

118TH CONGRESS  
1ST SESSION

# S. 1863

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

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## IN THE SENATE OF THE UNITED STATES

JUNE 7, 2023

Mr. COONS (for himself, Mr. CRAMER, Mr. KING, Ms. MURKOWSKI, Mr. HEINRICH, Mr. GRAHAM, Mr. WHITEHOUSE, Mr. CASSIDY, and Mr. HICKENLOOPER) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

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## A BILL

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, 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 “Providing Reliable, Ob-  
5 jective, Verifiable Emissions Intensity and Transparency  
6 Act of 2023” or the “PROVE IT Act of 2023”.

1 **SEC. 2. STUDY ON GREENHOUSE GAS EMISSIONS INTEN-**  
2 **SITY OF CERTAIN PRODUCTS PRODUCED IN**  
3 **THE UNITED STATES AND IN CERTAIN FOR-**  
4 **EIGN COUNTRIES.**

5 (a) DEFINITIONS.—In this section:

6 (1) APPROPRIATE COMMITTEES OF CON-  
7 GRESS.—The term “appropriate committees of Con-  
8 gress” means—

9 (A) the Committee on Energy and Natural  
10 Resources of the Senate; and

11 (B) the Committee on Energy and Com-  
12 merce of the House of Representatives.

13 (2) AVERAGE PRODUCT EMISSIONS INTEN-  
14 SITY.—The term “average product emissions inten-  
15 sity” means the national average of the product  
16 emissions intensity of a category of covered products  
17 produced in, as applicable—

18 (A) the United States; or

19 (B) a covered country.

20 (3) CARBON DIOXIDE-EQUIVALENT; CO<sub>2</sub>-e.—  
21 The term “carbon dioxide-equivalent” or “CO<sub>2</sub>-e”  
22 means the number of metric tons of carbon dioxide  
23 emissions with the same global warming potential as  
24 one metric ton of another greenhouse gas.

25 (4) CATEGORY OF COVERED PRODUCTS.—

1 (A) IN GENERAL.—The term “category of  
2 covered products” means—

3 (i) a category described in any of  
4 clauses (i) through (xxii) of subparagraph  
5 (B), each of which consists of products  
6 covered by the headings or subheadings of  
7 the Harmonized Tariff Schedule of the  
8 United States described parenthetically in  
9 that clause; and

10 (ii) any other category of covered  
11 products, as determined by the Secretary,  
12 consisting of products covered by 1 or  
13 more headings or subheadings of the Har-  
14 monized Tariff Schedule of the United  
15 States.

16 (B) CATEGORIES DESCRIBED.—The cat-  
17 egories referred to in subparagraph (A)(i), con-  
18 sisting of products covered by the headings or  
19 subheadings of the Harmonized Tariff Schedule  
20 of the United States described parenthetically  
21 for each category, are the following:

22 (i) Aluminum (any of 7601 through  
23 7608).

24 (ii) Articles of aluminum (any of 7609  
25 through 7616).

- 1 (iii) Articles of cement (6810 or  
2 6811).
- 3 (iv) Articles of iron and steel (any of  
4 7307 through 7326).
- 5 (v) Articles of plastic (any of 3916  
6 through 3926).
- 7 (vi) Biofuels (2207.10, 2207.20, or  
8 3826).
- 9 (vii) Cement (2523 or 3824.5).
- 10 (viii) Crude oil (2709).
- 11 (ix) Fertilizer (2808, 2814, 2834.21,  
12 or any of 3101 through 3105).
- 13 (x) Glass (any of 7001 through 7020).
- 14 (xi) Hydrogen (2804.10).
- 15 (xii) Iron and steel (any of 7201  
16 through 7306).
- 17 (xiii) Lithium-ion batteries (8507.60).
- 18 (xiv) Natural gas (2711.11 or  
19 2711.21).
- 20 (xv) Petrochemicals (2901 or  
21 2711.14).
- 22 (xvi) Plastics (any of 3901 through  
23 3915).
- 24 (xvii) Pulp and paper (any of 4701  
25 through 4707 or 4801 through 4813).

1 (xviii) Refined strategic and critical  
2 minerals, including copper, cobalt, graph-  
3 ite, lithium, manganese, and nickel  
4 (2825.50, 2827.41, any of 7401 through  
5 7404, 7406, 2822.00, 8105.20, 8105.30,  
6 2504, 3801.10, 2836.91, 2825.20,  
7 2820.10, 8111, 2825.40, any of 7501  
8 through 7504, or 2833.24).

9 (xix) Refined petroleum products  
10 (2710, 2712, 2713, 2714, 2715, 2902.20,  
11 2902.30, or 2902.44).

12 (xx) Solar cells and panels (any of  
13 8541.42 through 8541.43 or 8501.71  
14 through 8501.80).

15 (xxi) Uranium (2612.10, 2844.10,  
16 2844.20, or 2844.30).

17 (xxii) Wind turbines (8502.31).

18 (5) COVERED COUNTRY.—The term “covered  
19 country” means each of the following:

20 (A) A country that is a member of the  
21 Group of Seven.

22 (B) A country that is a signatory to a free  
23 trade agreement with the United States that is  
24 in effect as of the date on which the Secretary  
25 begins a study under subsection (b)(1).

1 (C) A foreign country of concern (as de-  
2 fined in section 9901 of the William M. (Mac)  
3 Thornberry National Defense Authorization Act  
4 for Fiscal Year 2021 (15 U.S.C. 4651)).

5 (D) A country that, in the determination  
6 of the Secretary, holds more than a de minimis  
7 share of the global market share, as measured  
8 by official trade statistics, of—

9 (i) 1 or more categories of covered  
10 products; or

11 (ii) upstream inputs for 1 or more  
12 categories of covered products.

13 (E) Any other country that the Secretary  
14 determines to be appropriate, including any  
15 country that the Secretary determines is a sig-  
16 nificant producer or exporter of at least 1 cat-  
17 egory of covered products.

18 (6) COVERED PRODUCT.—

19 (A) IN GENERAL.—The term “covered  
20 product” means a product covered by—

21 (i) any of the headings or subheadings  
22 of the Harmonized Tariff Schedule of the  
23 United States described parenthetically in  
24 paragraph (4)(B); or

1 (ii) any other heading or subheading  
2 of the Harmonized Tariff Schedule of the  
3 United States included within a category  
4 of covered products determined by the Sec-  
5 retary in accordance with paragraph  
6 (4)(A)(ii).

7 (B) LIST OF COVERED PRODUCTS.—The  
8 Secretary shall maintain a list of covered prod-  
9 ucts that identifies the category of covered  
10 products associated with each covered product  
11 on the list.

12 (7) GREENHOUSE GAS.—The term “greenhouse  
13 gas” has the meaning given the term in section 901  
14 of the Energy Independence and Security Act of  
15 2007 (42 U.S.C. 17321).

16 (8) PRODUCT EMISSIONS INTENSITY.—

17 (A) IN GENERAL.—The term “product  
18 emissions intensity” means the quantity of  
19 greenhouse gases emitted to the atmosphere as  
20 a result of the extraction, production, proc-  
21 essing, manufacture, and assembly, as applica-  
22 ble, of 1 unit of a covered product, including  
23 the greenhouse gas emissions of an upstream  
24 input that is incorporated into a downstream  
25 covered product.

1 (B) UNITS OF MEASUREMENT.—The Sec-  
2 retary, as the Secretary determines to be appro-  
3 priate, shall designate the units of measurement  
4 in which the product emissions intensity of a  
5 covered product shall be expressed, which may  
6 include—

7 (i) metric tons of CO<sub>2</sub>-e per metric  
8 ton of a covered product;

9 (ii) metric tons of CO<sub>2</sub>-e per dollar  
10 value of a covered product; or

11 (iii) any other unit of measurement  
12 that the Secretary determines to be appro-  
13 priate.

14 (9) SECRETARY.—The term “Secretary” means  
15 the Secretary of Energy.

16 (b) STUDY.—

17 (1) IN GENERAL.—Not later than 2 years after  
18 the date of enactment of this Act, and not less fre-  
19 quently than once every 5 years thereafter, the Sec-  
20 retary, in coordination with the Secretary of Com-  
21 merce (including appropriate officials of the Bureau  
22 of the Census and the International Trade Adminis-  
23 tration), the Administrator of the Environmental  
24 Protection Agency, the United States Trade Rep-  
25 resentative, the Secretary of Homeland Security, the

1 Secretary of State, and such other Federal officials  
2 as the Secretary determines to be appropriate, shall  
3 conduct, and submit to the appropriate committees  
4 of Congress a report describing the results of, a  
5 study—

6 (A) to determine the average product emis-  
7 sions intensity of each category of covered prod-  
8 ucts produced in the United States;

9 (B) to identify gaps in product emissions  
10 intensity data for categories of covered products  
11 produced in the United States;

12 (C) subject to paragraph (2)(B), to deter-  
13 mine the average product emissions intensity of  
14 each category of covered products produced in  
15 covered countries, which may incorporate, as  
16 the Secretary determines to be appropriate,  
17 findings from—

18 (i) the implementation of the meas-  
19 ures described in section 40416(a) of the  
20 Infrastructure Investment and Jobs Act  
21 (42 U.S.C. 18776(a)); and

22 (ii) the international energy data re-  
23 sources described in that section;

24 (D) to identify any issues with verifying  
25 the average product emissions intensity data for

1 covered products produced in covered countries;  
2 and

3 (E) to determine the relative average prod-  
4 uct emissions intensity of each category of cov-  
5 ered products produced in the United States  
6 compared to the average product emissions in-  
7 tensity of each category of covered products  
8 produced in covered countries.

9 (2) REQUIREMENTS.—

10 (A) IN GENERAL.—The report submitted  
11 under paragraph (1) shall include—

12 (i) a detailed, specific, and trans-  
13 parent description of the methodology used  
14 to determine the average product emissions  
15 intensity of a category of covered products  
16 under subparagraphs (A) and (C) of that  
17 paragraph;

18 (ii) a record of all sources of data  
19 used to determine the average product  
20 emissions intensity of a category of covered  
21 products under subparagraphs (A) and (C)  
22 of that paragraph; and

23 (iii) the heading or subheading of the  
24 Harmonized Tariff Schedule of the United  
25 States associated with each covered prod-

1           uct for which the average product emis-  
2           sions intensity of a category of covered  
3           products is determined under subpara-  
4           graphs (A) and (C) of that paragraph.

5           (B) CERTAIN COVERED COUNTRIES.—With  
6           respect to a covered country described in sub-  
7           paragraph (C) or (D) of subsection (a)(5), in  
8           carrying out subparagraph (C) of paragraph  
9           (1), the Secretary may limit the study under  
10          that paragraph to categories of covered prod-  
11          ucts with respect to which the covered country  
12          holds more than a de minimis share of the glob-  
13          al market share of that category of covered  
14          products.

15          (C) REUSE OF END-OF-LIFE MATERIALS.—  
16          In determining the average product emissions  
17          intensity of a category of covered products  
18          under subparagraphs (A) and (C) of paragraph  
19          (1), the Secretary shall favorably consider the  
20          reuse of end-of-life materials in place of virgin  
21          raw materials.

22          (3) COORDINATION AMONG PRIMARY STUDY  
23          PARTICIPANTS.—In carrying out paragraph (1), the  
24          Secretary, the Secretary of Commerce, the Adminis-  
25          trator of the Environmental Protection Agency, the

1 United States Trade Representative, the Secretary  
2 of Homeland Security, the Secretary of State, and  
3 such other Federal officials as the Secretary deter-  
4 mines to be appropriate shall establish procedures to  
5 facilitate timely and efficient data sharing for pur-  
6 poses of carrying out that paragraph, including, if  
7 appropriate, by designating appropriate individuals  
8 with appropriate qualifications to review any data  
9 shared.

10 (4) CONSULTATION AND COORDINATION WITH  
11 OTHERS.—In carrying out paragraph (1), the Sec-  
12 retary may consult and enter into agreements with  
13 institutions having relevant data or data collection  
14 or analysis capabilities, such as the National Lab-  
15 oratories, the National Institute of Standards and  
16 Technology, the National Academy of Sciences, the  
17 International Energy Agency, the Organisation for  
18 Economic Co-operation and Development, and rel-  
19 evant academic and think-tank partners.

20 (5) CONSULTATION AND COORDINATION WITH  
21 INDUSTRY.—In carrying out paragraph (1), the Sec-  
22 retary, in coordination with the Secretary of Com-  
23 merce, shall establish—

24 (A) a process to receive data from industry  
25 partners; and

1 (B) a process pursuant to which industry  
2 may request that a product be—

3 (i) included on the list of covered  
4 products maintained under subsection  
5 (a)(6)(B); and

6 (ii) analyzed as a covered product in  
7 subsequent studies and reports under that  
8 paragraph.

9 (6) INTERNATIONAL COORDINATION.—

10 (A) IN GENERAL.—In carrying out para-  
11 graph (1), the Secretary, the Secretary of  
12 State, and the United States Trade Representa-  
13 tive shall make every effort to coordinate with  
14 the governments of covered countries—

15 (i) to inform the determination of av-  
16 erage emissions intensity values;

17 (ii) to advance common emissions ac-  
18 counting methodologies and data formats;

19 and

20 (iii) to improve overall data avail-  
21 ability and quality.

22 (B) CONSULTATION.—In any case in which  
23 a covered country is credibly collaborating with  
24 the Secretary by supporting the collection, anal-

1            ysis, or verification of data, the Secretary may  
2            give that covered country—

3                    (i) a right to consultation with respect  
4                    to the determination of the average prod-  
5                    uct emissions intensity of 1 or more cat-  
6                    egories of covered products produced in  
7                    that covered country;

8                    (ii) an opportunity to discuss chosen  
9                    data; and

10                   (iii) an opportunity to fill data gaps.

11            (7) DATA AVAILABILITY.—

12                    (A) IN GENERAL.—In carrying out para-  
13                    graph (1), the Secretary shall—

14                    (i) take note of any instances in which  
15                    there is not sufficient data to precisely de-  
16                    termine the average product emissions in-  
17                    tensity of a category of covered products  
18                    under subparagraph (A) or (C) of that  
19                    paragraph;

20                    (ii) include in the report submitted  
21                    under that paragraph—

22                    (I) a notation with respect to  
23                    each instance noted under clause (i);  
24                    and

1 (II) an explanation for that nota-  
2 tion;

3 (iii) identify any issues with verifying  
4 the average product emissions intensity  
5 data for categories of covered products  
6 under subparagraph (A) or (C) of that  
7 paragraph; and

8 (iv) identify any gaps in product emis-  
9 sions intensity data for covered products or  
10 categories of covered products produced in  
11 the United States.

12 (B) REQUIREMENT.—For each instance  
13 noted under subparagraph (A)(i), the Secretary  
14 shall determine the average product emissions  
15 intensity of the next highest aggregation of cat-  
16 egories of covered products for which data are  
17 available.

18 (C) CONSIDERATIONS.—In determining  
19 whether there are sufficient data to precisely  
20 determine the average product emissions inten-  
21 sity of a covered product or category of covered  
22 products under subparagraph (A)(i), the Sec-  
23 retary shall consider the following factors:

24 (i) The public availability of statistics  
25 on greenhouse gas emissions for particular

1 industries from government sources and  
2 international organizations.

3 (ii) The public availability of data on  
4 the quantity and source of inputs, such as  
5 electricity, consumed by particular indus-  
6 tries.

7 (iii) The extent to which the data de-  
8 scribed in clauses (i) and (ii) cover a rep-  
9 resentative group of producers within an  
10 industry.

11 (iv) The transparency in the method  
12 used to collect, analyze, summarize, and  
13 publish the data described in clauses (i)  
14 and (ii).

15 (v) Whether there are other factors  
16 that may impact the precision of the data  
17 described in clauses (i) and (ii).

18 (vi) The recency of the data described  
19 in clauses (i) and (ii).

20 (c) PUBLIC DATABASE.—The Secretary shall estab-  
21 lish a public online database of—

22 (1) the average product emissions intensity data  
23 collected under subparagraphs (A) and (C) of sub-  
24 section (b)(1); and

1           (2) the relative average product emissions in-  
2           tensity of covered products determined under sub-  
3           paragraph (E) of that subsection.

4           (d) UPDATES.—Not less frequently than once every  
5 5 years, the Secretary shall update—

6           (1) the database established under subsection  
7           (c); and

8           (2) the list of covered products maintained  
9           under subsection (a)(6)(B).

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