been 98 percent, and in Seattle, 55 percent. So it is clear to us that as the trade volume grows, we are seeing a share of that cargo shifted north across the border as a result of the tilting of the playing field by institution of that tax.

You mentioned earlier that I spent some time at the Massachusetts Port Authority. We have the same issue there with the Port of Montreal.

Ms. DUNN. Excuse me, Mr. Chairman, I really would like to have us be an audience. This is so important, and I would really like to have other Members of the Committee hear it.

Chairman THOMAS. I'll tell the gentlewoman that there is a record being made, and there is a discussion going on, which is fundamental to it. I apologize, and I will turn my attention to the statements that are being made.

Mr. FARRELL. The harbor maintenance tax is an issue that the Massachusetts Port Authority addressed by asking and receiving from the Massachusetts State Legislature a State rebate for the harbor maintenance tax to companies based in Massachusetts that used Massachusetts ports to ship goods, as a way to blunt the impact that the Port of Montreal was having in that area due to the harbor maintenance tax.

So those are the two examples. Now, how does the security environment that we currently find ourselves in relate to that will certainly, as we look at enhancing security in our ports and at our border crossings, and we look to the Customs' CSI to partner with foreign ports, the first of which are the Canadian ports of Montreal, Halifax, and Vancouver, B.C., it is critically important that whatever security procedures we put in place at U.S. ports be balanced with ports across our borders, so that we do not have again a further slanted field, which affects both the commercial aspects of our business, in terms of the jobs related to moving of cargo, but also a security perspective.

Again, you are only as safe as your neighbor. You are only as secure as your neighbor. And that is why we have worked together with the ports of Seattle and Everett to make sure that our security initiatives are carried out jointly.

Ms. DUNN. Thank you very much. Thank you, Mr. Chairman.

Chairman THOMAS. Does the gentleman from California, Mr. Becerra, wish to inquire?

Mr. BECERRA. Thank you, Mr. Chairman.

First, thank you to all of you for your testimony. And I will try to contain myself to just a couple of questions.

If I could start with Ms. Kelley, I would like to see if I can get you to give me a little more information about section 730 of the proposal to create this new Homeland Security. I know that you have expressed concern that section 730 would not carry with it or would allow the department not take with it the various civil service protections—whistleblower protection, retirement, health benefit protections—that you currently receive as employees within Treasury or any department of the Federal Government.

Is there any circumstance in which you think Treasury employees or Customs' employees would accept a provision similar to section 730, which is the current proposal that President Bush has sent over to us?

Ms. KELLEY. I don't see how, because what the language says, as I read it, is that, on the day of the transfer that every thing stays intact. But whether it is 1 day, 1 week, or 1 month thereafter, that authority would lie with the Secretary of the department and the OPM Director.

And I guess at the bottom of all this for me is that employees of Customs, the employees of these agencies have done the work that they do on the front line for our country for decades as union Members, with these rights, and it has never ever been an issue

of their ability to do their jobs. So why a flexibility like this is needed is not understood by me.

We have asked a lot of questions, and it has never been made clear what the intent is to do with this. So the intent is unclear, and it is hard to address any specifics that they might have in mind.

Mr. BECERRA. On that point of having asked the questions, can you give me a better sense of what type of consultation you were afforded or NTEU was afforded with respect to the develop or formulation of the proposal that the Administration submitted to Congress?

Ms. KELLEY. Into the formulation, I would say zero. The day after the President's announcement, before the language was actually shared with anyone, I did have the opportunity to meet at the White House with Clay Johnson, Kay Coles James from OPM, and Mark Everson from the Office of Management and Budget. And they wanted to hear our concerns, and this was one of the concerns I clearly articulated.

So I guess from that standpoint, you could say they at least knew. And the response I got ranged from a stare to: "We understand the issue."

When the language was then finally made available, it was clear that any input we had or any opportunity we had to provide information was not included in the language.

Mr. BECERRA. And when you say you shared your concerns, it was beyond just the issue of section 730?

Ms. KELLEY. Yes. At the time section 730 did not exist, but we had a fear that this was going to happen, just from things that the President said in his address and from media reports later, in the next 48 hours or so, talking about flexibility. And so that kind of sent up the signals that we should be concerned.

So I was trying to anticipate what might happen and have a conversation that hopefully would stop it from happening. But that did not occur.

Mr. BECERRA. Other than the day before the proposal was presented publicly, did you have any other opportunities to comment to the Administration?

Ms. KELLEY. Actually, the conversation I just described was the day after the President's announcement. And then the next opportunity came the day before the language was made available. And it was a meeting held at OPM for a large number; employee organizations were invited.

I described that as a "Q" session, because they wanted to hear our questions, but there were no answers that were provided. But it was clear the next day, when it was published, that the language had already been written, and it really didn't matter.

I did reiterate that day everything I had said at the White House, but to no avail.

Mr. BECERRA. Thank you.

A question about the ACE system, the new automated system that hopefully we will have in place, anyone wish to comment about how we integrate that new system into this broader or larger agency, having to fulfill functions that go beyond what we thought

it would be used for, and whether or not you think that we can accelerate it quickly enough?

So, can we use it still? Is there something we have to do now to retool to make sure that we can use it for more than just Customs, since it is going to be under this new Homeland Security? And do you believe that we can try to accelerate its implementation sufficiently to have a good system that will be capable of meeting the needs that we have under this new department?

Mr. CLAWSON. Yes, in answer to your question. I think that it is currently structured in such a way with what is called the International Trade Data System, ITDS, which is made up of 12 departments on a board, and that that is intended to provide this service across the government as one point, so it is more than just Customs. So that type of integration is already anticipated and has already somewhat been underway. It will have to be tweaked, obviously, in a new department, but I think it can be done.

I think the bigger concern that we have, those of us who worked on the coalition for automation funding and whatever else, is that it is just taking too long. And I don't know what that means, in the sense that I am not a programmer, I don't do these kinds of things, but I know that enormous things happen in this country, we have great people who are doing wonderful things. It seems somehow that the team that is building this with Customs, and I do not know all the ins and outs, because they do not really tell you that, the behind-the-scenes stuff, but I know that they have been at this for an awful long time, in terms of concepts and whatever else.

And I think they are getting, finally, underway a bit. But they have to figure out a way to accelerate it. I agree with you.

Mr. BECERRA. But, Mr. Clawson, your sense is that the infrastructure, the hardware, software, everything that makes up ACE, is still applicable, given its heightened demand?

Mr. CLAWSON. Yes. The architecture was done initially in such a way that it was modular and could be added on to, because they did not want to go through what we have done, that in 5 years or 10 years, it can be obsolete. So this was a growing, viable kind of system, the way it is designed. And maybe that is what is taking it so long to get off the ground. But I have a comfort level with the architecture; I have a discomfort level, very much, with the speed which it is being built.

Mr. BECERRA. Thank you.

Mr. COOK. Congressman, a couple of comments on that. One, I think the ACE design and the platform and the team that is doing it is a very capable team. And I think where they are, they have rightfully spent a lot of time to step back and "let's not automate the paper process; let's really dig in and now that we have a great tool that we are designing, let's change that." I think to your point, it is probably more important now to accelerate the development and implementation of ACE, because in the absence, we are liable to build a parallel system to fill some other need that may be coming up because of security, and then we really will have a problem of a bifurcated system.

The second one is that we in the trade community, to the government, really need to mandate that the other government agencies

rely on ACE, because one of the problems we are facing is that it is voluntary that other governmental agencies use it as their data interface with trade. If it is not mandatory, then you stand a great chance of building very redundant systems that are very expensive and always trying to synchronize those, which does complicate the development and implementation of ACE.

And the third part is that we today in the trade arena require an enormous amount of data that really serves very little long-term use. A lot of it is for rounding up for census, but doesn't really provide the core mission of "what do I need to collect revenue, what do I need for enforcement and risk assessment?" And I think, if we go back and spend some more time to ferret out that, we can probably see ACE become a much more dynamic—I see ACE as really being the underlying system for all of homeland security, because it is advanced data, it is arriving data, it is post-data, it is identifying who shipped it, who is bringing it, and who is receiving it, and what commodities are coming. And that gives you the tool to do risk assessment and commercial clearance.

Mr. BECERRA. Thank you.

Mr. FARRELL. And I would second what both of these gentlemen have to say, and say that regardless of the ultimate disposition of Customs, the sooner we get this system in place, the better.

Mr. BECERRA. And it can be done quicker, do you think?

Mr. FARRELL. I would think so, yes.

Mr. BECERRA. Thank you.

Chairman THOMAS. I would tell the gentleman from California that it is probably misnamed if we call it "ACE." It is probably about a three of clubs.

[Laughter.]

Chairman THOMAS. And the problem is, it is well-financed; therefore, given the changing technology in the area, as you putter along, you are overtaken by new technology. If they could simply pick up the SKU system at Home Depot, they would really be on the cutting edge.

It has been underfinanced, and there is no integration in the approaches you heard. And I think we have going to have simply impose some requirements here to get it done. We have this problem with Social Security interfacing with IRS and everyone else. Now, that is a trillion dollar problem in other parts of the government. This is a distinct area in which, if we put mandatory requirements, minimum information, maximum flexibility, and speed at getting it done, because a border that is clogged up and is not moving is more insecure than a border that moves smoothly and you know who is where doing what.

This is a contribution that will come out of these hearings as we go forward, because if we have billions of dollars for homeland security, we ought to have a little bit for doing this particular function, because they raise enough revenue to pay for themselves, and that is not always the case in the other areas where enormous amounts of money are being spent. Security is security, and when you can get a return on your investment, you ought to work on this area.

Mr. BECERRA. I agree, Mr. Chairman.

Ms. THURMAN. I want to thank all of you. I know some folks are a little more frustrated, but I honestly believe that this Committee has the ability to tell the executive branch, if we are good enough, what the Customs' structure ought to look like under the new Homeland Security arrangement. And that is what we will attempt to do.

I look forward to getting the materials back from you. I know that we probably raised more questions. That may have been the intent of the Chair. Thank you very much.

[Whereupon, at 7:37 p.m., the hearing was adjourned.]

[Questions submitted from Chairman Thomas to Secretary O'Neill, and his responses follow:]

**QUESTIONS SUBMITTED BY CHAIRMAN THOMAS TO SECRETARY  
O'NEILL**

**Question:**

Can Customs perform its functions well if Congress mandates that Customs' revenue functions must remain intact and could not be reorganized internally or with other Homeland offices until such time as the Administration identifies specifically what it proposes?

**Answer:**

The President's proposal would move Customs intact to Homeland Security in order to minimize any disruptive effects. One of the main reasons for creating the new department is to achieve synergies and efficiencies among the now disparate agencies and the new Secretary would be given broad authority to do so, but any changes would need to be made only after further careful study. This is an issue on which the Administration would work closely with the Committee to address its concerns.

**Question:**

The fact that Customs collects revenue creates special circumstances and needs for Customs that other Homeland component offices will not experience. Do any other government offices or agencies being transferred to Homeland Security collect revenue as Customs does?

**Answer:**

Many agencies collect fees, fines, or penalties. Customs, however, also collects *tariffs*, which total about \$20 billion annually.

**Question:**

Are there specific parts of Customs whose exclusive *or* substantial function is to collect revenue? Please identify for the Committee those roles within Customs such as the Import Specialists and the Office of Rulings and Regulations that have a primary role in the collection of revenue. What percentage of Customs inspectors perform primarily revenue collecting functions?

**Answer:**

Certainly, while there are some functions in Customs, such as those of the import specialists and the Office of Regulations and Rulings, that *are more* directly focused on tariff collection than others, these same people also make decisions regarding the basic admissibility of merchandising to the U.S. Inspectors on the border rely on expert technical and legal advice to help identify trade fraud and the regulation writers rely on their close contact with the field inspectors to help them craft trade rules that will both keep trade moving and permit effective, efficient enforcement. The regulatory audit function is another activity that is focused on tariff revenue collection, but the information that auditors develop about businesses and trade patterns help to target anomalies and risky shipments for enforcement actions. Inspectors are trained to perform trade enforcement as well as contraband, drug and security enforcement. We want people examining shipments because of trade enforcement concerns to be alert for security risks. It is difficult, if not impossible, to separate the percentage of time individual inspectors devote to these various functions because they *are* intertwined.

**Question:**

Customs does so many things other than just searching for narcotics or preventing terrorists from entering the U.S. How will the President's proposed changes in organizational structure change the nature of what Customs does?

**Answer:**

The *President's proposal* would move Customs intact. Consequently, nothing in the nature of what Customs does would change.

**Question:**

Customs collects over \$1 billion in user fees from importers. According to law, those fees must be used for commercial purposes only. How can Congress keep track of how the commercial fees will be spent by the Administration?

**Answer:**

Unless Congress changes that law, the same restrictions on user fees that apply now would apply in the future. Under the President's proposal, Customs would be moved intact, and the same process of evaluating costs that Customs goes through now could be used in the future.

**Question:**

If Congress were to prohibit decreases in staffing and funding for Customs trade offices, would this ensure that trade activities are not inadvertently strangled?

**Answer:**

The President's proposal recognizes the importance of trade activities. In addition, *Governor Ridge* and Customs Commissioner Bonier have publicly committed to supporting the trade function as it moves to the new Department. We would want to work with Congress to take advantage of possible efficiencies that we may be *able* to realize, for instance efficiency gains from further automation and completion of the ACE system.

**Question:**

Has Customs done any projections to determine if there will be a significant cost to move to a new Department?

**Answer:**

There should not be any because Customs would retain its current headquarters and other locations. In addition, the consolidation of the different border entities under one agency has the potential to create additional efficiencies in the future.

**Question:**

Have increased security measures affected imports in any way? Can you give us specific cases?

**Answer:**

Certainly there were border delays in the week following September 11th. Customs responded quickly to reduce bottlenecks and minimize the impact on the economy while maintaining a heightened level of alert. Customs has since implemented innovative approaches to reduce the impact of the security threat. The Container Security Initiative (CSI), with cargo examination at the point of export rather than import, helps prevent delays at the border as well as reducing the threat to the homeland. The Customs-Trade Partnership Against Terrorism (C-TPAT) enlists the private sector in the fight against terror. Both are creative alternatives to the traditional border search.

**Question:**

What trade authority does Customs have granted directly from statute, as opposed to delegated by the Treasury Department?

**Answer:**

Most Customs related authority is currently granted statutorily to the Secretary and delegated to the Commissioner. We are reviewing the trade statutes to identify those authorities granted to the Commissioner, and will provide that information to the Committee as soon as that effort is completed.

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[Questions submitted from Mr. Rangel to Secretary O'Neill, and his responses follow:]

**QUESTIONS SUBMITTED BY MR. RANGEL TO SECRETARY O'NEILL**

**Question:**

Please advise me of any legislative provisions that you would like addressed in the bill (1) to ensure proper transfer of Customs to the new Department; (2) to preserve the effectiveness of Customs operations in protecting our borders and facilitating the commercial flow of trade; (3) to ensure retention of Customs employee job responsibilities and the employment protections currently under Title V; and (4) to maximize Customs' ability to fight our war on terrorism, and other important responsibilities currently part of the Customs mission.

**Answer:**

The bill proposed by the President addresses these issues in the following manner. The legislation includes specific provisions for the orderly transition of Customs to the new Department. The bill would provide for a 12-month transition period, during which time the President would direct when individual components would be transferred. The bill also provides other authorities for functions necessary for an orderly transition, such as support services, details, interim appointments, and the transfer of personnel, assets, and liabilities related to the components being transferred.

The President's proposal seeks to create an efficient structure to help ensure that our ports of entry and other critical assets are protected, and his proposed combination of key components will help do so. To recognize the importance of Customs' trade functions, 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 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. Under the President's plan, Customs will continue to administer and enforce the Customs laws, protect our borders against terrorists and terrorist weapons, and facilitate the flow of legitimate commerce.

When an organization becomes a part of the new Department, employees will transfer with existing pay and benefits intact. When the Department is established, employees represented by unions will continue to be represented because their bargaining units will move with them to the Department. The proposed legislation does not impair employees' collective bargaining rights in any way or change existing authorities.

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 and the Transportation Security Administration—allowing a single government entity to manage the U.S. borders. This is intended to improve coordination and communication among border agencies, enhance intelligence sharing, and increase operational efficiencies.

**Question:**

What is your understanding of why the responsibilities of the Bureau of Alcohol, Tobacco and Firearms relating to firearms and explosives are not part of the President's plan for transfer to the new Department?

**Answer:**

As you indicated, the President's proposal does not include moving the Bureau of Alcohol, Tobacco and Firearms (ATF) to the new Department of Homeland Security. While a number of options were considered, this was the final decision based on what needed to be done immediately to secure the homeland.

Under the President's proposal, the new Department would have law enforcement responsibilities as they pertain to securing and policing our borders, ports, airports, and territorial waters. The U.S. Secret Service, also proposed for transfer, would maintain its law enforcement functions, as well.

We recognize that other proposals have been made regarding ATF and the reorganization of Federal law enforcement (e.g., Webster Commission). The President's proposal is designed to cover the changes that need to be made immediately to accomplish the priority goal of securing the homeland as quickly as possible. The Treasury Department will be pleased to continue to work with the Committee on areas of concern as the legislation advances consistent with the President's proposal.

[Questions submitted from the Committee to Director Ridge, and his responses follow:]

#### QUESTIONS SUBMITTED BY THE COMMITTEE TO DIRECTOR RIDGE

**1. Will the Customs Service remain intact within the Department of Homeland Security or will portions be merged with other agencies either initially or at some time later?**

**ANSWER:** *The President proposes transferring the entire Customs Service—its border security, trade/revenue, and investigative missions—into the new Department of Homeland Security. Certainly, the new Secretary will likely consider how to best organize the new Department in order to maximize efficiencies and synergies and minimize redundancies and overlapping missions. The Administration also expects the new Department to study the different agencies' management systems with a view to attaining efficiencies in personnel management, fiscal oversight, procurement, contracting, and other administrative areas.*

**2. Under the President's proposal, a number of agencies are keeping their identity within the new Homeland Department, such as the Coast Guard and the Secret Service. Why is the Customs Service not being maintained as a discrete entity?**

**ANSWER:** *The Administration believes that the new Secretary of Homeland Security should have the management flexibility to minimize operational redundancies and overlapping missions. The Administration is also interested in achieving overhead efficiencies within the new Department. This may mean that some overlapping functions presently performed by some agencies might be consolidated.*

**3. The Administration's bill at § 402 identifies the Coast Guard, the Transportation Security Administration, the Immigration and Naturalization Service, and the Animal and Plant Health Inspection Service as being in the new Border Security Office. Who would be in charge, and what will these offices do differently once under the Homeland Security Department?**

**ANSWER:** *Section 402 of the draft bill prepared by the Administration proposes that an Under Secretary for Border and Transportation Security be in charge of these agencies. 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 agencies being transferred to the new Department—The Coast Guard, the Customs Service, the Immigration and Naturalization Service, the Animal and Plant Health Inspection Service, and the Transportation Security Administration will retain their statutory missions within the Department of Homeland Security. 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 whose primary mission is homeland security. 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.*

**4. The fact that Customs collects revenue creates special circumstances and needs for Customs that other Homeland component offices will not ex-**

**perience. Do any other offices or agencies being transferred to Homeland Security also collect revenue as Customs does?**

**ANSWER:** *Transferring Customs' trade and revenue collection function into the Department of Homeland Security will achieve the larger objectives of the 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 policymaking, and (4) promoting the collection and analysis of all information related to homeland security.*

*While Customs' trade / revenue function is extremely important—the Service provides the nation with its second largest source of revenue, returning \$22.1 billion to the Treasury in 2001—all of the border-management agencies the Administration proposes be transferred to the new Department collect fees, fines or penalties.*

**5. How can the Committee be sure that the trade mission of Customs will continue to be funded in the budget of the new Department?**

**ANSWER:** *Should the Customs Service be transferred to the new Department of Homeland Security, The Administration will continue to develop a proposed budget for all of Customs' statutory functions, and will continue to transmit the budget to Congress within the Administration's fiscal year budget proposals. The Congress will be able to verify the Administration's commitment to Customs' trade mission and, should it conclude that budget levels should be changed, make adjustments to the proposal during the appropriations process.*

**6. Will Customs continue to be the lead office of the collection of trade data or will another part of Homeland Security take over this function?**

**ANSWER:** *Yes. Customs will retain the mission of collecting trade data.*

**7. If Congress mandates that Customs' revenue functions will remain intact, even within the new Department, and could not be reorganized or with other Homeland offices until such time as the Administration identifies specifically what it proposes, is there any reason to believe that Customs could not perform its functions appropriately?**

**ANSWER:** *The President's proposal would move the Customs Service intact to the Department of Homeland Security. He believes that because of the interrelated tasks the Service currently performs, moving the Service in whole is important. The Administration fully expects that Customs will continue to discharge its revenue functions upon its transfer to the new Department. Given the Committee's 200 years of jurisdiction over the Custom Service, however, we would, of course, welcome the Committee's input on this important function.*

*The Customs Service's trade and revenue collection mission is an operational one that involves both enforcing trade laws (e.g., determining and verifying the classification, valuation, and country of origin of goods brought into the U.S.) and collecting duties. As part of this function, the Customs Service also determines the admissibility of goods by enforcing quotas and other trade restrictions.*

*This mission involves far more than the mere collection and remittance of funds to the Treasury. The process begins with inspectors and other frontline personnel who examine goods and paperwork to verify some of the critical components of admissibility and duty determinations— classification, valuation, country of origin, and quantity, among other things. After a duty is paid, Customs regulatory auditors may examine the records of an importer for compliance purposes and, depending on the outcome of that audit, may refer the matter to Customs Service special agents to open a criminal investigation. The criminal investigation, in turn, may lead to recovery of lost duties and substantial civil and/or criminal penalties.*

*Not only does the trade and revenue collection function cut across the entire Customs Service, it is a key part of the Customs Service's border security mission for several reasons:*

*First, the trade and revenue collection function is carried out by the same Customs Service personnel that ensure border security. The front line personnel that perform trade enforcement and compliance activities at the border, such as physical inspections and paperwork verifications, are the same personnel that perform inspections for security and other enforcement purposes.*

*Second, the trade and revenue function provides the Customs Service with the information that it needs to carry out its border security mission. For example, a trade compliance examination (i.e., physical inspection) of a shipment at the border, or an audit of an importer, may reveal that the importer maintains poor controls over its inventory and thus should be considered a security risk. As a result of that risk determination, the importer would be subjected to more physical inspections at the border to ensure that it does not intentionally or inadvertently bring contraband into the U.S.*

**8. What will happen to the continuing development of the new Customs computer system, the Automated Commercial Environment (ACE), during**

**the transition to the Department of Homeland Security? What steps will be needed to join the Customs computer system with that of the other agencies?**

**ANSWER:** *Systems plans for the components, which will enter the new department, will be carefully but promptly assessed to make sure they are consistent with both enterprise-wide requirements and specific statutory functions. There will be consolidation of systems where justified, with great care paid to make sure there is no interruption of critical functions. It is likely that the rapid development of the ACE system will continue as will the interagency community's development of an International Trade Data System that creates a harmonized system for import-related data. These systems will likely become a cornerstone of the Department of Homeland Security's enterprise architecture.*

**9. Customs collects over \$1 billion in user fees from importers. According to law, those fees must be used for commercial purposes only. How can Congress keep track of how the commercial fees be will spent by the Administration?**

**ANSWER:** *Unless Congress changes the laws governing user fees, the present restrictions on user fees collected by Customs will apply if the Service is transferred to the Department of Homeland Security. The draft bill prepared by the Administration does not change Customs' congressional reporting requirements. Accordingly, Congress' oversight capabilities in regard to collection and expenditure of importers' user fees are not reduced in any way by the President's proposal.*

**10. Has the Administration done any projections to determine if there will be significant cost to move a new Department?**

**ANSWER:** *Earlier this year, the Office of Management and Budget (OMB) examined the costs associated with and the efficiencies that would result from the establishment of a single agency comprising the Customs Service, the enforcement elements of INS, the Coast Guard, and the border inspectors of the Department of Agriculture. OMB estimated that combining these components into a single agency would have short-term costs and the potential for long-term redeployed resources. Short term costs associated with personnel buy-outs, relocation costs, and facility costs (breaking and entering new leases) would be covered from within the existing administrative budgets in these agencies.*

[Letter submitted from Mr. Rangel to Ms. Kelley, and her responses follow:]

*June 27, 2002*

Colleen M. Kelley  
National President  
National Treasury Employees Union  
901 E Street, NW  
Suite 600  
Washington, DC 20004

Dear Ms. Kelley:

Thank you for your testimony at the Committee's hearing on June 26th about the President's plan to create a new Department of Homeland Security. I, and the other Committee Democrats, support the President's effort and will work, on a bipartisan basis, to ensure development of a new federal Cabinet-level Department that effectively protects this country from the global threat of terrorism. As you know, the Ways and Means Committee is responsible for developing amendments to the President's plan as relates to the U.S. Customs Service, and we hope to make such recommendations by July 10, 2002.

In order to move quickly in evaluating the President's plan for Customs under the House Leadership's schedule, I request that you advise me of any legislative provisions that you would like addressed in the bill (1) to ensure proper transfer of Customs to the new Department; (2) to preserve the effectiveness of Customs operations in protecting our borders and facilitating the commercial flow of trade; (3) to ensure retention of Customs employee job responsibilities and the employment protections currently under Title V; and (4) to maximize Customs' ability to fight our war on terrorism, continue its drug interdiction programs, and other important responsibilities currently part of the Customs mission.

Also, as you agreed at the hearing, I ask that you meet with Customs Commissioner Bonner to discuss the future of Customs in the new Department. I am confident that meaningful dialog between the Customs Commissioner and NTEU officials representing Customs will assist you in answering the questions listed above

and in providing this Committee with valuable information and a clear direction on how we should proceed.

Given the short timeframe under which the Committee is working, I request a written response to these questions by Tuesday, July 2, 2002. Please feel free to contact the Committee Democratic staff at 202-225-4021. Also, please provide a copy of your response to 1106 Longworth House Office Building.

Thank you for your assistance.

Sincerely,

Charles B. Rangel  
*Ranking Democrat*

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National Treasury Employees Union  
Washington, DC 20004-2037  
*July 2, 2002*

Honorable Charles B. Rangel  
Ranking Member  
Committee on Ways and Means  
1106 Longworth House Office Building  
Washington, DC 20515

Dear Ranking Member Rangel:

I again want to thank you for the opportunity to testify before the Committee on the President's proposal to create a Department of Homeland Security and its effects on the Customs Service missions of trade facilitation. I also appreciate the opportunity to offer possible legislative provisions for inclusion in legislation creating a new Department of Homeland Security.

I would like to address the issues you raised in the same order as in your letter. First, to ensure proper transfer of Customs to a Department of Homeland Security, it must be maintained as a distinct entity. Congressman Mac Thornberry's Homeland Security legislation, HR 4660 contains a provision that would achieve this goal. The provision is section 102 Part (2) which states,

TRANSFER OF AUTHORITIES, FUNCTIONS, PERSONNEL, AND ASSETS TO THE DEPARTMENT.

The authorities, functions, personnel, and assets of the following entities are transferred to the Department:

(1) The Federal Emergency Management Agency, the 10 regional offices of which shall be maintained and strengthened by the Department. **(2) The United States Customs Service, which shall be maintained as a distinct entity within the Department.** (3) The portions of the Immigration and Naturalization Service responsible for law enforcement and border management, including the Border Patrol and Divisions of Inspections, Investigations, and Detention and Removal. (4) The United States Coast Guard, which shall be maintained as a distinct entity within the Department. (5) The Critical Infrastructure Assurance Office. (6) The National Infrastructure Protection Center and the National Domestic Preparedness Office of the Federal Bureau of Investigation. (7) The Animal Plant Health Inspection Service of the Department of Agriculture.

Second, to preserve the effectiveness of Customs operations in protecting our borders and facilitating the commercial flow of trade, the government must show the public that it is serious about protecting the borders and facilitating trade by full funding agencies such as the Customs Service which is tasked with defending the borders and enforcing the trade laws of the United States. The President's proposal—HR 5005, currently calls for no additional funding for any agencies that may be consolidated into a new Department of Homeland Security. 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.

Third, to ensure retention of Customs employees and to ensure that employee protections currently provided under Title 5 are retained, it is imperative that the merit system that has evolved for over 100 years and has produced the most corruption free civil service in the world be maintained.

To accomplish this goal, section 730 and 732 (b) of the President's proposal—HR 5005, must be removed. Section 730 provides that every section of Title 5 of them. To de, which sets out 7a of the rules, benefits and rights that currently apply to Federal employees, may not apply to them once they are transferred to the new Department of Homeland Security, unless two political appointees, the Secretary of Homeland Security and the Director of OPM so choose.

A list of the main sections of Title 5 is listed below, but included are whistleblower protection, pay and benefits, including health care and retirement, anti-

discrimination rules, the right to join a union and the merit system rules that prohibit political patronage. The legislation needs to ensure that employees of the new Department will be able to have a union and collectively bargain the same way employees who currently hold these jobs in their current agency do.

Under the President's proposal—HR 5005, the Secretary of Homeland Security and the Director of OPM would be allowed to prevent each and every one of these sections of law from applying to each and every employee of the new Department of Homeland Security. New personnel rules, created by these two political appointees, could be changed at any time. Every new Homeland Security Secretary and OPM Director would have the opportunity to rewrite them as they saw fit.

Section 732 (b) would allow the Secretary to hire any or all of the employees of the new department at any pay level, for any length of time. It is my understanding that the only agency that currently has an exemption such as this is the CIA.

The General Accounting Office and others have repeatedly warned Congress that the Federal Government faces a human capital crisis. The ranks of employees at or near retirement age have swelled to roughly half of the work force. How will the Department of Homeland Security be able to retain its most experienced employees when they will be faced with the possibility of losing the rights and benefits they have enjoyed for their entire career? More importantly, how will the Department of Homeland Security be able to attract the highly skilled employees it needs when employee pay, benefits and rights will be open to change at any time by political appointees that change every few years?

The employees that will be moved into a new Department of Homeland Security have been fighting the war against terrorism, before, during and since September 11th. They have captured potential terrorists, seized illegal contraband and prevented financial transactions that would provide potential terrorists access to the money they need to implement attacks. They have been fighting to protect our freedoms. This proposal would take away theirs.

**Here is a list of the important sections of Title 5:**

Ch.23—merit system principles; Ch.43—performance standards; Ch.53—pay, including FEPCA; Ch.63—leave; Ch.71—labor/management relations, including the right to belong to a union; Ch.72—anti-discrimination, including whistleblower protection; Ch.73—conduct standards, including Hatch act; Ch.83—CSRS retirement; Ch.84—FERS retirement; Ch.89—FEHBP.

Fourth, to maximize Customs' ability to fight our war on terrorism, continue its drug interdiction programs and other important responsibilities currently part of the Customs mission, the Customs Service must be fully funded to provide the proper number of personnel and resources to carry out their missions. In addition to full funding, additional legislative provisions that would be extremely beneficial to maximize Customs' employees ability to accomplish their missions include:

**Addition of Journeyman 11 status for Customs personnel:**

**Language should include the following to ensure that the recent announcement to increase the Journeyman status of Customs employees by the Commissioner of Customs is statutorily provided:**

**AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING**

(1) IN GENERAL—There are authorized to be appropriated for the Department of Treasury such sums as may be necessary to provide an increase in the annual rate of basic pay—

(A) for all journeyman Customs inspectors and Canine Enforcement Officers who have completed at least 1 year's service and are receiving an annual rate of basic pay for positions at GS-9 of the General Schedule under section 5332 of title 5, United States Code, from the annual rate of basic pay payable for positions at GS-9 of the General Schedule under such section 5332, to an annual rate of basic pay payable for positions at GS-11 of the General Schedule under such section 5332;

(B) for the support staff associated with the personnel described in subparagraphs (A), at the appropriate GS level of the General Schedule under such section 5332.

**Addition of Journeyman 12 status for Customs Import Specialists:**

**Language should include the following to increase the Journeyman status of Customs Import Specialists to Journeyman 12:**

**AUTHORIZATION OF APPROPRIATIONS FOR CUSTOMS STAFFING—**

(1) IN GENERAL—There are authorized to be appropriated for the Department of Treasury such sums as may be necessary to provide an increase in the annual rate, of basic pay—

(A) for all import specialists who have completed at least one year's service and are receiving an annual rate of basic pay for positions at GS-11 of the General Schedule under section 5332 of title 5, United States Code, from the annual rate of basic pay payable for positions at GS-11 of the General Schedule under such section 5332, to an annual rate of basic pay payable for positions at GS-12 of the General Schedule under such section 5332;

(B) for the support staff associated with the personnel described in subparagraphs (A), at the appropriate GS level of the General Schedule under such section 5332.

**Additional language for Law Enforcement Officer Status (6c) coverage for Customs personnel:**

**Language should include the following to enable Customs inspectors and canine enforcement officers to be recognized as law enforcement officers:**

To amend chapters 83 and 84 of title 5, United States Code, to include inspectors and canine enforcement officers of the United States Customs Service as law enforcement officers.

**SEC. 1. CIVIL SERVICE RETIREMENT SYSTEM.**

Section 8331 of title 5, United States Code, is amended—(1) in paragraph (20) by inserting 'customs inspector, customs canine enforcement officer, after 'administrative position; (2) by striking 'and' at the end of paragraph (27); (3) by striking the period at the end of paragraph (28) and inserting a semicolon; and (4) by adding at the end the following: '(29) 'customs inspector' means an employee of the United States Customs Service, the duties of whose position are primarily to—'(A) enforce laws and regulations governing the importing and exporting of merchandise; '(B) process and control passengers and baggage; '(C) interdict smuggled merchandise and contraband; and '(D) apprehend (if warranted) persons involved in violations of customs laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position; '(30) 'customs canine enforcement officer' means an employee of the United States Customs Service, the duties of whose position are primarily to work directly with a dog in an effort to—'(A) enforce laws and regulations governing the importing and exporting of merchandise; '(B) process and control passengers and baggage; '(C) interdict smuggled merchandise and contraband; and '(D) apprehend (if warranted) persons involved in violations of customs laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position.

**SEC. 2. FEDERAL EMPLOYEES RETIREMENT SYSTEM.**

Section 8401 of title 5, United States Code, is amended—

(1) in paragraph (17)—

(A) in subparagraph (C) by striking 'and' at the end;

(B) in subparagraph (D) by adding 'and' at the end; and

(C) by adding at the end the following:

(E) a customs inspector, and customs canine enforcement officer;

(2) by striking 'and' at the end of paragraph (33);

(3) by striking the period at the end of paragraph (34) and inserting a semicolon; and (4) by adding at the end the following: '(35) 'customs inspector' means an employee of the United States Customs Service, the duties of whose position are primarily to—'(A) enforce laws and regulations governing the importing and exporting of merchandise; '(B) process and control passengers and baggage; '(C) interdict smuggled merchandise and contraband; and '(D) apprehend (if warranted) persons involved in violations of customs laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position; '(36) 'customs canine enforcement officer' means an employee of the United States Customs Service, the duties of whose position are primarily to work directly with a dog in an effort to—'(A) enforce laws and regulations governing the importing and exporting of merchandise; '(B) process and control passengers and baggage; '(C) interdict smuggled merchandise and contraband; and '(D) apprehend (if warranted) persons involved in violations of customs laws, including an employee engaged in this activity who is transferred to a supervisory or administrative position; and

**SEC. 3. ADMINISTRATIVE PROVISIONS.**

(a) **EMPLOYEE CONTRIBUTIONS**—Any individual who has served as a customs inspector, and customs canine enforcement officer, before the effective date of this Act, shall have such service credited and annuities determined in accordance with the amendments made by sections 2 and 3 of this Act, if such individual makes payment into the Civil Service Retirement and Disability Fund of an amount, determined by the Office of Personnel Management, which would have been deducted and withheld from the basic pay of such individual (including interest thereon)

under chapters 83 and 84 of title 5, United States Code, as if such amendments had been in effect during the periods of such service.

(b) AGENCY CONTRIBUTIONS—Not later than 90 days after a payment made by an individual under subsection (a), the Department of the Treasury shall make a payment into the Civil Service Retirement and Disability Fund of an amount, determined by the Office of Personnel Management, which would have been contributed as a government contribution (including interest thereon) under chapters 83 and 84 of title 5, United States Code, for the service credited and annuities determined for such individual, as if the amendments made by sections 1 and 2 of the Act had been in effect during the applicable periods of service.

(c) REGULATIONS—The Office of Personnel Management shall determine the amount of interest to be paid under this section and may promulgate regulations to carry out the provisions of this Act.

SEC. 4. EFFECTIVE DATE.

This Act and the amendments made by this Act shall take effect 90 days after the date of enactment of this Act.

**Additional language for raising the overtime cap for Customs Personnel:**

**Language should include the following to enable Customs employees to avoid being subject to arbitrary decisions by Customs management on what overtime cap is established nationwide:**

Corrections Relating to Fiscal Year Cap:

(1.) Amend 5(c)(1) of the Act of February 13, 1911 (19 U.S.C. 267(c)(1)) to read as follows: Notwithstanding any other provision of law, the aggregate of overtime pay under subsection (a) of section 267 of U.S. Code Title 19 (including commuting compensation under subsection (a)(2)(B) of this section and premium pay under subsection (b) of this section that a customs officer may be paid in any fiscal year may not exceed \$35,000, except that the Commissioner of Customs or his designee may waive this limitation in individual cases to prevent excessive costs or to meet emergency requirements of the Customs Service.

(2.) TREATMENT OF CERTAIN PAY FOR RETIREMENT PURPOSES? Section 8331(3)(G) of title 5, United States Code, is amended to read as follows—

‘with respect to a customs officer (referred to in subsection (e)(1) of section 5 of the Act of February 13, 1911), compensation for overtime inspectional services provided for under subsection (a) of such section 5, but not to exceed 50 percent of any statutory or **administrative** maximum in overtime pay for customs officers which is in effect for the year involved;’

In closing, we believe that retaining all current Title 5 protections is critical to ensuring that Customs Service employees are able to continue to provide world class service and fight the war on terrorism. In addition, the proper funding, maintenance of employee rights, and legislative changes outlined here will ensure that Customs successfully continues its missions of trade facilitation and drug interdiction in the new Department of Homeland Security. Should you have any additional questions, please do not hesitate to contact me or Paul Giuliano or Maureen Gilman in NTEU’s Legislative Department at (202) 783-4444.

Sincerely,

Colleen M. Kelley  
*National President*

[Submissions for the record follows:]

American Apparel & Footwear Association  
Arlington, Virginia 22209  
8 July 2002

The Hon. Bill Thomas  
Chairman  
House Ways and Means Committee  
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the American Apparel & Footwear Association, I am pleased to provide comments in connection with your review of the creation of the Homeland Security Department.

The American Apparel & Footwear Association (AAFA) is the national trade association representing apparel, footwear and other sewn products companies and their suppliers, which compete in the global market. AAFA Members make and market their products in the United States and throughout the world. AAFA’s mission is

to promote and enhance its Members' competitiveness, productivity and profitability in the global market by minimizing regulatory, commercial, political, and trade restraints.

At the outset, we would like to affiliate ourselves with the comments and testimony of Jerry Cook from Sara Lee Branded Apparel, one of our member companies.

In particular, we strongly endorse the concept that the enforcement and trade facilitation elements of the current mandate of the U.S. Customs Service must remain together and must work together. Any proposal that separates these two functions would create uncertainty and confusion in the operation of the trade.

Our association recently endorsed a new trade policy that promotes, among other things, commonsense Customs practices to facilitate legal trade, responsible sourcing from countries that do not support terrorism, and continued funding for the ACE program.

Accordingly, we encourage you to build into this new Department a continued and healthy appreciation for the principles that Congress endorsed when it passed the Mod Act nearly ten years ago. The concepts of shared responsibility that have worked since then can and must continue to work, especially as we undertake new responsibilities in this new environment. On that point, I would note that the AAFA has for several years now heavily promoted customs compliance programs among its Members, including the Worldwide Responsible Apparel Production (WRAP) program, which provides for factory certification and independent monitoring on such issues as labor, customs compliance, anti-transshipment, and anti-narcotics.

Finally, it is absolutely essentially that Customs be mandated to complete its work in creating and implementing the ACE computer modernization project. We have been pleased that funding for this program is moving forward and would encourage you to use your leadership to ensure continued funding for this multi-year project.

If done carefully, a new Departmental entity can smoothly carry out the twin mandates to secure our homeland against terrorist attacks while promoting and facilitating legal trade. Most of our Members make and manufacture products throughout the world and depend upon sophisticated supply chains that extend through ports and across borders in order to get the right product to the right market at the right price and at the right time. We stand behind nobody in our commitment to ensure secure supply chains to prevent terrorist attacks on either those supply chains or on our homeland itself. At the same time, we stress that a Customs operation mired in overly restrictive procedures that do not recognize commercial practices can obstruct the trade dramatically. It is for this reason that we were pleased to hear Commissioner Bonner and Homeland Security Director Ridge recently assure the trade that the new Department of Homeland Security will keep trade facilitation among one of its top goals.

Please accept my best regards,

Stephen Lamar  
*Sr. Vice President*

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**Statement of Timothy H. Edgar, Legislative Counsel, American Civil Liberties Union**

On behalf of the American Civil Liberties Union (ACLU) and its approximately 300,000 Members, we welcome this opportunity to provide this testimony for the record on the President's proposed legislation to create a Department of Homeland Security, the Homeland Security Act of 2002 ("HSA"). We commend you for examining these issues in today's hearing.

The ACLU is a non-partisan, non-profit organization dedicated to preserving civil liberties and the principles of our constitutional democracy, including open and accountable government.

The proposed Department of Homeland Security will be a massive Cabinet-level department, containing over 170,000 employees and twenty-two federal agencies.<sup>1</sup> It will have substantial powers, and will include more armed federal agents with arrest power than any other agency. In considering the proposed Department, Congress should ask itself not only whether the proposal represents sound public management, but also whether the Department will have structural and legal safe-

<sup>1</sup>See Bob Williams & David Nather, *Homeland Security Debate: Balancing Swift and Sure*, CQ Weekly, June 22, 2002 at 1642.

guards in place that are sufficient to keep the agency open and accountable to the public.

Unfortunately, the draft legislation not only fails to provide such safeguards, it eviscerates many of the safeguards that are available throughout the government and have worked well to safeguard the public interest. As proposed, the plan:

- **Hobbles FOIA**—Any information voluntarily submitted to the department about terrorist threats to the nation’s infrastructure are exempt from Freedom of Information Act disclosure, drastically limiting the agency’s responsibility to answer public questions about how well it is addressing these threats. (HSA § 204).
- **Limits citizen input**—Advisory committees to the department, which normally include citizen input, hold open meetings and must be balanced in viewpoint would be immune from these safeguards of the Federal Advisory Committee Act, further undercutting the agency’s accountability to the public. (HSA § 731).
- **Muzzles whistleblowers**—Employees of the new agency could be stripped of the protections contained in the federal Whistleblower Protection Act. This would eliminate guarantees that—were the agency to overreach its mandate or engage in questionable activities—such abuse would be disclosed and the agency held accountable to Congress and the American public. Protection for the bravery like that displayed by FBI Agent Coleen Rowley would not exist in the new agency. (HSA § 731).
- **Lacks strong oversight**—Given the enormous potential power of the proposed agency, its Inspector General must not be hampered like those in other federal law enforcement agencies. Currently, the cabinet secretary in charge would have veto power over the IG’s audits and investigations. (HSA § 710).
- **Threatens personal privacy and constitutional freedoms**—Many of the information sharing provisions in the HSA are vague and do not provide sufficient guarantees to protect privacy or constitutional freedoms.

Finally, we firmly reject proposals to include in the Department of Homeland Security the intelligence gathering functions of the Central Intelligence Agency (CIA), other foreign intelligence agencies, or the Federal Bureau of Investigation (FBI). Intelligence gathering operations abroad are, as a practical matter, largely immune from constitutional constraints. The CIA and other agencies that gather foreign intelligence abroad operate in a largely lawless environment. To bring these agencies into the same organization as the FBI risks further damage to Americans’ civil liberties. As a result, Congress should resist any attempt to endow the Department of Homeland Security with new intelligence gathering powers or to fold the FBI and CIA into the new agency. Instead, Congress should put in place clear limits to prevent the Department from permanently retaining files on Americans that relate to First Amendment activities and have no connection to any criminal activity.

### **I. The Homeland Security Department Must Be Open and Accountable**

The President’s plan does not contain sufficient structural guarantees to ensure that this vast new Department will be accountable to the public, both to ensure it is doing its job and to ensure against abuse. Instead, the plan eviscerates many of the existing safeguards for government agencies. These provisions should be eliminated, and a strong mechanism should be put in place to ensure against abuse.

#### *Freedom of Information Act (FOIA) Exemption*

The ACLU strongly opposes section 204 of the proposed legislation, which creates a broad new exemption to the Freedom of Information Act (FOIA), 5 U.S.C. § 552. Section 204 provides that information that companies or others voluntarily provide to the Department about “infrastructure vulnerabilities” and other information said to be relevant to terrorism will be exempt from FOIA. These terms are not defined by the proposed legislation and could potentially cover a host of information. This is a deeply misguided proposal, and it should be rejected.

The FOIA is the bedrock statute designed to preserve openness and accountability in government and new exemptions to its provisions should not be created lightly. As the Supreme Court has made clear, “Disclosure, not secrecy, is the dominant objective of the Act.”<sup>2</sup> Open government is a core American value. It should not be set aside for reasons other than genuine necessity.

The FOIA already contains a number of common sense exemptions that would cover critical infrastructure information the disclosure of which could result in harm. The FOIA does not require the disclosure of national security information (ex-

<sup>2</sup>*Department of the Air Force v. Rose*, 425 U.S. 352 (1976).

emption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4).

Courts have carefully weighed the public's need for disclosure against the possible harms of disclosure under FOIA's traditional exemptions. In deciding whether to disclose technical information voluntarily submitted by private industry, courts have given substantial—many in the public interest and FOIA requester community would say excessive—deference to industry demands for confidentiality of business information under exemption 4.

Generally, information that a business voluntarily submits to the government on the basis that it be kept confidential is already exempt from disclosure if the company does not customarily release such information to the public and preserving confidentiality is necessary to ensure that the government will continue to receive industry's cooperation. *See, e.g., Critical Mass Energy Project v. Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992). It is difficult to see how any truly sensitive business information that was voluntarily submitted by a company concerning the vulnerabilities of its critical infrastructure could be released under this standard.

Indeed, supporters of a new FOIA exemption for critical infrastructure information have, when pressed, been forthright in admitting that such legislation simply is not needed to protect sensitive information from disclosure. For example,

- Senator Bennett, chief sponsor of legislation creating a new critical infrastructure exemption, has admitted that “[t]he Freedom of Information Act itself” currently allows sensitive information to be protected. “That is, there are provisions in the Act that say information need not be shared” with the public.<sup>3</sup>
- John S. Tritak, Director of the Critical Infrastructure Assurance Office of the U.S. Chamber of Commerce, says “You could say that [in the] current environment, if you're very careful and you watch out, the old existing exemptions will cover any concerns that may arise under FOIA, not to worry.”<sup>4</sup>
- Ronald L. Dick, Director of the National Infrastructure Protection Center of the Federal Bureau of Investigation (FBI), has said “[M]any legal authorities have agreed that the Federal Government has the ability to protect information from mandatory disclosure under the current statutory framework.”<sup>5</sup>
- VeriSign public policy director Michael Aisenberg has said worries about disclosure were overblown because FOIA already protects sensitive information, and new legislation is simply not needed “substantively.”<sup>6</sup>

Rather than put forward evidence that some information about critical infrastructure exists that is not adequately protected, supporters of a new exemption have said “it doesn't matter” whether current law provides adequate protection. Rather, it is said, a new exemption is needed because of a “perception” in private industry that there is some risk, however remote, that information that is voluntarily submitted to the government might be at risk of disclosure under FOIA.

If industry is unwilling to provide information to the government, despite adequate legal protection, the solution is not to change the law but to change the misperception by issuing legal guidance making clear the parameters of the FOIA as it currently exists. If a misperception exists that truly sensitive information that is given to the government cannot be protected from disclosure, it is hard to see how that will change if another exemption is enacted.

Perhaps most importantly, creating an overbroad exemption for “critical infrastructure information” would undermine, rather than enhance, security. Such an exemption would permit private industry and the government to shield from the public the actions they are taking—and, more importantly, the actions they are not taking—to protect the public from attacks on critical infrastructures.

Secrecy can hinder anti-terrorism efforts. Earlier this year in Israel, the media obtained a government report that discussed the potential vulnerability of a fuel depot to terrorists—exactly the sort of information about “infrastructure vulnerabilities” that might be exempt from FOIA under the proposed legislation. Military censors blocked publication of the report, and persuaded the mayor of Tel Aviv not to go public with a campaign to fix the problem. Nothing was done. Terrorists then attacked the fuel depot. In that case, public debate might well have forced action to address the problem.<sup>7</sup> The United States should not make the same mistake.

<sup>3</sup> *Senate Governmental Affairs Committee Holds Hearing on Private and Public Information Sharing and Infrastructure Security* (FDCH Transcripts), May 8, 2002.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> *Washington Internet Daily*, April 18, 2002.

<sup>7</sup> *See* Aviv Lavie, *Media: Sensing the Censor*, Ha'aretz (Tel Aviv, Israel), May 29, 2002.

For the all of the above reasons, ACLU opposes the enactment of a new FOIA exemption for critical infrastructure information. At the very least, however, any new exemption that Congress enacts should be subject to the following responsible limits:

First, any new exemption must be limited to clearly marked cyber-security documents, i.e., reports that describe cyber-attacks on a company's computer systems that have resulted or could result in some harm to its critical infrastructure. It should not apply to information about *all* vulnerabilities in critical infrastructure. Proposals to exempt information that is voluntarily shared with the government were developed to deal with the discrete and relatively new problem of cyber-attacks. To expand the scope of information that is exempted to include information about vulnerabilities to traditional physical attacks would interfere with a host of environmental and public safety regulatory regimes that have been developed over decades.

Second, any new exemption must be for written documents only, not "information" of all sorts. It would be virtually impossible to determine if information possessed by the government was the result of some oral conversation with a private sector company, making a FOIA exemption that covered such information unworkable and potentially devastating to the public's right to know.

Third, any new exemption must be limited in time, and should last for months, not years. A company which controls infrastructure that is vital to the public must have an incentive not only to share information, but also to do something to make itself less vulnerable to such attacks. A time limited exemption will give responsible companies and government agencies an incentive to fix their problem with due speed. Without a time limit, companies and the government can simply sit on the problem without any pressure to act.

Fourth, a new exemption should be an alternative to existing FOIA protections, not a new club to wield against FOIA requesters. Companies that wish to take advantage of the new exemption should clearly state on the relevant document they are requesting confidentiality under that exemption. Companies that fail to fix their vulnerabilities within a reasonable time limit, even with the protection of the new exemption, should not be allowed to take advantage of FOIA's other potentially applicable exemptions to cover up their failure to act after that time limit has expired. If companies believe the information they desire to share is protected under another FOIA exemption, they should be required instead to rely on that other exemption at the time of submission.

Finally, strict reporting requirements and a sunset clause should be included in the legislation to determine whether the new regime is working.

#### *Federal Advisory Committee Act (FACA) Exemption*

Section 731 of the HSA provides that advisory committees established by the Secretary of the Department of Homeland Security are exempt from the Federal Advisory Committee Act (FACA), and that Members of such advisory committees are not subject to certain restrictions on federal employees' conduct.

The FACA was passed in 1972 to promote the values of openness, accountability, and balance of viewpoints, and to ensure administrative efficiency and cost reduction. FACA imposes requirements on agencies<sup>8</sup> when they establish or utilize any advisory committee, which is defined as a group of individuals, including at least one non-federal employee, which provides collective advice or recommendations to the agency. 5 U.S.C. App. II, § 3(2). When an agency seeks to obtain such advice or recommendations, it must ensure the advisory committee is "in the public interest," *id.* at § 9(2), is "fairly balanced in terms of points of view represented and the function to be performed," *id.* at § 5(b)(2), and does not contain Members with inappropriate special interests. *Id.* at § 5(b)(3). If these criteria are satisfied, the agency must file a charter for the committee. *Id.* at § 9(c).

Once an advisory committee is operating, the agency also must comply with requirements designed to ensure public access and participation. FACA requires an agency to provide adequate public notice that it is establishing an advisory committee, *id.* at § 9(a)(2), conduct open meetings, *id.* at § 10(a), keep minutes of those meetings, *id.* at § 10(c), make available for public inspection and purchase all documents prepared for or by advisory committees, *id.* at §§ 10(b), 11(a), and permit all interested persons to attend, appear before, or file statements with any advisory committee. *Id.* at 10(a)(3). These openness requirements ensure public monitoring of advisory committees and reduce the likelihood that advisory committees can serve as secretive channels for special-interest access to government agencies. FACA's

<sup>8</sup>The FACA does not apply to the CIA or the Federal Reserve System. 5 U.S.C. App. II § 4(b).

right of access to advisory committee records is subject to the same nine exemptions that apply to access to agency records under the FOIA, which we believe are sufficient to guard against any disclosure of truly sensitive information.

By exempting from FACA requirements *any* advisory committees established by the Secretary of the Department of Homeland Security, the HSA severely undermines the openness and public-access goals of FACA. Although the HSA provides that the Secretary shall publish notice in the Federal Registrar announcing the establishment of an advisory committee and identifying its purpose and Membership, the meetings will not be open to the public, formal minutes of committee activity during those meetings will not be kept, and the public will not have access to view or purchase documents prepared for or by those advisory committees. Public access to and participation in advisory committees are essential to guarding against special-interest access to advisory committees and influence upon government decision-making.

In addition, the HSA exempts Members of advisory committees established under the Department of Homeland Security from federal laws restricting federal employees and officers (including Members of advisory committees) from participating in or advising the government upon matters about which there exists a conflict of interest. See 18 U.S.C. §§ 203, 205, 207. Combined with the lack of public access to and participation in advisory committee proceedings, exemption from these laws threatens to erode FACA's requirement that advisory committees' Memberships reflect a balance of viewpoints, and undermines the goal of accountability.

*Waiver of Whistleblower Protection Act (WPA) and other Title 5 Protections*

The federal Whistleblower Protection Act (WPA) was enacted to ensure that federal employees<sup>9</sup> who believe that a violation of law, mismanagement or other abuse has occurred may come forward and disclose that information without fear of summary dismissal or punitive action. The WPA protects federal employees from adverse action on the basis of a disclosure of information if the employee "reasonably believes [the information] evidences a violation of any law, rule, or regulation or gross mismanagement, gross waste of funds, an abuse of authority or a substantial and specific danger to public health and safety." 5 U.S.C. § 2302(b)(8). An employee is not protected if the disclosure involves classified information or if the disclosure is specifically prohibited by law. *Id.* The Act contains administrative remedies, administered by the Merit System Protections Board, and an employee may also seek judicial review in the United States Court of Appeals for the Federal Circuit. 5 U.S.C. §§ 1221, 7703(b). In this way, the WPA guarantees that federal agencies are held accountable to the American public if they overreach their mandate or engage in questionable activities.

The HSA permits the Secretary to sweep away the Whistleblower Protection Act, and all other protections for federal employees under Title 5, for the purpose of establishing a "Human Resources Management System" (HSA § 730) that is "flexible, contemporary, and grounded in the public employment principles of merit and fitness." By allowing the Secretary to make these personnel rules "[n]otwithstanding any other provision of this title," i.e., Title 5, the HSA does not guarantee employees of the Department of Homeland Security the protections of the WPA. Without such protection, employees who are in the best position to spot problems, violations of the law or dangers to the public are effectively silenced.

*The Homeland Security Department's Inspector General May Lack Authority*

We are concerned that the Homeland Security Act does not adequately provide for a fully functioning Inspector General (IG). Section 103(b) provides for the creation of an Inspector General pursuant to the Inspector General Act of 1978. However, section 710 of the HSA gives the Secretary of Homeland Security authority to override Inspector General Investigations in several areas including: (1) intelligence, counterintelligence, or counterterrorism matters; (2) ongoing criminal investigations or proceedings; (3) undercover operations; (4) the identity of confidential sources, including protected witnesses; (5) matters that constitute a threat to persons or property protected by the United States Secret Service and (6) other matters that constitute a serious threat to national security. Given the mission of the Homeland Se-

<sup>9</sup>The WPA does not apply to the CIA, FBI, Defense Intelligence Agency (DIA), the National Imagery and Mapping Agency (NIMA), the National Security Agency (NSA), and, "as determined by the President, any Executive agency or unit thereof the principal function of which is the conduct of foreign intelligence or counterintelligence activities." 5 U.S.C. 2302(a)(2)(C)(ii). However, employees of the FBI are covered by similar whistleblower protections contained at 5 U.S.C. § 2303, but must make their disclosures to an official designated by the Attorney General.

curity Agency, it is conceivable that many of the functions performed by this new agency could be said to fall under one of these exempted categories.

Other agencies have similar provisions that require the inspector general to be under the direct authority of the Department Secretary (e.g. Treasury, Department of Justice, Postal Service) when the IG is investigating areas of national security. We understand the need to protect information that if released could pose a danger to national security. However, many of the agencies that are going to become a part of the new Homeland Security Act such as FEMA, the INS, the Animal and Plant Health Inspection Service of the Department of Agriculture and the Coast Guard have functions much broader than dealing with national security. We are concerned that transferring these agencies into a Department whose primary function is to protect the United States against terrorism could erroneously be perceived as elevating their regular duties to those of national security, thereby making such currently non-exempt activities exempt from Inspector General oversight.

We recommend further study of this issue before legislation is approved, regular oversight by Congress and a requirement for the Homeland Security Department to report to Congress concerning how often the Inspector General is prevented from performing its duties due to section 710 exemptions, and the standards by which the Secretary exercises such authority.

## **II. The Homeland Security Department Should Not Invade the Privacy or Constitutional Rights of Americans**

Finally, the creation of a new Homeland Security Department naturally leads to concerns that such a large government agency could abuse its authority by invading the privacy or freedoms that Americans hold dear. Common sense protections can ensure against such abuses.

Because a primary function of the new Department is to receive and analyze information, Congress should insist on appropriate safeguards to protect the privacy of the information and to make sure that it is not used inappropriately. For example, there should be procedures to limit the use and disclosure of the collected information; rules that require the information to be secure and confidential; procedures to remove and destroy old data and remedies for the violation of statutory and constitutional rights and penalties for misuse of personal information.

### *The Intelligence Gathering Functions of the CIA and FBI Should Remain Separate and Outside the Homeland Security Department*

We commend the Administration for leaving the intelligence gathering function out of the new Department. The HSA leaves those functions to the Central Intelligence Agency (CIA) and other intelligence agencies and to the Federal Bureau of Investigation (FBI). While the government must do a better job of analyzing the intelligence information it already collects from both foreign and domestic sources, the Congress should not approve new intelligence gathering powers, much less a new intelligence gathering agency, without a showing that such powers are truly needed and do not unnecessarily tread on Americans' civil liberties.

Under our system of government, the CIA and other intelligence agencies are tasked with collecting foreign intelligence abroad. As a practical matter, these foreign activities have been largely immune from constitutional limits and from oversight by the federal courts, although they are and must remain subject to oversight by the Congress. On the other hand, the FBI collects foreign intelligence in the United States, and also investigates and prevents criminal activity. These domestic activities are clearly constrained by statute and by the Constitution. The FBI's intelligence gathering functions are also subject to oversight by the Foreign Intelligence Surveillance Court.

Blurring of domestic and foreign intelligence gathering functions could have a severe impact on civil liberties, potentially leading to widespread spying on Americans constitutionally-protected political and religious activity. This is already a danger under the relaxed FBI guidelines for domestic investigations recently announced by Attorney General Ashcroft.<sup>10</sup> The Congress should resist any attempt to further erode these protections by including substantial intelligence gathering functions in the new Department of Homeland Security.

### *The Homeland Security Department Should be Barred from Political Spying*

Instead of adding to the Homeland Security Department new intelligence gathering powers that could tread on civil liberties, Congress should consider adding

<sup>10</sup>For a memorandum explaining how these changes threaten constitutional rights, see Interested Persons Memorandum of Marvin J. Johnson, ACLU Legislative Counsel, June 6, 2002, available at <<http://www.aclu.org/congress/1060602c.htm>>.

provisions that would prevent the Department from maintaining files on Americans that are not linked to any criminal activity, but instead relate solely to political beliefs and associations. Under the draft legislation, while the Department will not gather intelligence information, it will receive such information in the course of its efforts to prevent terrorism.

Without safeguards, these provisions could lead to abuse. No one wants a repeat of the J. Edgar Hoover era, when the FBI was used to collect information about and disrupt the activities of civil rights leaders and others whose ideas Hoover distained.<sup>11</sup> Moreover, during the Clinton Administration, the "Filegate" matter involving the improper transfer of sensitive information from FBI background checks of prominent Republicans to the White House generated enormous public concern that private security-related information was being used for political purposes. Congress should not provide a future Administration with the temptation to use information available in Homeland Security Department files to the detriment of its political enemies.

One model the Congress could consider is Oregon Revised Statutes § 181.575. It provides that no state law enforcement agency may "collect or maintain information about the political, religious or social views, associations or activities" of a person or group unless such information "directly relates to an investigation of criminal activities" and there are "reasonable grounds to suspect" the subject "is or may be involved in criminal conduct." Such sensible limits would ensure that the Department is focused on its mission of preventing unlawful terrorist activity, not on keeping tabs on unorthodox or unusual, but constitutionally protected, political or religious activity.

### III. Conclusion

The creation of a new Homeland Security Department is truly a massive undertaking. It requires careful and thoughtful consideration. While Congress understandably wants to respond to the Administration's initiative without undue delay, caution is needed to ensure that the basic principles of our government that ensure public accountability of government activity remain intact.

Instead, the Administration's plan weakens many of the laws that are vital to ensuring an open and accountable government, by creating unnecessary blanket exemptions to the Freedom of Information Act, the Federal Advisory Committees Act, and the Whistleblower Protection Act. The plan also fails to provide for an effective review mechanism, instead proposing an Inspector General that may lack sufficient power to provide an effective check on the powerful new Secretary of Homeland Security. Finally, while the plan should be commended for recognizing the importance of the distinction between foreign and domestic intelligence gathering for the protection of civil liberties, safeguards against political spying must be added to avoid a repeat of the abuses of the Hoover era.

American Petroleum Institute  
Washington, DC 20005-4070  
July 31, 2002

The Honorable Bill Thomas  
Chairman, Committee on Ways and Means  
U.S. House of Representatives  
Washington, D.C. 20515

Dear Chairman Thomas:

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 11th. In particular, we support the concept of a Department of Homeland Security.

<sup>11</sup>For a discussion of how the FBI engaged in illegal surveillance and harassment of Dr. Martin Luther King, Jr., see Marvin J. Johnson, ACLU Legislative Counsel, *The Dangers of Domestic Spying by Federal Law Enforcement: A Case Study on FBI Surveillance of Dr. Martin Luther King* (January 2002), available at <<http://www.aclu.org/congress/mikreport.PDF>>.

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.

Sincerely,

Charles E. Sandler  
*Vice President*

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### Statement of the American Textile Manufacturers Institute

This statement is submitted by the American Textile Manufacturers Institute (ATMI). ATMI is the national trade association of the domestic textile industry, which employs approximately 435,000 individuals nationwide.

First of all, ATMI understands and fully supports President Bush's desire to create a U.S. Department of Homeland Security, and we urge Congress to ensure that this department is given the resources it will need to perform the vital tasks which will be assigned to it.

At the same time, ATMI would like to caution that, in transferring the assets and authority of the U.S. Customs Service to the new Department of Homeland Security, great care should be taken to ensure that the essential mission of the Customs Service is not in any way weakened. Indeed, the various responsibilities already assigned by Congress to the Customs Service are absolutely critical to our nation's security, and if anything the Customs Service should be given additional resources so as to better fulfill this task.

By way of background, ATMI has had a long relationship with the U.S. Customs Service. ATMI and several of its member firms have trained scores of Customs agents in textile and apparel manufacturing materials, methods and procedures in order to provide them with the expertise required to detect fraud in textile and apparel trade. This expertise has been used by Customs production verification teams (aka "jump teams") and port personnel to ensure compliance with Customs laws and regulations and trade agreements—such as NAFTA—to which the United States is party.

It is a regrettable fact that unscrupulous traders both abroad and in the United States have engaged in every kind of fraud known with respect to U.S. imports of textiles and apparel. The volume of fraudulently entered textiles and apparel is reckoned in the billions of dollars annually and, besides cheating the Treasury of significant revenue to which it is legally entitled, has had and continues to have a damaging effect on domestic producers and their workers.

Other victims of these ongoing frauds are honest exporters and importers.

Over the years Customs has interdicted large quantities of textile and apparel imports that attempted to enter domestic commerce illegally. Unpaid duties have been collected, fines and penalties assessed and culpable individuals sentenced.

With respect to transshipment, the practice of falsely declaring the country of origin of imported products in order to evade quantitative restraints maintained under the World Trade Organization's Agreement on Textiles and Clothing, millions of garments and made-up textile products have been charged against the quotas of the countries of true origin because of transshipment. Yet the illicit practices continue on a large scale.

Therefore, ATMI and its member companies are understandably concerned that any redeployment of Customs' assets from the Department of the Treasury to a newly created cabinet-level department must not in any way diminish or impair Customs' ability to investigate, detect and interdict illicit textile and apparel trade.

In its notice of the June 26 hearing on this subject, the Committee noted that one of Customs' many responsibilities is "Protecting American business and labor and intellectual property rights by enforcing U.S. laws intended to prevent illegal trade practices . . .". ATMI is pleased that the Committee recognizes the importance of this element of Customs' daunting mission.

Traders who conduct their business legally also have an important stake in the operations of the Customs Service and have been quite vocal in their calls for greater speed, efficiency and simplicity in Customs procedures. To this end, "trade facilitation" has become their mantra and has garnered considerable attention within the Customs Service. The Committee noted in its June 19 Advisory that trade facilitation is one of Customs' "core functions". ATMI does not disagree with this assess-

ment, but does wish to caution that enforcement measures must exist so that illicit trade is not facilitated.

In closing, ATMI supports inclusion of the Customs Service in the new Department of Homeland Security, and urges the Committee and the Congress to provide sufficient resources for the Customs Service to better fulfill its enormous responsibilities.

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### **Statement of the Border Trade Alliance, San Diego, California**

The Border Trade Alliance (BTA) has been monitoring plans to establish a Department of Homeland Security with great interest. Since 1986, our organization has advocated in favor of the resources needed by our land border ports of entry and the federal inspection services posted at those ports of entry, which together are critical to thwarting illegitimate trade and travel while facilitating the speedy passage of legitimate travelers and cargo.

On April 11, 2002, the BTA Chair, Stephen Gross, testified before the Senate Government Relations Committee chaired by Senator Joseph Lieberman. In that hearing, Mr. Gross offered our organization's support for Senator Lieberman's plan to establish a Department of National Homeland Security with a cabinet level secretary to oversee it. Then in June, as we all know, President Bush offered a similar plan from his Administration to establish a Homeland Security Department.

We are greatly encouraged by the momentum these proposals are gaining and welcome the opportunity to offer our years of our experience in cross-border affairs to provide insight as to the role that the U.S. Customs Service could play in this new Department of Homeland Security.

The BTA has a long history of working with the Customs Service to achieve goals that are in the best interests of both the agency and the trade community. Based upon our years of working as an organization with U.S. Customs, and the experiences our individual Members have in their day-to-day dealings with Customs, we propose the following ideas to the Committee:

1) We remain convinced that good law enforcement equates to speedy trade facilitation. Further, we acknowledge that these changing times require new and innovative ideas in response to the need for greater security. We also ascribe to the principle that security must begin at the point of loading and not at the U.S. port of unloading. Therefore, as we approach the structure and focus of this new department, we cannot lose sight of the need for international accord on such topics as the types of security equipment to be used, the qualifications of the personnel who will operate it, the standards for the training of that personnel and agreed upon standards by which security will be measured. We also agree that risk management tools, human and artificial, must be employed and maximized in order to distinguish between those shipments which should move through the system with minimal scrutiny and those which warrant more attention.

2) In this new era of increased security, we must not lose sight of the key role played by international trade. It is the life-blood of our economy, even when that economy is teetering, as it is right now. In the legislative language proposed by the Bush Administration, we were greatly encouraged to read that one of the responsibilities of the Under Secretary for Border Transportation Security (Section IV) will be to ensure the "speedy, orderly, and efficient flow of lawful traffic and commerce." As noted above, the BTA is an organization which believes that increased security and more efficient trade facilitation can be synonymous. However, if this new department is focused solely on securing our physical boundaries, then our economic security will suffer. Many of our land border communities are poor and trade is their primary industry. We must continue to insure that we do not heighten security to the point where it strangles the economic viability of these communities or the rest of the country.

3) With the new responsibilities proposed comes the need for new resources. For Congress to expect real results from the Department of Homeland Security and a smooth transition by Customs (and the other agencies) into the new department, then Congress must meet its responsibility to fund U.S. Customs (and the other inspection agencies that are part of this transition) at a level that realistically allows the agency to be equal to the new tasks it (and the other affected agencies) is being expected to tackle. It is no longer satisfactory to leave Customs at the same staffing level at which it has operated for the last ten (10) years. While it is important to make sure there are enough inspectors and agents to conduct proper examinations and follow-up, we should not lose sight of the fact there are many other positions within Customs which are equally important but much less high profile. For exam-

ple, Import Specialists, who often are Customs' first line of contact with importers, deal with importers on a daily basis and are often in the best position to spot commercial fraud. Similarly, there are personnel which process the millions of entries filed each year. These and similar positions are just as important to the overall ability of Customs to do its jobs as the latest high-tech piece of X-ray equipment.

4) We are aware the Committee is focused on Customs' dual mission of law enforcement and trade facilitation. The Committee has listed the issues about which it wishes to receive information. Mindful of that list and our focus on land border trade and transportation, we wish to raise an additional issue about which we have felt strongly since our inception. Many of our Members cross the border daily (some even several times a day). Too often they and others have found long lines, even before the events of September 11th. The requirements to enter are often interpreted in contradictory manners depending on the agency personnel manning a given gate. Often there is a tremendous lack of coordination in terms of staffing needs as each inspection agency seeks to address its unique role. We have long supported what we have chosen to call unified port management (UPM). In its simplest terms, UPM means that one agency is put in charge of the staffing and similar administrative requirements at the ports of entry. By doing so, there can be proper planning for staffing needs, including peak and slow times. Therefore, if Homeland Security is properly administered, we can see the possibility for a real cost savings, both to taxpayers and to business. If legitimate cargo and travelers are able to cross more smoothly, their expedited treatment means less time is wasted and so the attendant costs are minimized.

5) While we have never taken a formal position as to which agency should be put in charge, many of our Members have long felt that Customs is the agency which should be in charge for the simple reason that it is the only federal inspection agency which regularly reaches out to the trade community in trying to address its mandate. The most recent example of Customs good-faith efforts to work with the trade has taken the form of the Customs-Trade Partnership Against Terrorism (C-TPAT). The guidelines Customs published and the methodology it is using to roll out the program and administer it are the direct result of intense discussions with the trade. Unlike many other federal agencies, Customs regularly consults with its constituencies. In the case of C-TPAT, Customs initially met with the trade under the aegis of the Subcommittee on Border Security formed by Treasury's Commercial Operations Advisory Committee. While many of the basics of C-TPAT were worked out there, Customs did not consult with only that group but has been regularly reaching out to the trade community through meetings with major trade associations. Customs should be encouraged to continue these efforts, as they are vital to making our borders secure. The other federal agencies in Homeland Security should be similarly encouraged to reach out to the trade community. In the end, we in the business community are the best source of solutions which are both practical and workable.

We thank you for this opportunity to comment on this important issue and welcome future opportunities where our insights may prove relevant. As the Ways and Means Committee continues to monitor the important subject of the role of U.S. Customs in the Department of Homeland Security, we offer the Border Trade Alliance's 16 years of experience in border trade affairs should the Committee require any additional information as we all seek to better organize our government for homeland and economic security.

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#### **Statement of the National Customs Brokers and Forwarders Association of America**

The National Customs Brokers and Forwarders Association of America (NCBFAA) is pleased to provide its views on the President's proposal to create a Department of Homeland Security.

NCBFAA is the national trade association representing customs brokers, ocean freight forwarders, air forwarders, nonvessel operating common carriers (NVOCCs) and other intermediaries. Our Members are responsible for directing the flow of cargo on behalf of our customers, for handling interactions between shippers, carriers and consignees and for serving as the interface with regulatory agencies. Specifically, customs brokers are licensed professionals who interact directly with the Customs Service on behalf of the importing public. We represent small, medium and large importers, preparing their entries, collecting duties and other revenues, and ensuring that imported merchandise complies with U.S. law.

NCBFAA strongly supports the President's proposal to create a Department of Homeland Security. It brings under one roof all the disparate agencies tasked with

that function, giving coherence and focus to the government's homeland security mission. The proposal also provides the tools for the Secretary to coordinate the activities of these agencies. Previously, competition for mission authority and agency standing was counterproductive to the overall effort. Implementation of the President's proposal will give the government a single, coordinated voice on security issues.

NCBFAA recognizes the need to include the Customs Service within the new Department. After all, Customs has already been tasked by the President to assume a major role in protecting the borders from being compromised by terrorists. The Customs Service is the one agency with a sufficiently robust presence at the borders to perform this mission. The agency also has the unique combination of expertise, manpower, and infrastructure required to conduct this effort.

The President's proposal appropriately transfers all of Customs to the new Department of Homeland Security, recognizing that it is not possible to divide Customs' trade and security responsibilities between Treasury and the new Department. Personnel engaged in commercial operations are also necessary and integral participants in security activities. The agency must remain intact.

NCBFAA believes it is essential that commercial operations continue to have a preeminent role at Customs. In years past, the culture of enforcement has threatened to stifle the free flow of trade. Management has reduced its emphasis on facilitation and placed a higher premium on commercial enforcement.

As the Customs Service makes a new home in the Department of Homeland Security, the significant role of trade cannot be lost to the demands of security. Properly structured and implemented, effective trade facilitation can actually enhance security, giving the agency the ability to better target its enforcement efforts to high risk shipments and activity. To ensure a proper balance of its dual roles, NCBFAA recommends the following:

- Within the Customs Service itself, security measures should be separated, whenever possible, from commercial measures. For example:
  - (1) Customs should not blur the line between commercial enforcement and security measures. An importer's record on commercial compliance may have nothing to do with his ability to provide supply chain integrity.
  - (2) A manifest should not become a "Noah's Ark" for every form of necessary data element. [To the extent that expanded data requirements are added, however, the manifest data should not be publicly available through the Freedom of Information Act (FOIA).] A manifest should continue to function as a commercial document. Instead, for security purposes, NCBFAA recommends a separate security document.
  - (3) Customs should not require commercial entry data (such as 6-digit HTS numbers, which may not be valid at earlier points in the entry process) at an inordinately early time when the requirement only encumbers trade and when less intrusive alternatives exist.
- Presently, commercial operations interests are represented at the highest levels of Customs [e.g., Field Operations, Office of Trade Relations, OR&R and the traditional role of the Deputy Commissioner].

These should not be diminished.

- Advocacy from the private sector has been built into the government structure (e.g., COAC, the Trade Support Network). This important partnership should be retained.
- Resourcing for commercial functions must be generous since the funding source, the merchandise processing fee, more than provides those monies. A negative example this year is the underfunding of import specialists.
- The Commissioner should recommend concrete steps, whether through organizational measures, resourcing or other means, to protect the status of commercial operations.

This concludes NCBFAA's statement. We look forward to working with this Committee on the challenging task ahead.