United States Senate Committee on Finance

For Immediate Release
Friday, July 15, 2005

Grassley, Baucus Express Concern Over Poor Consultation on Homeland Security Revamp

WASHINGTON – Sen. Chuck Grassley, chairman of the Committee on Finance, and Sen. Max Baucus, ranking member, have expressed concern over poor consultation with the committee from the Department of Homeland Security over a proposed departmental restructuring.

The committee retains jurisdiction over key functions within the department, such as key revenue and trade facilitation functions. For example, after Sept. 11, 2001, Daimler-Chrysler announced it would close one of its assembly plants because it could not get the parts it needed from Canada after the border was closed. The Finance Committee has jurisdiction over any policy involving the halting and resumption of trade facilitation activities.

Despite this significant responsibility, Grassley and Baucus received little communication from the department over the proposed restructuring, despite repeated requests and assurances that they would be consulted. Grassley and Baucus expressed their concern in a letter to Department of Homeland Security Secretary Michael Chertoff in a letter this week. The text follows.

July 14, 2005

Via Facsimile: (202) 772-9734
Original via USPS Mail
Secretary
Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20528

Dear Secretary Chertoff:

We would like to commend you on your efforts to streamline the Department of Homeland Security (DHS) and make it a more efficient and effective Department within the United States. Since the announcement of the planned DHS review in March 2005, Finance Committee staff has been in contact with your office trying to ascertain your plans to streamline and manage DHS. In fact, on April 15, 2005, in a letter to you, the Committee requested that you provide copies of any and all third-party reviews, audits, and evaluations conducted regarding the department and key agencies under our jurisdiction. The Committee has yet to receive a substantive response from that request. Instead, in your April 29, 2005, response letter to the Committee, you stated that your office was looking into the matter regarding our inquiry and would get back to us in the future. We are still waiting.

That is why on the morning of July 13, 2005, we were amazed and disappointed to learn the details of your proposed reorganization by reading the front page of the Washington Post and in a speech you gave later that day. Let's make this perfectly clear — a good public relations effort does not substitute for adequate Congressional consultations. It is unacceptable for the Chairman and Ranking Member of the Committee to learn about the proposed restructuring and other key changes to the DHS in the media and through speeches instead of through consultations.

Unfortunately, the Committee relied upon repeated representations of high-level DHS staff members stating that Committee staff would be made aware of any briefings afforded to Congress. It later came to our attention that a Senate-wide briefing was held on the evening of July 12, 2005, at the office of the Homeland Security and Government Affairs Committee. However, the Finance Committee was never made aware of that fact. This is particularly troubling because throughout the past few months, Finance Committee staff had several phone conversations with your Office of Legislative Affairs (OLA), in which, your staff specifically conveyed that they would keep the Committee staff apprised of any developments and that it would be included in any briefings and updates to Congress. It is unacceptable that DHS, and specifically OLA did not contact the Committee to advise of your intended announcement and speech on July 13, 2005. This is even more troubling because as recently as the week of June 13, 2005, we were provided assurances by DHS staff that we would be consulted.

Mr. Chertoff, we are confident that you recognize Congressional consultation is critically important and that we should be able to rely on the representations made by your staff that we would be consulted.

As a concession, your staff did indeed provide a last-minute briefing on the day of your speech, but only after repeated phone calls, messages, and emails from Committee staff. We assume that the scenario described above will never be repeated in the future.

It is important to note that Congress has consistently advocated that the Department of Homeland Security maintain a careful balance between trade facilitation and security functions. It is precisely for this reason that Congress did not transfer customs and trade facilitation functions wholesale to the DHS when Congress created the Department of Homeland Security. Under the Homeland Security Act, Congress specifically chose to retain the authority over customs revenue functions within the Department of the Treasury. In fact, under the final Homeland Security legislation, authorities vested in the Secretary of the Treasury relating to customs revenue functions remained with the Secretary of the Treasury until delegated to the Secretary of Homeland Security by Treasury Order 100-16 on May 15, 2003. This authority is subject to certain exceptions that preserved Treasury's oversight of the U.S. Customs with respect to policy matters and the authority to issue regulations and determinations. The rationale for retaining overall policy authority with Treasury instead of DHS lies in the belief that the Treasury Department is better equipped to ensure that international trade, which is so important to the economic health of our economy, is not needlessly stifled.

More recently, the passage of S. Res. 445 reinforced Congressional intent to maintain the balance between security and trade. During the consideration of S. Res. 445 in the108th Congress, it was

determined that the Senate Finance Committee would preserve the oversight of revenue functions, commercial functions and commercial operations that are now delegated to Customs and Border Protection and Immigration and Customs Enforcement at the DHS. The Committee's oversight also covers matters relating to trade facilitation and trade regulation. To further elucidate, please find attached a colloquy and floor statement related to the debate, both of which can be found in the Congressional Record.

As you know, commercial Customs' functions are one element of the comprehensive international trade agenda of the United States while various elements of international trade and trade policy are woven together so thoroughly that effective oversight of the whole necessitates oversight of the individual elements of trade.

The Committee is requesting that your office provide the relevant information as requested in the April 15, 2005, letter no later than July 22, 2005.

Thank you for your prompt attention to these matters.

Sincerely,

Charles E. Grassley	Max Baucus
Chairman	Ranking Member