

DHS TRADE AND ECONOMIC SECURITY
COUNCIL ACT OF 2022

R E P O R T

OF THE

COMMITTEE ON HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE

TO ACCOMPANY

S. 4243

TO ESTABLISH THE DEPARTMENT OF HOMELAND SECURITY
TRADE AND ECONOMIC SECURITY COUNCIL AND THE
POSITION OF ASSISTANT SECRETARY FOR TRADE AND
ECONOMIC SECURITY WITHIN THE DEPARTMENT OF
HOMELAND SECURITY, AND FOR OTHER PURPOSES



NOVEMBER 17, 2022.—Ordered to be printed

U.S. GOVERNMENT PUBLISHING OFFICE

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DHS TRADE AND ECONOMIC SECURITY COUNCIL
ACT OF 2022

NOVEMBER 17, 2022.—Ordered to be printed

Mr. PETERS, from the Committee on Homeland Security and
Governmental Affairs, submitted the following

R E P O R T

[To accompany S. 4243]

[Including cost estimate of the Congressional Budget Office]

The Committee on Homeland Security and Governmental Affairs, to which was referred the bill (S. 4243) to establish the Department of Homeland Security Trade and Economic Security Council and the position of Assistant Secretary for Trade and Economic Security within the Department of Homeland Security, and for other purposes, having considered the same reports favorably thereon with an amendment in the nature of a substitute and recommends that the bill, as amended, do pass.

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I. PURPOSE AND SUMMARY

S. 4243, the DHS Trade and Economic Security Council Act of 2022, requires the Secretary of Homeland Security to establish the Department of Homeland Security (DHS) Trade and Economic Security Council in order to provide the Secretary advice and recommendations on matters of trade and economic security, including: identifying risks and setting priorities to secure trade and eco-

conomic security, coordinating Department-wide activities, and developing the President’s continuity of the economy plan as required by the Fiscal Year 2021 National Defense Authorization Act. The bill requires the Council to be comprised of the Department’s component heads or their designees.

The bill also amends the Homeland Security Act of 2002 to establish the Assistant Secretary for Trade and Economic Security within the Office of Strategy, Policy, and Plans. The bill specifies, that at the direction of the Under Secretary for Strategy, Policy, and Plans, the Assistant Secretary may be tasked with coordinating supply chain policies, assessments, and reports to Congress related to economic security domains, coordinating with Federal and non-governmental stakeholders, and serving as the representative of the Under Secretary for Strategy, Policy, and Plans on the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector and the Committee on Foreign Investment in the United States.

II. BACKGROUND AND NEED FOR THE LEGISLATION

The United States’ economic prosperity depends both on the flow of goods and services, people and capital, and information and technology across our borders, and also the integrity of the U.S. industrial base.¹ DHS plays a significant role in fostering this economic prosperity given that its core mission is to protect the borders of the United States while facilitating legitimate trade and travel and enforcing trade, customs, and other laws.² DHS’s U.S. Customs and Border Protection (CBP) saw a significant increase in trade volume during fiscal year 2021 compared to the previous year—volume increased by 13 percent from fiscal year 2020. The volume of shipments entering the United States was not only higher than the previous year, it also surpassed pre-COVID–19 pandemic levels, continuing an overall trend of steadily increasing trade volume.³ As trade volume has increased, authorities must remain vigilant against unfairly traded goods, the importation of which violates U.S. law and undermines the country’s industrial base and overall competitiveness.

In its execution of its trade and economic mission, DHS is positioned to identify and proactively mitigate potential threats and vulnerabilities to the U.S. supply chain and domestic production. These include economic and geopolitical exploitation from our adversaries, natural disasters, terrorist attacks, or public health crises.⁴ Most recently, the COVID–19 pandemic exposed supply chain vulnerabilities and the subsequent effects on our economic security, including access to food and medicine and the inability to conduct

¹Department of Homeland Security, *Trade and Economic Security* (<https://www.dhs.gov/trade-and-economic-security>) (accessed May 31, 2022).

²U.S Customs and Border Protection, *CBP Trade and Travel Report Fiscal Year 2021* (Apr. 15, 2022) (<https://www.cbp.gov/sites/default/files/assets/documents/2022-Apr/FINAL%20FY2021%20Trade%20and%20Travel%20Report%20%28508%20Compliant%29%20%28April%202022%29%20.pdf>).

³*Id.*

⁴Homeland Security Advisory Council, *Final Report: Economic Security Subcommittee* (Nov. 16, 2020) (https://www.dhs.gov/sites/default/files/publications/final_economic_security_subcommittee_report_1.pdf).

business.⁵ In 2020, the then-members of DHS’s Homeland Security Advisory Council (HSAC) Economic Security Subcommittee issued a report that found that the threats and vulnerabilities of the U.S. supply chain are growing and that the COVID–19 pandemic further exacerbated these issues, in particular highlighting our nation’s dependence on China.⁶ Currently, the Trade and Economic Security sub-office within DHS’s Office of Strategy, Policy, and Plans leads department-wide efforts to counter these threats while establishing policies focused on safeguarding economic integrity and competitiveness.⁷

S. 4243 helps address current and emerging issues related to trade and economic security by better positioning DHS to address and respond to threats and vulnerabilities, as well as strengthening U.S. supply chains and domestic production capacity. Specifically, the bill establishes the Trade and Economic Security Council—chaired by the Under Secretary for Strategy, Policy, and Plans—which would provide the Secretary with advice and recommendations on matters of trade and economic security. The bill requires the Council to meet on a quarterly basis and brief Congressional committees on a regular basis.

In addition, the bill makes permanent the role of Assistant Secretary for Trade and Economic Security in DHS’s Office of Strategy, Policy, and Plans. At the direction of the Under Secretary for Strategy, Policy, and Plans, the Assistant Secretary may serve as the lead for matters of economic security and trade, including supply chain policy, related assessments and reports to Congress, serve as the Under Secretary’s representative to related committees, and coordinate with stakeholders.

III. LEGISLATIVE HISTORY

Senator Rob Portman (R–OH) introduced S. 4243, the DHS Trade and Economic Security Council Act of 2022, on May 18, 2022, along with Senators Gary C. Peters (D–MI) and Debbie Stabenow (D–MI).

The bill was referred to the Committee on Homeland Security and Governmental Affairs. The Committee considered S. 4243 at a business meeting on May 25, 2022. During the business meeting, a substitute amendment was offered by Senator Portman that designated the Under Secretary for Strategy, Policy, and Plans as the Chair of the Council and clarified that the Assistant Secretary for Trade and Economic Security’s duties and responsibilities are at the direction of the Under Secretary for Strategy, Policy, and Plans, in addition to other technical edits. The Portman Substitute Amendment was adopted by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen, Padilla, Ossoff, Portman, Lankford, Romney, Scott, and Hawley present.

The Committee ordered the bill, as amended, reported favorably by voice vote *en bloc* with Senators Peters, Hassan, Sinema, Rosen,

⁵U.S. Department of Homeland Security Office of Strategy, Policy, and Plans, *2020 Economic Security Assessment* (Jan. 1, 2021) (https://www.dhs.gov/sites/default/files/publications/21_0111_economic-security-assessment-annual-report.pdf).

⁶Homeland Security Advisory Council, *Final Report: Economic Security Subcommittee* (Nov. 16, 2020) (https://www.dhs.gov/sites/default/files/publications/final_economic_security_subcommittee_report_1.pdf).

⁷Department of Homeland Security, *Trade and Economic Security* (<https://www.dhs.gov/trade-and-economic-security>) (accessed May 31, 2022).

Padilla, Ossoff, Portman, Lankford, Romney, Scott, and Hawley present.

Consistent with Committee Rule 3(G), the Committee reports the bill with a technical amendment by mutual agreement of the Chairman and Ranking Member.

IV. SECTION-BY-SECTION ANALYSIS OF THE BILL, AS REPORTED

Section 1. Short title

This section designates the name of the bill as the “DHS Trade and Economic Security Council Act of 2022.”

Section 2. DHS Trade and Economic Security Council

Subsection (a) defines the terms “Council”, “Department”, “economic security”, and “Secretary.”

Subsection (b) requires that the Secretary establish the DHS Trade and Economic Security Council, which is a standing council comprised of component heads or their designees.

Subsection (c) describes the duties of the Council established in subsection (b). The Council is directed to provide the Secretary with advice and recommendations on trade and economic security issues. Such issues include: identifying risks, setting priorities, coordinating DHS-wide activities, developing the President’s continuity of the economic plan as required by the Fiscal Year 2021 National Defense Authorization Act, and proposing necessary changes related to trade and economic security.

Subsection (d) requires that the Under Secretary for Strategy, Policy, and Plans serve as the Council Chair and allows the Under Secretary to designate one of the Council members to serve as the Vice Chair.

Subsection (e) requires that the Council meet on a quarterly basis and more if needed, at the direction of the Chair or Secretary.

Subsection (f) requires that within 180 days after the bill is enacted and every 180 days thereafter for four years, the Council must brief the Committee on Homeland Security and Governmental Affairs of the Senate and the Committee on Homeland Security of the House of Representatives on the Council’s activities.

Section 3. Assistant Secretary for Trade and Economic Security

This section amends Section 709 of the Homeland Security Act of 2002 by redesignating subsection (g) as subsection (h) and inserting a new subsection (g) after subsection (f).

Section 709(g)(1) establishes an Assistant Secretary for Trade and Economic Security in the Office of Strategy, Policy, and Plans.

Section 709(g)(2) defines the Assistant Secretary’s duties to include overseeing trade and economic security policy as those matters relate to DHS.

Section 709(g)(3) defines additional duties that the Assistant Secretary may have at the direction of the Under Secretary for Policy, Strategy, and Plans, including oversight of the Department’s supply chain policy and Congressional assessments and reports on economic security. The subsection also allows the Assistant Secretary to represent the Under Secretary for Policy, Strategy, and Plans on the Committee on Foreign Investment in the United States as well as the Committee for the Assessment of Foreign Participation on

the United States Telecommunications Services Sector. In addition, this subsection allows the Assistant Secretary to coordinate with federal and nongovernmental stakeholders on trade and economic security issues and perform any additional duties at the direction of the Under Secretary.

Section 709(g)(4) defines the terms “critical economic security domain” and “economic security.”

Section 4. Rule of construction

This section provides that nothing in this bill, including the amendments it makes, shall be construed to affect or diminish the authority granted to any DHS officer.

V. EVALUATION OF REGULATORY IMPACT

Pursuant to the requirements of paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee has considered the regulatory impact of this bill and determined that the bill will have no regulatory impact within the meaning of the rules. The Committee agrees with the Congressional Budget Office’s statement that the bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA) and would impose no costs on state, local, or tribal governments.

VI. CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, October 20, 2022.

Hon. GARY C. PETERS,
Chairman, Committee on Homeland Security and Governmental Affairs, U.S. Senate, Washington, DC.

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for S. 4243, the DHS Trade and Economic Security Council Act of 2022.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Margot Berman.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

S. 4243, DHS Trade and Economic Security Council Act of 2022			
As ordered reported by the Senate Committee on Homeland Security and Governmental Affairs on May 25, 2022			
By Fiscal Year, Millions of Dollars	2023	2023-2027	2023-2032
Direct Spending (Outlays)	0	0	0
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	0	0
Spending Subject to Appropriation (Outlays)	*	*	not estimated
Statutory pay-as-you-go procedures apply?	No	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2033?	No	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No
* = between zero and \$500,000.			

S. 4243 would establish a council within the Department of Homeland Security (DHS) tasked with providing recommendations on matters of trade and economic security to the Secretary of DHS. The council would brief the House and Senate Homeland Security Committees on its activities every six months for a period of four years, beginning 180 days after the bill's enactment. S. 4243 also would create the position of Assistant Secretary for Trade and Economic Security within the Office of Strategy, Policy, and Plans.

Based on information from DHS, the agency currently has an Assistant Secretary for Trade and Economic Security and is already undertaking some of the activities required by the bill. As a result, CBO estimates that implementing S. 4243 would cost less than \$500,000 over the 2023–2027 period.

On January 27, 2022, CBO transmitted a cost estimate for H.R. 4476, the DHS Trade and Economic Security Council Act of 2021, as ordered reported by the House Committee on Homeland Security, on October 26, 2021. The pieces of legislation are different, and CBO's estimates of their budgetary effects reflect those differences. H.R. 4476 specifically authorizes the appropriation of \$3 million annually over the 2022–2026 period. S. 4243, as ordered reported, did not include that specified authorization of appropriations.

S. 4243 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contact for this estimate is Margot Berman. The estimate was reviewed by Leo Lex, Deputy Director of Budget Analysis.

VII. CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as reported, are shown as follows: (existing law proposed to be omitted is enclosed in brackets, new matter is printed in italic, and existing law in which no change is proposed is shown in roman):

HOMELAND SECURITY ACT OF 2002

* * * * *

TITLE VII—MANAGEMENT

* * * * *

SEC. 709. OFFICE OF STRATEGY, POLICY, AND PLANS.

* * * * *

(g) *ASSISTANT SECRETARY FOR TRADE AND ECONOMIC SECURITY.*—

(1) *IN GENERAL.*—*There is established within the Office of Strategy, Policy, and Plans an Assistant Secretary for Trade and Economic Security.*

(2) *DUTIES.*—*At the direction of the Under Secretary for Strategy, Policy, and Plans, The Assistant Secretary for Trade and Economic Security shall be responsible for policy formulation regarding matters relating to economic security and trade, as such matters relate to the mission and the operations of the Department.*

(3) *ADDITIONAL RESPONSIBILITIES.*—*In addition to the duties specified in paragraph (2), the Assistant Secretary for Trade and Economic Security, at the direction of the Under Secretary for Strategy, Policy, and Plans, may—*

(A) *oversee—*

(i) *coordination of supply chain policy; and*

(ii) *assessments and reports to Congress related to critical economic security domains;*

(B) *serve as the representative of the Under Secretary for Strategy, Policy, and Plans for the purposes of representing the Department on—*

(i) *the Committee on Foreign Investment in the United States; and*

(ii) *the Committee for the Assessment of Foreign Participation in the United States Telecommunications Services Sector;*

(C) *coordinate with stakeholders in other Federal departments and agencies and non-governmental entities with trade and economic security interests, authorities, and responsibilities; and*

(D) *perform such additional duties as the Secretary or the Under Secretary of Strategy, Policy, and Plans may prescribe.*

(4) *DEFINITIONS.*—*In this subsection:*

(A) *CRITICAL ECONOMIC SECURITY DOMAIN.*—*The term ‘critical economic security domain’ means any infrastructure, industry, technology, or intellectual property (or combination thereof) that is essential for the economic security of the United States.*

(B) *ECONOMIC SECURITY.*—*The term ‘economic security’ has the meaning given that term in section 890B(c)(2).*

[(g)](h) LIMITATION.—Nothing in this section overrides or otherwise affects the requirements specified in section 888.

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