

Washington Report

The Department of Homeland Security Takes Shape

- by J.H. Kent, NCBFAA Legislative Representative

It wasn't so long ago – October to be exact – when the Homeland Security bill was stuck in a seemingly irreconcilable clash of wills. There was virtually no hope for Congressional passage before the election and little expectation that a weak lame duck Congress could make much, if any, progress. Even Republican leaders in the Senate were predicting that the Homeland Security Department bill would be at the top of the next Congress' agenda.

All that changed. The ways of Washington being what they are, this old reality vanished in an instant. President Bush, empowered by a stunning Election Day mandate, decreed that the Homeland Security would happen...now. Meetings were held. Deals were cut. The lame duck Congress limped back into town and, with uncharacteristic efficiency and only a few faint cries of protest, sent the President his bill. A week later the President's signature made it official. The Department of Homeland Security was born.

The sense of urgency has not lessened since then. The legislation gave the Administration a full 60-days to transmit a blueprint for how the reorganization of 22 agencies will occur. Yet, a mere 6 hours after signing the bill, the President sent his plan to Congress. Under that plan, on January 24, the effective date of the Act, the Office of the Secretary will be established, the various bureaus will be formed and appointment of Under Secretaries and Assistant Secretaries will begin. On March 1, the transfer of the personnel and assets of the various agencies, including Customs, will take place, with all remaining details to be resolved by September 30. The Customs Service will be housed within the Directorate of Border and Transportation Security (BTS), along with the Transportation Security Administration, the Office of Domestic Preparedness, the Federal Protective Service, the Federal Law Enforcement Training Center and the newly created Bureau of Border Security.

We are venturing into uncharted territory. The President's outline is deceptively simple, obscuring the fact that this is a monumental undertaking that will take years to fully accomplish. The President's bold air of inevitability may help to propel the new Department through a staggering gauntlet of bureaucratic obstacles. None of it, however, will be easy.

These are early days in the Department's development, but not too early to make a few initial observations about what we can expect:

A Preeminent Role for Customs: Customs as an agency will enter the new Department in a relative position of strength. The bill contains carefully drafted provisions to ensure that Customs as a trade and revenue-producing entity will survive intact. These provisions contain more detail and more structural protections than is provided for any other agency subject to transfer. Specifically:

- The position of Customs Commissioner, subject to confirmation by the Senate, will continue untouched in the Department of Homeland Security.
- Customs will arrive at its new home with its own funding source – and a stern directive in the law that neither the merchandise processing fees nor funds appropriated to Customs can be used by other agencies.
- The *authority* for Customs trade and revenue functions, which are broadly defined, will remain with Treasury, although Treasury will delegate its authority to the Secretary of Homeland Security. This mechanism may be of more symbolic than practical use, serving as a constant reminder that Customs commercial functions are not to be overlooked. It also may serve as a device to keep the House Ways and Means and Senate Finance Committees involved in Customs' oversight.

- The law stipulates that personnel and resources for these trade and revenue functions may not be diminished from the levels that exist on the day before the transfer takes place.
- Finally, key to Customs' role is ACE – the sophisticated technology designed to transform import processing. This Customs' driven technology will be the centerpiece for the border security initiative and, through ITDS, will be the portal for sharing information with any and all agencies.

Given these combined attributes, Customs is, at the very least, positioned to exert a commanding role within the new Department.

Dangers from Within and Without

Despite the protections afforded Customs' commercial operations, the harsh light of reality can in time dilute the words of the statute. Much will depend on how the Department takes shape and the strength of the personalities involved – from Tom Ridge at the top to Asa Hutchinson, the former Congressman and DEA Administrator who is slated to serve in the pivotal role of Under Secretary for Border and Transportation Security, to the Commissioner of Customs, Robert Bonner. Their sensitivity to commercial concerns in the midst of security imperatives will be a crucial factor.

No doubt, there will be Departmental pressures for Customs to define itself first and foremost as a border security agency. Perhaps more importantly, there will be similar pressures from within Customs. Eager as the agency is to play a dominant role within the Department of Homeland Security, Customs will want to prove its mettle – to show it is indeed tough enough to lead the fight against terrorism. This, more than any outside force, has the potential to leave the commercial perspective vulnerable.

Bureaucratic Challenges

The sheer magnitude of merging 170,000 employees from 22 different entities is sobering. Just integrating computer and email systems so people can communicate will be no small task. And then there are the logistics of

transferring people, property and money. Blending the disparate cultures of the various entities will be the greater challenge and one that will take years. And all of this will occur as vested interests cling to their turf, skeptical union members drag their feet and bureaucratic inertia creeps in. The Homeland Security bill vests a lot of administrative discretion in one person – the Secretary Tom Ridge – that can be risky, but may be necessary to move things along. Yet, even under the most optimistic scenario, disruptions will be unavoidable.

Business As Usual

For the Customs Service itself, though, everyday life can be expected to go on, even as the agency undergoes this historic shift. It has been their personality to be independent and self-contained – characteristics that will serve them well now. Since the agency will move intact as an entity to the Department of Homeland Security, it can hopefully avoid much of the dysfunction that will accompany a more fragmented agency move. The responsibilities for trade processing and enforcement and border security should proceed without incident. Policy initiatives relating to the Container Security Initiative and CTPAT will remain top priorities, as will development of ACE. Completing the 24-hour advance notice rulemaking will continue to preoccupy Customs, as the agency strives to finish the rulemaking by August.

Congress' Role

During passage of the Homeland Security legislation, Congress temporarily sidestepped the touchy issue of who will have legislative jurisdiction over the new Department. Yet, a jurisdictional showdown is inevitable. Under the current rules of jurisdiction, around 80 different committee and subcommittee chairmen have a claim to a piece of the Department. This has led some in Congress to advocate a major reorganization of the existing patchwork of Congressional jurisdiction, calling for a new appropriations committee and a new authorizing committee to oversee the Department. In fact, House Republicans approved a "sense of the Republican Conference" resolution in November that called on the House to consolidate the

Homeland Security Department's authorization and appropriations processes. Nevertheless, the issues involved are complex and the politics are dicey. There will be no easy compromise.

It will be critical to Customs commercial side for the House Ways and Means Committee and the Senate Finance Committee to continue its oversight jurisdiction over those Customs' policies and operations. Similarly, it will be advantageous for funding decisions to be in the hands of the Treasury appropriations subcommittee. House Ways and Means Committee Chairman Bill Thomas' (R-CA) foresight in defining careful boundaries for Customs commercial operations with continued lines of authority back to Treasury may favor the continued involvement of these key committees.

Ultimately, several years from now, the Department of Homeland Security will be something very different from the loose assemblage of agencies in its infancy. The intent was never to simply patch together 22 existing agencies under one roof. The idea is to blend these many related functions scattered throughout the government into a coherent new design. That was the whole point behind President Bush's unyielding insistence that he be given new authority and flexibility to move people and money within the

Department, unencumbered by the restrictions of current law. We can absolutely expect a major reorganization to occur, with the intent being to transform the Department of Homeland Security into a more efficient entity, one in which the old lines of demarcation will barely be visible. The shape of Customs commercial operations in this new order remains to be seen, but surely it will depend in large part on how well we in the industry do our job in these critical early stages.



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