118TH CONGRESS  
1ST SESSION

S. ______

To amend the Internal Revenue Code of 1986 to impose a fee on certain products imported into the United States based on the pollution intensity associated with the production of such products, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Mr. CASSIDY introduced the following bill; which was read twice and referred to the Committee on ______

A BILL

To amend the Internal Revenue Code of 1986 to impose a fee on certain products imported into the United States based on the pollution intensity associated with the production of such products, and for other purposes.

1 Be it enacted by the Senate and House of Representa-
2 tives of the United States of America in Congress assembled,
3 SECTION 1. SHORT TITLE.
4 This Act may be cited as the “Foreign Pollution Fee
5 Act of 2023”.
6 SEC. 2. SENSE OF CONGRESS; PURPOSE.
7 (a) SENSE OF CONGRESS.—It is the sense of Con-
8 gress that—
(1) it is in the interests of the United States to strive for environmental protection in order to protect human health;

(2) the nature of environmental challenges are transnational in nature, but international cooperative efforts, including those led by the United States, have not resulted in many trading partners adopting measures to address those challenges;

(3) the transnational issues related to environmental protection and pollution impact the environment and public health in the United States and in turn present national security risks because of the environmental and public health risks;

(4) the United States—

(A) has adopted many environmental protections, including the Clean Air Act (42 U.S.C. 7401 et seq.), the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. 2601 et seq.), and more than 15 other major environmental protection laws that—

(i) add costs to the production of goods in order to secure the benefits of environmental protection and conservation efforts; and
(ii) serve to meaningfully decrease greenhouse gases such as carbon dioxide \((\text{CO}_2)\), methane \((\text{CH}_4)\), nitrous oxide \((\text{N}_2\text{O})\), sulfur hexafluoride \((\text{SF}_6)\), hydrofluorocarbons \((\text{HFCs})\), perfluorocarbons \((\text{PFCs})\), and other fluorinated greenhouse gases;

(B) is the world’s largest consumer market and its economy is highly integrated into the world; and

(C) bears responsibility to ensure that the United States market does not incentivize forum shopping for the production of goods to jurisdictions with low environmental standards to obtain a competitive cost advantage while undermining efforts to address transnational environmental and resource challenges as well as global public health;

(5) it is necessary to apply measures to ensure the environmental conservation efforts of the United States are not frustrated through such forum shopping; and

(6) the development needs of low-income and lower-middle-income countries must be reasonably
taken into consideration while strengthening envi-
ronmental protection.

(b) PURPOSE.—It is the purpose of this Act to raise
global environmental performance to ensure a healthy en-
vIRONMENT and secure global public health benefits.

sec. 3. rules of construction.

(a) Domestic Production.—Nothing in this Act,
or any amendments made by this Act, shall be construed
to authorize the creation of any carbon tax, fee, pricing,
or other mechanism that imposes additional costs to any
covered product (as defined in section 4695(a) of the In-
ternal Revenue Code of 1986, as added by this Act) which
is produced domestically and sold, used, further refined,
or distributed within United States or exported to another
country for sale or use.

(b) Application to Other Laws.—Nothing in this
Act, or any amendments made by this Act, shall be con-
strued to authorize new environmental standards of per-
formance or impact calculations of compliance to stand-
ards under the Clean Air Act (42 U.S.C. 7401 et seq.)
or any other Act which examines the environmental impact
of domestic production or proposed production.

(c) Data Collection.—Except as expressly author-
ized under this Act, nothing in this Act, or any amend-
ments made by this Act, shall be construed to authorize
additional authority for any agency to collect additional pollution data from a domestic producer.

**TITLE I—FOREIGN POLLUTION FEE**

**SEC. 101. FOREIGN POLLUTION FEE.**

(a) In General.—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:

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"Subchapter E—Foreign Pollution Fee

Sec. 4691. Imposition of foreign pollution fee.
Sec. 4692. Determination of variable charge.
Sec. 4693. Calculation of pollution intensity.
Sec. 4694. Treatment of international partnerships.
Sec. 4695. Covered products.
Sec. 4696. National Laboratory Advisory Board on Global Pollution Challenges.
Sec. 4697. Definitions.
Sec. 4698. Establishment process and reassessments.
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**SEC. 4691. IMPOSITION OF FOREIGN POLLUTION FEE.**

(a) In General.—

"(1) Imposition of fee.—In the case of any covered product which is imported by a covered entity into the United States after the applicable date, there is hereby imposed a fee upon entry or importation of such covered product in an amount equal to the product of—

"(A) the amount of such covered product which is imported into the United States, and

"(B) the variable charge (as determined under section 4692)."
“(2) Applicable date.—

“(A) In general.—For purposes of paragraph (1), the applicable date shall be the date which is 36 months after the date of enactment of this subchapter.

“(B) Postponement.—With respect to any covered product produced in a low-income country or lower-middle-income country, the Secretary may extend the applicable date under such clause for a period of not greater than 12 months if the United States Trade Representative issues a certification to the appropriate congressional committees that such country is making progress towards an international partnership agreement.

“(b) Fee due.—

“(1) In general.—The fee imposed under this section with respect to any covered product shall be paid by the covered entity which imported such product at the same time, and through the same electronic portal, that any payment of custom duties are made.

“(2) Security for fees.—The Secretary may issue such regulations or other guidance to require, or may direct officers of U.S. Customs and Border
Protection to require, a covered entity to file with the Secretary a bond or other security in such amount and with such conditions as the Secretary determines necessary to ensure payment of the fees imposed under this section.

“(c) Measurement of Imported Products.—The amount of any covered product which is imported into the United States shall be determined by the measure ordinarily used in the course of trade of such covered product (as determined pursuant to the 6-digit HTS subheading number with respect to such product).

“(d) Amounts and Fees.—The Commissioner of U.S. Customs and Border Protection shall allow payment of the fee imposed under this section for such product to be paid by the covered entity in the same manner in which payment of custom duties are made.

“SEC. 4692. Determination of Variable Charge.

“(a) In General.—The variable charge is an ad valorem fee which is specific to a covered product and determined pursuant to the tier to which such covered product is assigned.

“(b) Tiers.—

“(1) In General.—Tiers for covered products shall be established as follows:
“(A) For covered products for which the pollution intensity difference is greater than 10 percent and not greater than 50 percent, tiers shall be established at each 5-percentage-point increment.

“(B) For covered products for which the pollution intensity difference is greater than 50 percent and not greater than 200 percent, tiers shall be established at each 10-percentage-point increment.

“(C) For covered products for which the pollution intensity difference is greater than 200 percent, tiers shall be established at each 20-percentage-point increment.

“(2) APPLICATION OF TIERS.—

“(A) IN GENERAL.—The purposes of the tiers under this section are as follows:

“(i) To provide for a standardized organization model for each covered product to allow for proper implementation and application of the fee imposed under section 4691, with such tiers to be based on the different pollution intensities for a given covered product based on the country of origin of such covered product (or, subject
to section 204 of the Foreign Pollution Fee
Act of 2023, the manufacturer of such cov-
ered product).

“(ii) To allow for determinations of
the variable charge under this section in
relation to the tiers in a manner which is
specific to the covered product.

“(B) USE OF TIERS IN DETERMINING
VARIABLE CHARGE.—

“(i) IN GENERAL.—In accordance
with paragraph (1), tiers shall be estab-
lished for each covered product, with the
variable charge assigned to each tier in a
manner which is consistent with achieving
the goals described in subsection (c)(2)
with respect to such covered product.

“(ii) PROHIBITION.—The variable
charge assigned to a particular tier for a
covered product shall not be used to deter-
mine the variable charge assigned to the
same tier for a different covered product.

“(3) ASSIGNMENT.—Each covered product shall
be assigned to the applicable tier which corresponds
to the pollution intensity difference with respect to
such covered product.
“(c) Variable Charge.—

“(1) In General.—The variable charge assigned to each tier for a covered product shall be specific to the achievement of the goals in paragraph (2).

“(2) Goals.—

“(A) Phase One Goals.—During the 6-year period beginning after the applicable date described in section 4691(a)(2) (or, in the case of any covered product added pursuant to subsection (d) or (e) of section 4695, the 6-year period subsequent to the date described in subsection (f) of such section), the goal utilized for establishment of the variable charge with respect to any covered product shall be—

“(i) in the case of any covered product for which the average pollution intensity difference is greater than 50 percent, to alter trade flows such that the average pollution intensity difference associated with such covered product is not greater than 50 percent,

“(ii) in the case of any covered product for which the average pollution intensity difference is greater than 25 percent
and not greater than 50 percent, to alter trade flows such that the average pollution intensity difference associated with such covered product is not greater than 25 percent, and

“(iii) in the case of any covered product for which the average pollution intensity difference is not greater than 25 percent, to alter trade flows such that the average pollution intensity difference associated with such covered product is not greater than 10 percent.

“(B) PHASE TWO GOALS.—During the 6-year period subsequent to the initial 6-year period described in subparagraph (A), the goal for establishment of the variable charge with respect to any covered product shall be—

“(i) in the case of any covered product which, for the initial 6-year period described in such subparagraph, was described in clause (i) of such subparagraph, to alter trade flows such that the average pollution intensity difference associated with such covered product is not greater than 25 percent,
“(ii) in the case of any covered product which, for the initial 6-year period described in such subparagraph, was described in clause (ii) of such subparagraph, to alter trade flows such that the average pollution intensity difference associated with such covered product is not greater than 10 percent, and

“(iii) in the case of any covered product which, for the initial 6-year period described in such subparagraph, was described in clause (iii) of such subparagraph, to maintain achievement of the goal described in such clause.

“(C) Phase Three Goals.—For any year subsequent to the period described in subparagraph (B), the goal for establishment of the variable charge with respect to any covered product shall be to alter trade flows such that the average pollution intensity difference associated with such covered product is not greater than 10 percent.

“(3) Progression of Variable Charge.—

“(A) In General.—To the maximum extent practicable, the variable charges assigned
to each tier of a covered product to achieve the
goals described in paragraph (2) shall progress
through each tier in a manner consistent with
an increasing linear interpolation of the variable
charge.

“(B) Exception.—With respect to any
tier for a covered product and the variable
charge assigned to such tier, the Board may
recommend and the Secretary may finalize a
variable charge that deviates from a linear in-
terpolation of the variable charge as described
in subparagraph (A), provided that such alter-
ation allows for a higher likelihood that the
goals described in paragraph (2) will be at-
tained.

“(4) Minimization of Domestic Cost In-
creases.—For purposes of this subsection, any
variable charge shall be established in a manner
which ensures that the goals described under para-
graph (2) are attained while minimizing any poten-
tial increase in domestic costs.

“(d) Exceptions.—

“(1) Comparable to Baseline Pollution
Intensity.—In the case of any covered product for
which the pollution intensity difference is not greater
than 10 percent, the variable charge shall be zero.

“(2) INSUFFICIENT DOMESTIC PRODUCTION.—

“(A) IN GENERAL.—In the case of any
covered product for which the Secretary deter-
mines there is not sufficient domestic produc-
tion with respect to such product, the variable
charge shall be zero.

“(B) DEFINITION.—

“(i) IN GENERAL.—For purposes of
this paragraph, the term ‘sufficient domes-
tic production’ means any covered product
for which an equivalent product which is
produced by domestic producers within the
United States constitutes greater than the
applicable percentage of domestic con-
sumption of such product.

“(ii) APPLICABLE PERCENTAGE.—

“(I) IN GENERAL.—For purposes
of clause (i), the applicable percentage
shall be equal to—

“(aa) 5 percent, or

“(bb) in the case of any cov-
ered product described in sub-
clause (II), such percentage
below 5 percent as is determined appropriate by the Secretary.

“(II) SPECIFIED PRODUCT.—A covered product described in this sub-clause is a product—

“(aa) which the Secretary, in consultation with the United States Trade Representative, has determined requires an applicable percentage below 5 percent for purposes of supporting—

“(AA) national security,

“(BB) prevention of dumping from foreign countries, or

“(CC) development of a domestic industry, or

“(bb) for which, as a result of an international partnership agreement, a country which is a party to such agreement produces not less than 5 percent of United States domestic consumption of such covered product.
“(C) ADJUSTMENT.—In the case of any covered product for which no variable charge is imposed under this section pursuant to a determination under subparagraph (A), the Secretary shall—

“(i) review such determination not less than annually, and

“(ii) if the Secretary’s review determines that sufficient domestic production has been attained with respect to such product, terminate application of subparagraph (A) for such product.

“(D) EXCEPTION.—This paragraph shall not apply with respect to any product which is included as a covered product pursuant to section 4695(d).

“(3) NATIONAL SECURITY.—

“(A) PRODUCT WAIVER.—

“(i) IN GENERAL.—The Secretary, in coordination with the Secretary of Defense and the Commissioner of U.S. Customs and Border Protection, may reduce the variable charge to zero for any covered product if the Secretary determines that
such product is imported for purposes of fulfilling a contract with—

“(I) the Department of Defense,

or

“(II) any contractor of the Department of Defense.

“(ii) FORM.—

“(I) IN GENERAL.—Any reduction under this subparagraph shall only apply to a covered product—

“(aa) for the period that the contract described in clause (i) is in effect, and

“(bb) with respect to the quantity of such covered product which is required to fulfill the contract described in such clause.

“(iii) PUBLICATION.—The Secretary shall make public any reduction under this subparagraph with respect to a covered product unless the publication of such information would negatively affect national security.

“(B) INTERNATIONAL PARTNERSHIP AGREEMENTS.—In the case of—
“(i) any upper-middle-income country, 
or
“(ii) any country which has entered 
into a mutual defense treaty or security 
partnership with the United States,
the United States Trade Representative (in con- 
sultation with the Secretary of Defense and the 
Secretary of State) may permit such country to 
be subject to the requirements applicable to a 
low-income country or a lower-middle-income 
country under section 203 of the Foreign Pollu-
tion Fee Act of 2023 if completion of an inter-
national partnership agreement with such coun-
try is determined to assist in the national secu-
rity or geopolitical positioning of the United 
States.
“(4) FREE TRADE AGREEMENT.—In the case of 
any covered product—
“(A) which is produced in a country with 
which the United States has a free trade agree-
ment,
“(B) for which all of the transforming 
parts or components parts necessary to produce 
such covered product are produced within—
“(i) any country with which the United States has a free trade agreement, or

“(ii) the United States, and

“(C) for which the pollution intensity difference is not greater than 50 percent, the variable charge shall be zero.

“(e) LIMITATION.—Subsection (d) shall not apply to any covered product which is produced in a country which is classified as a nonmarket economy country unless such country—

“(1) is a low-income country or a lower-middle-income country, and

“(2) is a party to an international partnership agreement.

“(f) CIRCUMVENTION.—

“(1) IN GENERAL.—If the Secretary (in consultation with the United States Trade Representative, the appropriate congressional committees, and any relevant Federal agency) determines that any country is attempting to circumvent application of the fee imposed under section 4691, the Secretary shall adjust the variable charge in such manner as is deemed necessary to offset such circumvention.
“(2) INCLUSION.—For purposes of this subsection, circumvention of the fee imposed under section 4691 shall include—

“(A) artificially decreasing the price for which a covered product is sold, and

“(B) subsidization to producers within the country of origin to offset such fee.

“(3) DETERMINATION.—If the Secretary determines that a country is attempting to circumvent application of the fee imposed under section 4691, the Secretary shall publish in the Federal Register—

“(A) a justification for such determination,

“(B) the adjusted variable charge applicable to any covered product produced in such country, and

“(C) the date (not later than 6 months after the date of publication) on which the adjusted variable charge will begin application.

“SEC. 4693. CALCULATION OF POLLUTION INTENSITY.

“(a) IN GENERAL.—For purposes of determining the applicable tiers for covered products under section 4692(b), the Secretary and the Board shall develop consistent methods for calculating the pollution intensity of any covered product which are specific to the country of origin.
“(b) FORM.—

“(1) IN GENERAL.—With respect to any covered product, the pollution intensity of such product shall be expressed based on the average pollution intensity associated with the manufacturing of such product (including point source pollution and upstream pollution) in the country of origin.

“(2) SPECIFICITY.—

“(A) IN GENERAL.—To the maximum extent practicable, the pollution intensity of a covered product shall be specific to the applicable 6-digit HTS subheading number.

“(B) CRUDE OIL.—In the case of a covered product described in section 4695(a)(4), the pollution intensity of the covered product shall be specific to the applicable 8-digit HTS subheading number.

“(3) EXCEPTION.—In the case of a covered product (with the exception of a covered product described in section 4695(a)(4)) for which data is not available to determine pollution intensity in a manner specific to the 6-digit HTS subheading number, the Secretary and the Board may determine the pollution intensity based on the applicable 4-digit HTS heading.
“(c) DATA.—

“(1) IN GENERAL.—To the extent necessary for any determination with respect to any covered product, the Secretary and the Board may use—

“(A) economic, statistical, and engineering models and analysis,

“(B) pollution monitoring data from facilities, satellites, and other pollution monitoring tools, provided that such data—

“(i) is publicly available, or

“(ii) is not publicly available but is able to be accessed and verified on a consistent basis by the Secretary or the head of any relevant Federal agency,

“(C) voluntarily reported data, provided that such data is—

“(i) a product of monitored emissions, and

“(ii) able to be verified by the Secretary or the Board,

“(D) the best available information on technology performance levels for the industrial sector that produces such product, and

“(E) manufacturing and pollution data which is specific to a covered product, including
relevant data with respect to the point source pollution and upstream pollution, the industrial sector which is associated with such product, and the country of origin.

“(2) DATA PREFERENCE.—

“(A) IN GENERAL.—To the greatest extent possible, in determining baseline pollution intensity, the Secretary and the Board shall give preference to data collected through regulatory reporting methods by the Environmental Protection Agency.

“(B) DATA COLLECTION.—To the extent necessary to carry out the purposes of this subchapter, the Administrator may alter the Greenhouse Gas Reporting Program (as established under part 98 of title 40, Code of Federal Regulations) to include the reporting of production from stationary sources regarding—

“(i) the quantity of any product produced, and

“(ii) the heading, subheading, and statistical reporting number of the HTS under which the product would be classified if the product were imported.

“(3) ACCESS TO INFORMATION.—
“(A) IN GENERAL.—The head of every relevant Federal agency shall provide the Secretary and the Board with any information held by or otherwise available to the head of such Federal agency which is relevant to the calculation of pollution intensity.

“(B) CONFIDENTIALITY.—With respect to any information or data relating to operational practices or manufacturing processes of any producer of a covered product which is provided to the Secretary and the Board pursuant to subparagraph (A), unless such information or data is otherwise publicly available, the head of any relevant Federal agency shall take such measures as are necessary to ensure that such information and data is aggregated and anonymized.

“(d) METHODOLOGY.—

“(1) IN GENERAL.—For purposes of creating a process for calculating the pollution intensity of any covered product under subsection (a), the Secretary and the Board shall—

“(A) use the best, and most granular, data available in the United States to establish the
baseline pollution intensity with respect to such product, and

“(B) in the case of a covered product produced outside of the United States, base the calculation of the pollution intensity of such product on the process used to establish the baseline pollution intensity for such product.

“(2) Treatment of Different Manufacturing Methods and Locations. — For purposes of calculating the baseline pollution intensity of a covered product, such calculations shall seek to account for differences in pollution intensity due to—

“(A) varied manufacturing methods,

“(B) differences in geographic location associated with upstream pollution intensity, and

“(C) the proportion of manufacturing of such product which is associated with the methods and differences described in subparagraphs (A) and (B) relative to total domestic production of such product.

“(3) Treatment of Recycled Materials. — Any recycled material (as defined in section 246.101(w) of title 40, Code of Federal Regulations) shall be deemed to have a pollution intensity of zero
if recycled (as defined in section 246.101(x) of such title) into—

“(A) a contributing part,

“(B) a component part, or

“(C) a covered product.

“(4) TREATMENT OF CARBON OXIDES.—

“(A) IN GENERAL.—Any carbon oxide captured from manufacturing processes or from ambient air by the producer of a covered product, or verifiably purchased by the producer of a covered product as an offset from an entity operating carbon capture infrastructure, shall have the effect of reducing the pollution associated with the production of a covered product if such carbon oxide is—

“(i) utilized in the creation of a contributing part, component part, transforming part, or covered product,

“(ii) utilized to help access a contributing part, component part, transforming part, or covered product that is extracted from a geologic formation, or

“(iii) verifiably sequestered in the country of origin of such product in a manner which provides an accurate ac-
counting of the storage of such carbon oxide.

“(B) ACCOUNTING.—Any carbon oxide utilized or sequestered as described in subparagraph (A) shall be—

“(i) treated as a reduction in pollution associated with the production of a covered product based on the total tons of carbon oxide utilized or sequestered, and

“(ii) eligible to offset all forms of pollution based on the relevant carbon dioxide equivalent value.

“(5) TREATMENT OF COVERED PRODUCTS WITH MULTIPLE PARTS.—

“(A) IN GENERAL.—In the case of a covered product described in subparagraph (B) which contains any covered component part or covered transforming part, to the maximum extent practicable, the pollution intensity of such covered component part or covered transforming part shall be calculated based on—

“(i) the amount of such covered component part or covered transforming part originating in each country of origin (including the United States) which supply
such covered component part or covered transforming part for the covered product, and

“(ii) the pollution intensity associated with production of such covered component part or covered transforming part within the country of origin.

“(B) DE MINIMIS RULE.—For purposes of subparagraph (A), a covered component part or covered transforming part shall not be included if such covered component part or covered transforming part accounts for less than 5 percent of—

“(i) the total weight of the covered product,

“(ii) the total monetary value of the covered component parts or covered transforming parts contained in the covered product, and

“(iii) the pollution intensity of the covered product (as otherwise determined under such subparagraph).

“(C) ADDITIONAL MEASUREMENTS.—In the case of a petition to include a product which contains any other covered component part or
covered transforming part as a covered product under section 4695(d), such petition—

“(i) shall provide such information as is deemed necessary to make any calculation under subparagraph (A), and

“(ii) may include, at the election of the petitioner, additional calculations to achieve an accurate determination of the pollution intensity of such product which are not tied solely to the pollution intensity of the covered component part or covered transforming part.

“(6) TREATMENT OF FACILITY-SPECIFIC AGREEMENTS.—For the purpose of determining the pollution intensity of any covered product which is produced in a foreign country, if—

“(A) such product is produced in a facility which is—

“(i) located in such country, and

“(ii) covered by an agreement established under section 204 of the Foreign Pollution Fee Act of 2023, and

“(B) the pollution intensity of the product produced in such facility would otherwise lower
the average pollution intensity associated with
the production of such product in such country,
the pollution intensity of the product produced in
such facility shall not be included for purposes of
calculating the pollution intensity associated with
production of such product in the country of origin.

“(e) ALTERATIONS FOR FOREIGN DATA.—For pur-
poses of determining the pollution intensity values with
respect to any country of origin for a covered product, if—

“(1) the baseline pollution intensity for such
covered product was determined utilizing a method-
ology based on data described in subsection (c)
which was provided at a more localized level, or in
more granular detail, than the data available with
respect to the country of origin, or

“(2) due to unavailable or unverifiable data
with respect to the country of origin, such deter-
mination required estimation through modeling
which was not performed for purposes of the calcula-
tion of the baseline pollution intensity,
the pollution intensity otherwise determined under this
section with respect to production of such covered product
in such country of origin shall be increased by 20 percent.

“(f) FOREIGN ILLUSTRATION OF POLLUTION INTEN-
sity.—
“(1) IN GENERAL.—Any country may provide
the Secretary with access to any data necessary to
establish an alternative pollution intensity with re-
spect to any covered product.

“(2) ALTERNATIVE POLLUTION INTENSITY.—

“(A) IN GENERAL.—In the case of a coun-
try which provides data described in paragraph
(1), the Secretary may adjust the pollution in-
tensity with respect to any covered product,
provided that the country providing such
data—

“(i) ensures the accuracy of all rel-
evant data for all covered products,

“(ii) provides data at a level of granu-
larity which satisfies the methods estab-
lished by the Board, and

“(iii) provides the data consistently
and in a manner that is verifiable by the
Secretary.

“(B) ROLE OF THE BOARD.—For purposes
of this paragraph, the Board shall assist the
Secretary by verifying relevant data and calcu-
lating adjustments to pollution intensities.

“(3) PUBLICATION OF ALTERNATIVE POLLU-
TION INTENSITY VALUES.—In the case of any pollu-
tion intensity with respect to any covered product which is adjusted pursuant to paragraph (2)—

“(A) the Secretary shall publish such adjustment in the Federal Register, and

“(B) such adjustment shall take effect in the following calendar year.

“(g) TREATMENT OF POTENTIAL CIRCUMVENTION AND OUTLIERS.—

“(1) IN GENERAL.—On or after the date of the first reassessment required under section 4698, the Secretary, in consultation with the United States Trade Representative, may assign a product which is produced by a foreign producer to a tier which is different from the tier determined under section 4692 with respect to the country of origin in which such producer is located if—

“(A) subsequent to the applicable date (as described in section 4691(a)(2)), such foreign producer has increased production of such product by not less than 5 percent through the establishment of a new production facility or the expansion of an existing production facility, and

“(B) the increase in production described in subparagraph (A) results in an increase in pollution intensity associated with production of
such product by such foreign producer which is at least 5 percent greater than the pollution intensity associated with production of such product in such country (as determined under paragraph (2)).

“(2) COMPARISON OF POLLUTION INTENSITY.—

For purposes of paragraph (1)(B), the pollution intensity associated with production of a covered product in a foreign country shall be equal to the lowest pollution intensity determination with respect to production of such product in such country for any period beginning after the applicable date under section 4691(a)(2).

“(3) TREATMENT OF FOREIGN OWNERSHIP.—

For purposes of paragraph (1), if the Secretary determines that—

“(A) a foreign producer is owned, operated, or majority financed by—

“(i) a country (referred to in this paragraph as the ‘base country’) other than the country in which the production facility is located, or

“(ii) an entity which is headquartered in the base country, and
“(B) the pollution intensity associated with production of the covered product in the base country is greater than the pollution intensity associated with production of such product by the foreign producer,

the Secretary shall assign the covered product which is produced by such foreign producer to the same tier determined under section 4692 with respect to production of such covered product in the base country.

“(4) FOREIGN PRODUCER.—For purposes of this subsection, the term ‘foreign producer’ means any producer which is not a domestic producer.

“SEC. 4694. TREATMENT OF INTERNATIONAL PARTNERSHIPS.

“(a) ADJUSTMENT OF FEE FOR PARTNER COUNTRIES.—In the case of a covered product which is produced in a country which is a party to an international partnership agreement which satisfies the conditions under sections 201 and 202 of the Foreign Pollution Fee Act of 2023 (referred to in this section as a ‘partner country’), no fee under section 4691 shall apply.

“(b) ELIMINATION OF TREATMENT OF FOREIGN DATA.—Section 4693(e) shall not apply to any partner country.
“SEC. 4695. COVERED PRODUCTS.

“(a) IN GENERAL.—The term ‘covered product’ means articles classifiable under the same 6-digit subheading number of the HTS within one of the following categories:

“(1) Aluminum classifiable under any of headings 7601 through 7616 of the HTS.

“(2) Biofuels classifiable under subheading 2207.10 or 2207.20, or heading 3826, of the HTS.

“(3) Cement classifiable under heading 2523, 6810, or 6811, or subheading 3824.50, of the HTS.

“(4) Crude oil classifiable under heading 2709 of the HTS.

“(5) Glass classifiable under any of headings 7001 through 7020 of the HTS.

“(6) Hydrogen, methanol, or ammonia classifiable under heading 2814 or any of subheadings 2804.10, 2905.11, 3102.10, 3102.30, or 3102.80 of the HTS.

“(7) Iron and steel classifiable under any of headings 7201 through 7326 of the HTS.

“(8) Lithium-ion batteries classifiable under subheading 8507.60 of the HTS.

“(9) Minerals classifiable under any of the following headings or subheadings of the HTS:

“2504 .......................... 2825.50 ...................... 3801.10
“(10) Natural gas classifiable under subheading 2711.11 or 2711.21 of the HTS.

“(11) Petrochemicals classifiable under heading 2901 or subheading 2711.14 of the HTS.

“(12) Plastics classifiable under any of headings 3901 through 3926 of the HTS.

“(13) Pulp and paper classifiable under any of headings 4701 through 4707 or 4801 through 4813 of the HTS.

“(14) Refined petroleum products classifiable under any of headings 2710, 2712 through 2715, or 2803 or subheadings 2902.20, 2902.30, or 2902.44, of the HTS.

“(15) Solar cells and panels classifiable under any of subheadings 8541.42 through 8541.43 or 8501.71 through 8501.80 of the HTS.

“(16) Wind turbines classifiable under subheading 8502.31 of the HTS.

“(b) Determination of Relevant HTS Numbers.—

“(1) In General.—The Secretary shall include, in the final rule required by section 4698, a list of covered products that includes the appropriate
heading or subheading of the HTS for each such product.

“(2) Scope.—Inclusion of a HTS code under paragraph (1) shall only apply with respect to a covered product if such product is—

“(A) described in subsection (a) and not subject to an exception under section 4692(d)(2), or

“(B) added pursuant to subsection (d) or (e).

“(c) Naturally Occurring Covered Products.—

“(1) Pollution Intensity Calculations.—

In the case of a naturally occurring covered product which is refined in a manner whereby such product becomes a transforming part for multiple other products (referred to in this paragraph as a ‘resulting product’), the pollution intensity associated with the refining of the naturally occurring covered product shall be divided between the resulting products in a manner consistent with the proportion of the naturally occurring product which is utilized in each resulting product and the quantity of each resulting product.
“(2) DEFINITION.—For purposes of this sub-
section, the term ‘naturally occurring covered prod-
uct’ means crude oil or minerals.
“(d) ADDITIONAL COVERED PRODUCTS.—
“(1) IN GENERAL.—An eligible entity may sub-
mit a petition (or, in the case of more than one eligi-
bble entity, may jointly submit a petition) to the Sec-
retary for any product (based on the 6-digit sub-
heading number of the product under the HTS) to
be included as a covered product for purposes of this
subchapter.
“(2) ELIGIBLE ENTITY.—For purposes of this
subsection, the term ‘eligible entity’ means, with re-
spect to any product—
“(A) a domestic producer of such product,
“(B) trade organizations consisting of pro-
ducers of such product,
“(C) labor unions representing individuals
employed in the production of such product,
and
“(D) individuals employed in the produc-
tion of such product.
“(3) THRESHOLD.—The Secretary may not ap-
prove a petition described in paragraph (1) with re-
spect to any product unless not less than 50 percent
of the total annual domestic production with respect to such product is attributable to domestic producers which are represented in such petition.

“(4) MEASUREMENT.—

“(A) IN GENERAL.—For purposes of determining whether the total annual domestic production requirement under paragraph (3) has been satisfied, the petitioners may elect whether such determination shall be made on the basis of—

“(i) net tons of production during the preceding year, or

“(ii) net monetary value of sales of the product during the preceding year.

“(B) TREATMENT OF TRADE ORGANIZATIONS.—For purposes of subparagraph (A), in the case of a trade organization described in paragraph (2)(B), the total annual domestic production attributable to any domestic producer which is part of such organization shall be included for purposes of determining whether the requirement under such subparagraph has been satisfied.

“(C) TREATMENT OF LABOR UNIONS AND INDIVIDUALS.—For purposes of subparagraph
(A), in the case of a labor union described in paragraph (2)(C) or individuals described in paragraph (2)(D) (referred to in this subparagraph as ‘petitioning employees’), the total annual domestic production attributable to such labor union or the petitioning employees shall be determined based on—

“(i) the total production of the product during the preceding year by any producer that employs members of such labor union or petitioning employees, and

“(ii) the percentage of the total number of employees of such producers during the preceding year who are members of such labor union or petitioning employees.

“(D) Exclusion of double counting.—In the case of more than 1 eligible entity which is included in a petition, the Secretary shall ensure that any production attributable to each such eligible entity is not included in the determination under paragraph (3) more than once.

“(5) Petition.—With respect to any product, the petition described in paragraph (1) shall include—
“(A) the applicable HTS code with respect to such product,

“(B) the eligible entities and the percentage of domestic production represented by such eligible entities, and

“(C) proposed methods for determination of the pollution intensity with respect to such product.

“(6) POLLUTION INTENSITY.—For purposes of paragraph (5)(C), the proposed methods shall—

“(A) satisfy the applicable requirements under section 4693,

“(B) utilize existing pollution intensity values for any covered component part, covered contributing part, or covered transforming part contained in the product, and

“(C) at the election of the petitioner, for purposes of achieving an accurate calculation of pollution intensity, include additional methods to determine the pollution intensity of any component part or transforming part which is not included under subparagraph (B).

“(7) IMPLEMENTATION.—

“(A) IN GENERAL.—Not later than 30 days after the date on which the petition de-
scribed in paragraph (1) was received by the Secretary, the Secretary shall determine whether the domestic production requirement under such paragraph is satisfied with respect to the product to be included as a covered product.

“(B) INCLUSION AS COVERED PRODUCT.—For purposes of subparagraph (A), if the Secretary determines that the domestic production requirement under paragraph (3) is satisfied with respect to the product—

“(i) such product shall be included as a covered product for purposes of this subchapter,

“(ii) the inclusion of such product as a covered product shall be published in the Federal Register, and

“(iii) such product shall be subject to the rulemaking process under section 4698(d).

“(C) DETERMINATION OF POLLUTION INTENSITY.—Subsequent to any determination under subparagraph (B) to include a product as a covered product for purposes of this subchapter, the Board shall—
“(i) review the proposed methods for
determination of the pollution intensity
with respect to such product (as described
in paragraph (5)(C)), and

“(ii) make any adjustments necessary
to—

“(I) ensure compliance with the
requirements under section 4693, and

“(II) account for availability of
necessary data and information for
such determination.

“(e) CRITICAL MINERALS.—

“(1) IN GENERAL.—In the case of any mineral
which—

“(A) is not described in subsection (a)(9),
and

“(B) is included on the list of critical min-
erals published by the United States Geological
Survey,

the Secretary, in consultation with the United States
Trade Representative, may elect to include such
mineral as a covered product for purposes of this
subchapter.

“(2) PUBLICATION AND RULEMAKING.—In the
case of any mineral which is included as a covered
product by the Secretary pursuant to paragraph (1)—

“(A) the inclusion of such product as a covered product shall be published in the Federal Register, and

“(B) such product shall be subject to the rulemaking process under section 4698(d).

“(f) APPLICATION FOR ADDITIONAL COVERED PRODUCTS.—With respect to any product included as a covered product under subsection (d) or (e), imposition of the fee under section 4691 shall take effect in the first calendar year beginning after the issuance of the final rule described in section 4698(d)(1)(B).

“SEC. 4696. NATIONAL LABORATORY ADVISORY BOARD ON GLOBAL POLLUTION CHALLENGES.

“(a) IN GENERAL.—

“(1) ESTABLISHMENT.—There is hereby established the National Laboratory Advisory Board on Global Pollution Challenges (referred to in this subchapter as the ‘Board’).

“(2) DUTIES.—The Board shall—

“(A) in accordance with section 4693, establish methods of calculating—
“(i) the baseline pollution intensity, as determined based on production of the covered product in the United States, and
“(ii) the respective pollution intensity for production of such covered product in any foreign country,
“(B) provide recommendations for rule-making and reassessments in accordance with section 4698, and
“(C) provide assistance with regard to subsections (f) and (g) of section 4693, as well as any other requests from the Secretary.
“(3) CHAIR.—The chair of the Board (referred to in this section as the ‘Chair’) shall be the Director of the National Energy Technology Laboratory.
“(4) DEPUTY CHAIRS.—The deputy chairs of the Board (referred to in this section as the ‘Deputy Chairs’) shall be—
“(A) the Director of Idaho National Laboratory,
“(B) the Director of the National Renewable Energy Laboratory,
“(C) the Director of the Pacific Northwest National Laboratory, and
“(D) the Chair of the Council of Environmental Quality.

“(5) OTHER BOARD MEMBERS.—

“(A) IN GENERAL.—In addition to the Chair and Deputy Chairs, the Board shall consist of—

“(i) 2 representatives from each of the industrial sectors described in paragraphs (1) through (16) of section 4695(a), and

“(ii) 1 representative from each relevant Federal agency, as designated by such agency.

“(B) APPOINTMENT.—

“(i) INITIAL APPOINTMENT.—For purposes of subparagraph (A)(i), each industrial sector described in paragraphs (1) through (16) of section 4695(a) shall (pursuant to clause (ii)) designate the representatives to serve for the 36-month period subsequent to the date of enactment of this subchapter.

“(ii) APPOINTMENT PROCESS.—The Secretary shall establish a process by which—
“(I) an individual who would satisfy the requirements described in subparagraph (C) can be nominated (including by self-nomination) to serve as a representative on the Board,

“(II) allows each domestic producer of the relevant industrial sector the opportunity to elect individuals nominated under subclause (I) to serve on the Board,

“(III) any representative elected to serve on the Board is designated in a timely manner with respect to relevant rulemakings under section 4698, and

“(IV) a new round of nominations and elections occurs for each reassessment under section 4698(c).

“(C) REPRESENTATIVES.—For purposes of subparagraph (A)(i), each elected representative shall be the highest ranking officer (or their designee) of a domestic producer which—

“(i) manufactures a product which is included under paragraphs (1) through (16) of section 4695(a), and
“(ii) has annual revenues of greater than $40,000,000.

“(6) Approval of Recommendations.—For purposes of any recommendations required to be submitted to the Secretary under subsection (b), not less than two-thirds of the representatives described in paragraph (5)(A)(i) shall be required to approve such recommendation.

“(7) Staff.—

“(A) In General.—With respect to carrying out any duties described in paragraph (2), any laboratory described in paragraph (3) or (4) may designate staff to assist with such duties.

“(B) Detaillees.—Upon the Board’s request, the Administrator, the Secretary of Energy, and the Director of the Office of Science and Technology Policy shall detail, without reimbursement, employees from each agency to assist the Board in carrying out its duties under this section.

“(b) Failure to Submit Recommendations.—In any case in which the Board fails to timely transmit a recommendation under section 4698, the Secretary may
establish rules, or alter reassessments, required under this section or section 4698 without consultation of the Board.

“(c) No Cause of Action.—Any recommendation, verification, or report issued by the Board under this section shall not create or give rise to any claim or cause of action.

“SEC. 4697. DEFINITIONS.

“(a) In General.—For purposes of this subchapter—

“(1) Administrator.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) Appropriate Congressional Committees.—The term ‘appropriate congressional committees’ means the Committee on Finance of the Senate and the Committee on Ways and Means of the House of Representatives.

“(3) Baseline Pollution Intensity.—The term ‘baseline pollution intensity’ means the pollution intensity associated with production of a covered product in the United States.

“(4) Carbon Dioxide Equivalent.—The term ‘carbon dioxide equivalent’ means, with respect to a greenhouse gas, the quantity of such gas that has a global warming potential equivalent, deter-
mined over a 100-year period, to 1 metric ton of carbon dioxide, as determined pursuant to table A-1 of subpart A of part 98 of title 40, Code of Federal Regulations, as in effect on January 1, 2023.

“(5) COMPONENT PART.—The term ‘component part’ means, with respect to a covered product, any component which is contained as an independent product utilized in the completed covered product.

“(6) CONTRIBUTING PART.—The term ‘contributing part’ means, with respect to a covered product, any product which was used in the creation of such covered product in a manner which is consistent with—

“(A) combustion of such product to provide energy to produce the covered product, or

“(B) utilization of such product to provide electricity necessary to operate machinery used to create the covered product.

“(7) COUNTRY OF ORIGIN.—The term ‘country of origin’ means—

“(A) the country in which a covered product was produced, or

“(B) the last country in which a covered product was substantially transformed,
as determined in a manner consistent with U.S.
Customs and Border Protection procedures, directly
prior to importation into the United States.

“(8) COVERED COMPONENT PART.—The term
‘covered component part’ means any component part
which is itself a covered product.

“(9) COVERED CONTRIBUTING PART.—The
term ‘covered contributing part’ means any contribut-
ing part which is itself a covered product.

“(10) COVERED ENTITY.—The term ‘covered
entity’ means importer of record of a covered prod-
uct at the time of the importation of such product.

“(11) COVERED TRANSFORMING PART.—The
term ‘covered transforming part’ means any trans-
forming part which is itself a covered product.

“(12) DOMESTIC PRODUCER.—The term ‘do-
meric producer’ means a producer which—

“(A) has filed their articles of incorpora-
tion in the United States, and

“(B) is not a subsidiary of an entity which
is incorporated in a nonmarket economy coun-
try.

“(13) EXPORT OR DEVELOPMENT FINANC-
ING.—The term ‘export or development financing’
means financing—
“(A) for the purposes of—

“(i) developing international production capacity, or

“(ii) securing the exportation of goods or technology manufactured in the United States (including technologies used to manufacture covered products), and

“(B) which is provided by—

“(i) the Department of Energy,

“(ii) the Department of Commerce,

“(iii) the Department of State,

“(iv) the Export-Import Bank of the United States,

“(v) the United States International Development Finance Corporation,

“(vi) the Trade and Development Agency,

“(vii) the United States Agency for International Development, or

“(viii) the Office of the United States Trade Representative.

“(14) FREE TRADE AGREEMENT.—The term ‘free trade agreement’ means an agreement with 1 or more countries which—
“(A) reduces or eliminates tariffs and non-tariff barriers between the countries party to such agreement, and

“(B) is approved by Congress.

“(15) **GREENHOUSE GAS.**—The term ‘greenhouse gas’ has the meaning given such term in section 98.6 of title 40, Code of Federal Regulations (as in effect on the date of enactment of this subchapter).

“(16) **HTS.**—The term ‘HTS’ means the Harmonized Tariff Schedule of the United States.

“(17) **INTERNATIONAL PARTNERSHIP AGREEMENT.**—The term ‘international partnership agreement’ means an international partnership agreement established pursuant to title II of the Foreign Pollution Fee Act of 2023.

“(18) **NONMARKET ECONOMY COUNTRY.**—The term ‘nonmarket economy country’ has the meaning given such term in section 771(18) of the Tariff Act of 1930 (19 U.S.C. 1677(18)).

“(19) **POINT SOURCE POLLUTION.**—The term ‘point source pollution’ means pollution emitted into the ambient air at the site of the manufacturing of a product.
“(20) POLLUTION.—The term ‘pollution’ means greenhouse gas emissions.

“(21) POLLUTION INTENSITY.—The term ‘pollution intensity’ means the amount of greenhouse gases (as determined under section 4693), expressed in metric tons of carbon dioxide equivalent, which are emitted into the atmosphere in the production of a single unit of a covered product (as determined pursuant to section 4691(e)).

“(22) POLLUTION INTENSITY DIFFERENCE.—The term ‘pollution intensity difference’ means, with respect to any covered product, the difference (expressed as a percentage) between—

“(A) the pollution intensity associated with production of such product in the country of origin, and

“(B) the baseline pollution intensity with respect to such product.

“(23) PRODUCER.—The term ‘producer’ means the entity responsible for the creation of a product through—

“(A) a manufacturing process, or

“(B) in the case of a geologic resource, extraction.
“(24) PRODUCT.—The term ‘product’ means any article, regardless of whether such article is—

“(A) exported from the country of origin, or

“(B) produced and sold only within the country of origin.

“(25) RELEVANT FEDERAL AGENCY.—The term ‘relevant Federal agency’ means—

“(A) the Department of the Treasury,

“(B) the Department of Energy,

“(C) the Office of the United States Trade Representative,

“(D) the Department of Commerce,

“(E) the Department of State,

“(F) the Environmental Protection Agency,

“(G) the Council on Environmental Quality,

“(H) the Office of Science and Technology Policy, and

“(I) the Department of Homeland Security.

“(26) TRANSFORMING PART.—The term ‘transforming part’ means a product which is substantially transformed or refined into another product.
“(27) Upstream pollution.—The term ‘upstream pollution’ means, with respect to any covered product—

“(A) the pollution associated with all covered component parts, covered contributing parts, and covered transforming parts, and

“(B) any fugitive pollution which occurs during extraction, refining, and transport of any part described in subparagraph (A).

“(b) World Bank classifications.—For purposes of this subchapter—

“(1) In general.—Subject to paragraph (2), the terms ‘high-income country’, ‘upper-middle-income country’, ‘lower-middle-income country’, and ‘low-income country’ shall be defined based on the classification of the economy of a country by the World Bank.

“(2) High-income and upper-middle-income countries.—In the case of any country which, as of January 1, 2023, is classified by the World Bank as a high-income country or an upper-middle-income country, such country shall not be eligible to be reclassified as a lower-middle-income country or a low-income country.
“SEC. 4698. ESTABLISHMENT PROCESS AND REASSESSMENTS.

“(a) In General.—The processes established under this section shall be utilized to—

“(1) provide the initial rules for application of the fee imposed under section 4691, and

“(2) perform any required reassessment.

“(b) Initial Rulemaking.—

“(1) Classification of Covered Products.—Not later than 12 months after the date of enactment of this subchapter, the Secretary shall issue a final rule for purposes of—

“(A) determining the appropriate heading or subheading number of the HTS for each covered product (as required under section 4695(b));

“(B) determining the appropriate measurement of any covered product (as described in section 4691(c)).

“(2) Pollution Intensity Calculations.—

“(A) In General.—Not later than 18 months after the date of enactment of this subchapter, the Secretary shall publish a final rule establishing—

“(i) in a manner consistent with section 4693, the pollution intensity with re-
spect to each covered product and country of origin, and

“(ii) methods for any foreign country to establish an alternative pollution intensity with respect to any covered product pursuant to subsection (f) of such section.

“(B) CIRCUMVENTION.—Not later than 36 months after the date of enactment of this subchapter, the Secretary shall publish a final rule to address producers described in section 4693(g).

“(3) ESTABLISHMENT OF VARIABLE CHARGES.—Not later than 24 months after the date of enactment of this subchapter, the Secretary (in consultation with the United States Trade Representative) shall issue a final rule establishing the variable charge for covered products for purposes of section 4692.

“(4) ADDITIONAL RULEMAKING.—In addition to the rules described in paragraphs (1) through (3), any rules which are necessary in order to properly apply the fee under section 4691 shall be issued not later than the date which 24 months after the date of enactment of this subchapter.

“(c) REASSESSMENT.—
“(1) IN GENERAL.—Not later than 3 years after the date of the issuance of any final rule described in subsection (b), and every 3 years thereafter, the Secretary shall reassess and, as necessary, issue a final rule to adjust, the existing final rule.

“(2) REVISION.—The United States International Trade Commission, in consultation with the Secretary, shall annually publish a notice reflecting headings, subheadings, and statistical reporting numbers of the HTS contained in any rule issued under this section which need to be amended due to revisions to the HTS.

“(3) NEWLY AVAILABLE DATA.—With respect to any reassessment described in paragraph (1), the Secretary may utilize any data which is available as a result of enhancements in the ability to assess domestic or foreign pollution pursuant to legislation enacted or developments in technology subsequent to the issuance of the most recent final rule.

“(4) INTERNATIONAL PARTNERSHIPS.—In the case of an international partnership agreement, the Secretary may, at the time of the establishment of such agreement and in a manner consistent with such agreement, issue a final rule to adjust the pollution intensity for any covered product (as deter-
mined pursuant to subsection (b)(2)) produced in a
country which is a party to such agreement.

“(5) TIMING.—In the case of any final rule
issued with respect to any reassessment under para-
graph (1), the application of such rule shall take ef-
fecf on January 1 of the first calendar year begin-
ning subsequent to the issuance of such final rule.

“(d) ADDITIONAL COVERED PRODUCTS.—

“(1) IN GENERAL.—With respect to any prod-
uct which is included as a covered product pursuant
to subsection (d) or (e) of section 4695 following the
publication in the Federal Register (as described in
subsection (d)(7)(B)(ii) or subsection (e)(2)(A) of
such section, as applicable)—

“(A) not later than 12 months after the
date of such publication, the Secretary shall
issue a final rule with respect to the pollution
intensity of such covered product and any coun-
try of origin consistent with the requirements
under section 4693, and

“(B) not later than 6 months after the
issuance of the final rule described in subpara-
graph (A), the Secretary shall issue a final rule
establishing the variable charge for such cov-
ered product consistent with the requirements under section 4692.

“(2) Reassessments.—

“(A) In general.—Except as provided in subparagraph (B), any classification or rule established pursuant to paragraph (1) with respect to any covered product shall remain in effect under the next reassessment under subsection (e).

“(B) Exception.—With respect to any product included as a covered product under subsection (d) or (e) of section 4695, if the date for imposition of the fee under section 4691 (as determined pursuant to section 4695(f)) is less than 1 year from the date of the next reassessment under subsection (e), such product shall not be subject to such reassessment.

“(e) Process.—

“(1) Board recommendations.—Not later than 6 months prior to—

“(A) the date on which any final rule is required to be issued under paragraph (1), (2), or (3) of subsection (b), and

“(B) the date on which any reassessment is required to be made under subsection (c)(1),
the Board shall provide recommendations to the Secretary with respect to such final rule or reassessment.

“(2) Notice.—Not later than 30 days after receiving the recommendations of the Board provided under paragraph (1), the Secretary shall—

“(A) publish a notice of proposed rule-making based on such recommendations with respect to the final rule or reassessment,

“(B) brief the appropriate congressional committees and consult with such committees regarding such final rule or reassessment.

“(3) Comment.—Following the notice under paragraph (2)(A), the Secretary shall provide a public comment period of not less than 60 days.

“(4) Consultation.—Prior to the issuance of any final rule or reassessment under this section regarding the appropriate classification of covered products, the Secretary shall consult with—

“(A) the United States Trade Representative,

“(B) the United States International Trade Commission,

“(C) the Commissioner of U.S. Customs and Border Protection, and
“(D) all other relevant Federal agencies.

“(5) Publication.—The publication of any final rule required under this section shall include a statement from the Secretary explaining any deviation from the recommendations submitted by the Board pursuant to paragraph (1).

“(f) Judicial Review.—

“(1) In general.—The United States Court of Appeals for the District of Columbia Circuit shall have original and exclusive jurisdiction over any claim with respect to any final rule issued under this section.

“(2) Limitation.—No final rule issued under this section shall be subject to judicial review unless—

“(A) the claim is filed not later than 30 days after the issuance of such rule, and

“(B) the person filing such claim—

“(i) is a citizen of the United States or a domestic producer, and

“(ii)(I) demonstrates that—

“(aa) application of such rule will result in the infliction of a direct and tangible harm to such person, and
“(bb) the rulemaking process was conducted in a manner that was intended to directly harm such person, or
“(II) demonstrates that such final rule—
“(aa) altered the recommendations made by the Board, and
“(bb) would limit the ability to attain the goals established under section 4692(c)(2).
“(3) ACCEPTABLE ACTION.—Notwithstanding any claim or cause of action filed with respect to any provision of this subchapter—
“(A) the applicable date described in section 4691(a)(2),
“(B) the application of reassessment pursuant to subsection (e), and
“(C) with respect to covered products included pursuant to subsection (d) or (e) of section 4695, the date for imposition of the fee under section 4691 to take effect (as determined under section 4695(f)),
shall not be subject to judicial review and shall not be subject to delay or suspension.”.
TITLE II—INTERNATIONAL PARTNERSHIP AGREEMENTS RELATING TO POLLUTION FEES

SEC. 201. INTERNATIONAL PARTNERSHIP AGREEMENTS.

(a) In general.—The United States Trade Representative, at the direction of the President, may—

(1) engage in negotiations with countries to encourage the establishment and expansion of international partnership agreements, as provided in this title;

(2) establish agreements with foreign countries with respect to proposals to enter into international partnership agreements;

(3)(A) implement such an agreement in accordance with subsection (e); or

(B) submit a proposal to Congress under subsection (f) with respect to such an agreement and implement the agreement following the approval of Congress in a manner consistent with that subsection; and

(4) perform the oversight and enforcement role necessary to uphold any such agreement.

(b) Consultation During Negotiation for International Partnership Agreements.—
(1) IN GENERAL.—With respect to negotiations for an international partnership agreement under this title, the Trade Representative shall—

(A) consult closely and on a timely basis with the appropriate congressional committees, keeping those committees fully apprised of the negotiations; and

(B) provide to those committees, including staff with appropriate security clearances, access to the text of any negotiating proposal or any other document presented by the United States or another party to the negotiations that presents concepts or considerations for the negotiations not later than 5 business days before the proposal or other document is formally brought up for consideration in the negotiations.

(2) DESIGNATION OF ADVISORS.—The chairperson and ranking member of each of the appropriate congressional committees may each designate not more than 5 Members of Congress on their committee and not more than 4 individuals on the staff of that committee as official advisors to negotiations.

(3) BRIEFING.—
(A) IN GENERAL.—The Trade Representative shall brief the appropriate congressional committees before and after every negotiation session in relation to an international partnership agreement.

(B) TIMING.—A briefing required by subparagraph (A) following a negotiating session shall take place not later than 5 business days following the session.

(c) REQUIREMENTS FOR INTERNATIONAL PARTNERSHIP AGREEMENTS.—

(1) IN GENERAL.—An international partnership agreement may be entered into under this title on the basis of one covered product, multiple covered products, or all covered products.

(2) PARTICIPATION.—

(A) IN GENERAL.—Subject to the requirements under paragraph (3), the United States may enter into an international partnership agreement under this title with—

(i) one country;

(ii) multiple countries; or

(iii) a group of countries participating in an international forum such as the Organisation for Economic Co-operation
and Development or the Group of Seven (G7).

(B) EXPANSIONS OF EX POST CONGRESS-
SIONAL-EXECUTIVE INTERNATIONAL PARTNER-
SHIP AGREEMENTS.—In the case of an inter-
national partnership agreement previously ap-
proved by Congress under subsection (f), addi-
tional countries may be added to the agreement
without requiring further approval by Congress
if the only changes to the agreement—

(i) are the addition of a new country
to the agreement; and

(ii) do not require alterations to sub-
chapter E of the Internal Revenue Code of
1986, as added by title I.

(3) REQUIREMENTS.—An international partner-
ship agreement entered into under this title is re-
quired to provide for—

(A) creation of compatible methods to pro-
mote pollution reduction through trade mecha-
nisms by assessing pollution intensity dif-
ferences between countries;

(B) maintenance of the ability of a country
that is a party to the agreement to determine
methods of pollution reduction within that country;

   (C) elimination of any fee or charge between countries that are parties to the agreement in a manner compatible to the process described in section 202;

   (D) elimination or reduction of other duties, import fees, and trade barriers maintained by the country related to covered products;

   (E) compatible pollution monitoring, reporting, and verification methods that—

      (i) allow for similar methods to be used to calculate the pollution intensity of covered products and countries that are parties to the agreement, on the basis of the available information within each such country;

      (ii) allow for similar methods to be used to calculate the pollution intensity of covered products imported from countries that are not parties to the agreement; and

      (iii) allow for each country that is a party to the agreement to consistently validate the monitoring and reporting information of the other countries that are parties
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to the agreement with respect to products
covered by the agreement;

(F) design characteristics compatible with
subchapter E of the Internal Revenue Code, as
added by title I;

(G) design characteristics compatible with
the provisions of this title; and

(H) processes for how to add—

(i) additional countries to the agree-
ment; and

(ii) additional covered products to the
agreement.

(4) CONSIDERATION OF THIRD-PARTY PARTICI-
PATION.—

(A) IN GENERAL.—An international part-
nership agreement entered into under this title
may include direction for an entity that is not
from a country that is a party to the agreement
to—

(i) serve as a repository of relevant
pollution data from countries that are par-
ties to the agreement;

(ii) provide validation of pollution in-
tensity calculations and other requirements
under paragraph (3); and
(iii) adjudicate discrepancies with respect to such data and requirements between countries that are parties to the agreement.

(B) LIMITATIONS.—

(i) ACCESS TO INFORMATION.—An international partnership agreement entered into under this title is required to provide for each country that is a party to the agreement to maintain the ability to access and validate any pollution information related to other countries that are parties to the agreement.

(ii) SCOPE OF ADJUDICATION.—

(I) IN GENERAL.—An entity described in subparagraph (A) may adjudicate discrepancies between countries that are parties to an international partnership agreement entered into under this title only to the extent that such discrepancies relate to requirements under the agreement.

(II) IMPACT ON DOMESTIC LAWS.—An entity described in subparagraph (A) may not alter the do-
mestic law of a country that is a party
to an international partnership agree-
ment entered into under this title, in-
cluding subchapter E of the Internal
Revenue Code of 1986, as added by
title I.

(d) Timeline.—

(1) In general.—The requirements described
in subsection (c) with respect to an international
partnership agreement are required to be achieved—

(A) for high-income countries and upper-
middle income countries, not later than 3 years
after entering into the agreement; and

(B) for low-income countries and lower-
middle-income countries, not later than 5 years
after entering into the agreement.

(2) Applicability of benefits.—

(A) In general.—Countries described in
paragraph (1)(A) shall not receive the treat-
ment described in section 4694 of the Internal
Revenue Code of 1986, as added by title I, until
the requirements under subsection (c) are met.

(B) Termination.—The United States
shall maintain the right to terminate an inter-
national partnership agreement if the require-
ments under subsection (c) are not met in the time described in paragraph (1).

(c) **Ex Ante Congressional-Executive International Partnership Agreements.**—

(1) **In General.**—The United States Trade Representative may, at the direction of the President, enter into and carry out an international partnership agreement entered into under this title without the approval of Congress if the agreement—

(A) complies with the requirements under subsection (c); and

(B) does not require any alteration of subchapter E of the Internal Revenue Code of 1986, as added by title I.

(2) **Effect.**—An agreement described in paragraph (1) that complies with the requirements under subsection (c) shall qualify as an international partnership agreement for purposes of section 4694 of the Internal Revenue Code of 1986, as added by title I.

(3) **Publication; Congressional Review.**—An agreement entered into under this subsection shall be—

(A) published in the Federal Register; and
(B) treated as a final rule prepared by an agency, including with respect to review by Congress under chapter 8 of title 5, United States Code (commonly referred to as the “Congressional Review Act”).

(f) EX POST CONGRESSIONAL-EXECUTIVE INTERNATIONAL PARTNERSHIP AGREEMENTS.—

(1) IN GENERAL.—An agreement shall be treated as a congressional-executive agreement and enter into force only if a joint resolution of approval is enacted in accordance to this subsection if any alteration of subchapter E of the Internal Revenue Code of 1986, as added by title I, is required to implement the agreement.

(2) SUBMISSION TO CONGRESS AND PUBLICATION OF AGREEMENT.—The President shall—

(A) post the text of an agreement described in paragraph (1) on a publicly available website of the Office of the United States Trade Representative for not less than 5 business days; and

(B) submit to Congress on a day on which both Houses of Congress are in session a copy of the final legal text of the agreement, together with—
(i) an identification of any United States laws that may be inconsistent with the text; and
(ii) a statement of any administrative action proposed to implement the agreement.

(3) JOINT RESOLUTIONS OF APPROVAL.—

(A) DEFINITION.—In this paragraph, the term “joint resolution of approval” means only a joint resolution the matter after the resolving clause of which is as follows: “That Congress approves ________, submitted to Congress on ________,”, with the first blank space being filled with the name of the applicable international partnership agreement entered into under this title and the second blank space being filled with the appropriate date.

(B) INTRODUCTION.—A joint resolution approving an agreement described in paragraph (1) may be introduced in either House of Congress by the chairperson or ranking member of one of the appropriate congressional committees.

(C) PROCEDURES IN HOUSE AND SENATE.—Except as provided in this paragraph,
the provisions of subsections (d), (e), and (f) of section 152 of the Trade Act of 1974 (19 U.S.C. 2192) shall apply with respect to a joint resolution of approval under this paragraph to the same extent and in the same manner as such provisions apply with respect to a joint resolution described in subsection (a) of that section.

(D) Referral.—A joint resolution of approval shall be referred exclusively to the appropriate congressional committees.

(E) Discharge.—If the committee of either House to which a joint resolution of approval has been referred has not reported it by the close of the 40th day after its introduction (excluding any day described in section 154(b) of the Trade Act of 1974 (19 U.S.C. 2194(b))), that committee shall be automatically discharged from further consideration of the joint resolution and the joint resolution shall be placed on the appropriate calendar.

(F) Consideration.—

(i) In General.—It is not in order for—
(I) the Senate to consider any joint resolution of approval unless the joint resolution has been reported by the Committee on Finance or the committee has been discharged from consideration of the joint resolution under subparagraph (E); or

(II) the House of Representatives to consider any joint resolution of approval unless it has been reported by the Committee on Ways and Means or the committee has been discharged from consideration of the joint resolution under subparagraph (E).

(ii) Motion to Proceed in House of Representatives.—A motion in the House of Representatives to proceed to the consideration of a joint resolution of approval may be made only on the second legislative day after the calendar day on which the Member making the motion announces to the House the intention of the Member to do so.
(4) Rules of Senate and House of Representatives.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Senate and the House of Representatives, respectively, and as such is deemed a part of the rules of each House, respectively, and supersedes other rules only to the extent that it is inconsistent with such other rules; and

(B) with the full recognition of the constitutional right of either House to change the rules (so far as relating to the procedures of that House) at any time, in the same manner, and to the same extent as any other rule of that House.

(g) Inclusion in Other International Agreements.—

(1) In General.—The United States Trade Representative, at the direction of the President, may seek to include an expansion of an international partnership agreement in any other international agreement entered into or renegotiated on or after the date of the enactment of this Act, such as—

(A) a free trade agreement;
(B) an international agreement relating to environmental protections, sustainable development, or climate; or

(C) a trade agreement involving international organizations such as the Organisation for Economic Co-operation and Development, the Group of Seven (G7), or any similar organization.

(h) Restrictions on Negotiations.—

(1) Nonmarket economy countries.—The authority provided by this section does not include the authority to negotiate or enter into an agreement with a nonmarket economy country if the country is—

(A) an upper middle-income country; or

(B) a high-income country.

(2) Domestic policies.—The authority provided by this section does not include the authority to negotiate or enter into an agreement that would establish carbon taxes, fees, pricing, or other mechanisms that impose additional costs on products produced by a domestic producer by the United States.
SEC. 202. APPLICATION OF FOREIGN POLLUTION FEE IN
PARTNERSHIPS.

(a) In General.—In accordance with section 4694
of the Internal Revenue Code of 1986, as added by title
I, no fee shall be applied under section 4691 of such Code
with respect to a covered product imported from a country
that is a party to an international partnership agreement
entered into under this title if production of the covered
product has a pollution intensity difference that is less
than or equal to 50 percent.

(b) Failure to Meet Requirements.—If a cov-
ered product is produced in a country that is a party to
an international partnership agreement entered into under
this title but does not meet the requirement described in
subsection (a), the fee applied under section 4691 of the
Internal Revenue Code of 1986, as added by title I, with
respect to the covered product shall be determined based
on the applicable tier (as described in paragraph (2) of
section 4692(e) of the Internal Revenue Code of 1986, as
added by title I) associated with—

(1) the pollution intensity difference; reduced
by

(2) 50 percentage points.

(e) Treatment of Low-Income and Lower-Mid-
dle Income Countries.—
IN GENERAL.—During the 5-year period following the entry into force of an international partnership agreement under this title between the United States and a low-income country or lower-middle-income country—

(A) the pollution intensity requirement described in subsection (a) shall be considered to be met with respect to covered products produced in the country; and

(B) no fee shall be applied to covered products imported from that country.

MODIFICATIONS TO REQUIREMENTS.—

(A) IN GENERAL.—During the 10-year period beginning after the completion of the 5-year period described in paragraph (1), the pollution intensity requirement described in subsection (a) shall be considered to be met with respect to a covered product produced in a country described in paragraph (1) if new capacity in that country for the production of the covered product developed during the 10-year period described in paragraph (1) is not more than 50 percent more pollution intense than the baseline pollution intensity at the time of the
entry into force of the international partnership agreement.

(B) Future Development.—For the 10-year period beginning after the completion of the 10-year period described in subparagraph (A), and each 10-year period thereafter, the pollution intensity requirement described in subsection (a) shall be considered to be met with respect to a covered product produced in a country described in paragraph (1) if new capacity in that country for the production of the covered product developed during the preceding 10-year period is not more than 25 percent more pollution intense than the baseline pollution intensity at the beginning of such preceding 10-year period.

(3) Application of Fee.—If the requirements described in paragraph (1) or (2), as applicable, are not met with respect to a covered product, the fee specified in subsection (b) shall apply.

(d) Treatment of Circumvention.—Nothing in this section shall supersede section 4693(g) of the Internal Revenue Code of 1986, as added by title I, with respect to potential circumvention of the fee assessed under section 4691 of such Code if—
(1) a determination is made under such section 4693(g) with respect to a producer; and

(2) the producer is owned, operated, or financed in or by a country that is not a party to an international partnership agreement entered into under this title.

SEC. 203. SUPPORT FOR PARTICIPATION OF LOW-INCOME AND LOWER-MIDDLE-INCOME COUNTRIES IN INTERNATIONAL PARTNERSHIP AGREEMENTS.

(a) IN GENERAL.—The United States Trade Representative, at the direction of the President, may include, in an international partnership agreement entered into under this title with a low-income country or a lower-middle-income country, provisions providing for—

(1) the provision of treatment described in section 202(c) to that country;

(2) the extension of untied or tied aid through a United States export, development, or trade agency for energy or manufacturing technologies and projects;

(3) lower initial requirements relating to pollution data monitoring and alternative methods to more accurately project and model pollution under the agreement;
(4) support for expansion of monitoring and reporting of pollution; and

(5) technical assistance to ensure full compliance with the terms of the agreement.

(b) **BENCHMARKS AND REQUIREMENTS.**—

(1) **IN GENERAL.**—The United States Trade Representative shall establish benchmarks or requirements to assess the progress of a country described in subsection (a) in fully implementing the terms of the international partnership agreement entered into under this title.

(2) **BENCHMARKS.**—The benchmarks and requirements established under paragraph (1) with respect to a country shall include—

(A) improving methods of monitoring, reporting, and verifying pollution levels;

(B) if, after the entry into force of the international partnership agreement, new manufacturing or production capacity for a covered product is built in the country but that capacity is owned or operated, or the majority of the financing for that capacity is provided, by an entity associated with a country that is not a party to an international partnership agreement, treating the new capacity—
(i) at the pollution intensity of the country that is not a party to an international partnership agreement if the pollution intensity for the covered product produced in that country is greater than the pollution intensity of the covered product produced in the country that is a party to the international partnership agreement;

(ii) as not eligible for the treatment of a country that is a party to an international partnership agreement described in section 202; and

(iii) in accordance to the requirements of section 4694 of the Internal Revenue Code of 1986, as added by title I;

(C) if, after the entry into force of the international partnership agreement, the ownership, a stake of ownership, or operation of manufacturing or production capacity for a covered product that is in operation on the date of entry into force is transferred to an entity in a country that is not a party to an international partnership agreement, treating such capacity—
(i) at the pollution intensity of the
country that is not a party to an inter-
national partnership agreement if the pol-
lution intensity for the covered product
produced in that country is greater than
the pollution intensity of the covered prod-
uct produced in the country that is a party
to the international partnership agreement;

(ii) as not eligible for the treatment of
a country that is a party to an inter-
national partnership agreement described
in section 202; and

(iii) in accordance to the requirements
of section 4694 of the Internal Revenue
Code of 1986, as added by title I; and

(D) in the case of an international partner-
ship agreement with a nonmarket economy
country that is a low-income country or a lower-
middle-income country, making progress in de-
veloping a market economy.

(c) TERMINATION.—The United States shall main-
tain the authority to terminate the application of the pro-
ings described in subsection (a) to a country if the coun-
try does not meet the benchmarks and requirements under
subsection (b).
(d) Inclusion of Other International Partners.—To the maximum extent practicable, the United States shall seek to include additional high-income countries and upper-middle-income countries in international partnership agreements entered into under this title with low-income countries or lower-middle-income countries.

SEC. 204. FACILITY-SPECIFIC AGREEMENTS RELATING TO POLLUTION FEES.

(a) Authority to Negotiate Facility-specific Agreements.—The United States Trade Representative may negotiate, in coordination with the Secretary of the Treasury and the Administrator of the Environmental Protection Agency, an agreement with a facility located in a foreign country that allows products produced at the facility to be treated at a pollution intensity specific to the facility.

(b) Requirements.—To be eligible for an agreement under subsection (a), a facility is required to—

(1) consistently operate according to the standards a United States facility is statutorily required to abide by, for existing operations and any future expansion of operations, including such standards set forth under—

(A) the Clean Air Act (42 U.S.C. 7401 et seq.);
(B) the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.) (commonly known as the “Clean Water Act”);

(C) the Safe Drinking Water Act (42 U.S.C. 300f et seq.); and

(D) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);

(2) deploy pollution monitoring equipment able to report in real time the levels of pollution emitted by the facility;

(3) provide real-time access to physical pollution monitoring by United States officials or their designees;

(4) allow for spot inspections by United States officials or their designees to ensure compliance with the requirements of the agreement;

(5) if the pollution intensity of the facility is higher than the pollution intensity of the United States or the least pollution intense foreign country that is a party to an international partnership agreement entered into under this title with the United States—

(A) provide actionable benchmarks to decrease the pollution intensity of the facility so that pollution intensity is equal to or less than
the pollution intensity of the United States or
such other country not later than 10 years after
entering into an agreement under subsection
(a);

(B) achieve the benchmarks described in
subparagraph (A) during the 10-year period de-
scribed in that subparagraph;

(C) provide actionable benchmarks to de-
crease, by not later than 20 years after entering
into an agreement under subsection (a), the
pollution intensity of the facility to an intensity
not less than 50 percent lower than the pollu-
tion intensity of the United States at the time
of entry into the agreement;

(D) achieve the benchmarks described in
subparagraph (C) during the 20-year period de-
scribed in that subparagraph; and

(E) ensure that any pollution reduction
technology used in achieving the benchmarks
described in subparagraph (A) or (C) contains
not less than 50 percent of components of
United States origin;

(6) account for any upstream pollution—

(A) at the level associated with the pollu-
tion intensity of the country in which the con-
tributing part or transforming part is produced,
unless the part is covered by an agreement en-
tered into under subsection (a); or

(B) if determined appropriate by the
United States Trade Representative and pro-
vided for in the agreement, based on an appli-
cable standard of the International Organiza-
tion for Standardization;

(7) identify the covered entity with respect to
covered products produced at the facility if the cov-
ered entity is not the owner of the facility; and

(8) ensure the agreement may be terminated at
the sole discretion of the United States if the facility
is not in compliance with any requirement under this
subsection.

(e) CONSULTATION WITH CONGRESS.—The Trade
Representative may not conclude an agreement under sub-
section (a) with a facility unless—

(1) the Trade Representative—

(A) informs the appropriate congressional
committees of the intention of the Trade Rep-
resentative to pursue negotiations with the fa-
cility not less than 2 business days after com-
mencing negotiations;
(B) shares the text of the proposed agree-
ment with the appropriate congressional com-
mittees for not less than the lesser of—

   (i) 12 days on which both Houses of
Congress are in session; or

   (ii) 60 calendar days; and

   (C) responds to all inquiries regarding the
terms of the agreement from the chairperson or
ranking member of one of the appropriate con-
gressional committees before concluding the
agreement; and

   (2) a resolution of disapproval is not enacted
during the period described in paragraph (1)(B).

(d) TREATMENT OF THE AGREEMENT.—

   (1) IN GENERAL.—Any agreement entered into
under this section with a facility shall allow a prod-
uct produced by the facility and imported into the
United States to be assigned to the tier (as estab-
lished under section 4692(b) of the Internal Revenue
Code of 1986, as added by title I) aligned with the
pollution intensity difference of a product produced
by the facility and the baseline pollution intensity.

   (2) RESTRICTIONS.—Under no circumstances
may an agreement entered into under this section
require the United States to alter the implementation of this Act.

(c) Ineligibility of State-owned Facilities in Nonmarket Economy Countries.—A facility in a nonmarket economy country is not eligible for an agreement under this section if the facility—

(1) is owned, partially owned, or operated by the government of the country or an entity owned or controlled by that government; or

(2) has received financing, including in the form of a tax credit or a limit on tax liability, to operate the facility by the government of the country or an entity owned or controlled by that government.

(f) Transparency.—The Trade Representative shall promptly publish a description of the proposed agreement under this section in the Federal Register.

SEC. 205. DEFINITIONS.

In this title, the definitions set forth in section 4697 of the Internal Revenue Code of 1986, as added by title I, apply.