

Calendar No. 311118TH CONGRESS
2D 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.

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, Mr. HICKENLOOPER, Mr. DURBIN, Mr. BOOZMAN, Mr. PADILLA, and Mr. KELLY) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

JANUARY 25, 2024

Reported by Mr. CARPER, with an amendment

[Strike out all after the enacting clause and insert the part printed in *italic*]

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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Providing Reliable, Ob-
3 jective, Verifiable Emissions Intensity and Transparency
4 Act of 2023” or the “PROVE IT Act of 2023”.

5 **SEC. 2. STUDY ON GREENHOUSE GAS EMISSIONS INTEN-**
6 **SITY OF CERTAIN PRODUCTS PRODUCED IN**
7 **THE UNITED STATES AND IN CERTAIN FOR-**
8 **EIGN COUNTRIES.**

9 (a) **DEFINITIONS.**—In this section:

10 (1) **APPROPRIATE COMMITTEES OF CON-**
11 **GRESS.**—The term “appropriate committees of Con-
12 gress” means—

13 (A) the Committee on Energy and Natural
14 Resources of the Senate; and

15 (B) the Committee on Energy and Com-
16 merce of the House of Representatives.

17 (2) **AVERAGE PRODUCT EMISSIONS INTEN-**
18 **SITY.**—The term “average product emissions inten-
19 sity” means the national average of the product
20 emissions intensity of a category of covered products
21 produced in, as applicable—

22 (A) the United States; or

23 (B) a covered country.

24 (3) **CARBON DIOXIDE-EQUIVALENT; CO₂-e.**—

25 The term “carbon dioxide-equivalent” or “CO₂-e”
26 means the number of metric tons of carbon dioxide

1 emissions with the same global warming potential as
2 one metric ton of another greenhouse gas.

3 (4) CATEGORY OF COVERED PRODUCTS.—

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

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

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

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

- 1 (i) Aluminum (any of 7601 through
2 7608).
- 3 (ii) Articles of aluminum (any of 7609
4 through 7616).
- 5 (iii) Articles of cement (6810 or
6 6811).
- 7 (iv) Articles of iron and steel (any of
8 7307 through 7326).
- 9 (v) Articles of plastic (any of 3916
10 through 3926).
- 11 (vi) Biofuels (2207.10, 2207.20, or
12 3826).
- 13 (vii) Cement (2523 or 3824.5).
- 14 (viii) Crude oil (2709).
- 15 (ix) Fertilizer (2808, 2814, 2834.21,
16 or any of 3101 through 3105).
- 17 (x) Glass (any of 7001 through 7020).
- 18 (xi) Hydrogen (2804.10).
- 19 (xii) Iron and steel (any of 7201
20 through 7306).
- 21 (xiii) Lithium-ion batteries (8507.60).
- 22 (xiv) Natural gas (2711.11 or
23 2711.21).
- 24 (xv) Petrochemicals (2901 or
25 2711.14).

1 (xvi) Plastics (any of 3901 through
2 3915).

3 (xvii) Pulp and paper (any of 4701
4 through 4707 or 4801 through 4813).

5 (xviii) Refined strategic and critical
6 minerals, including copper, cobalt, graph-
7 ite, lithium, manganese, and nickel
8 (2825.50, 2827.41, any of 7401 through
9 7404, 7406, 2822.00, 8105.20, 8105.30,
10 2504, 3801.10, 2836.91, 2825.20,
11 2820.10, 8111, 2825.40, any of 7501
12 through 7504, or 2833.24).

13 (xix) Refined petroleum products
14 (2710, 2712, 2713, 2714, 2715, 2902.20,
15 2902.30, or 2902.44).

16 (xx) Solar cells and panels (any of
17 8541.42 through 8541.43 or 8501.71
18 through 8501.80).

19 (xxi) Uranium (2612.10, 2844.10,
20 2844.20, or 2844.30).

21 (xxii) Wind turbines (8502.31).

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

24 (A) A country that is a member of the
25 Group of Seven.

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

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

9 (D) A country that, in the determination
10 of the Secretary, holds more than a de minimis
11 share of the global market share, as measured
12 by official trade statistics, of—

13 (i) 1 or more categories of covered
14 products; or

15 (ii) upstream inputs for 1 or more
16 categories of covered products.

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

22 (6) COVERED PRODUCT.—

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

1 (i) any of the headings or subheadings
2 of the Harmonized Tariff Schedule of the
3 United States described parenthetically in
4 paragraph (4)(B); or

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

11 (B) LIST OF COVERED PRODUCTS.—The
12 Secretary shall maintain a list of covered prod-
13 ucts that identifies the category of covered
14 products associated with each covered product
15 on the list.

16 (7) GREENHOUSE GAS.—The term “greenhouse
17 gas” has the meaning given the term in section 901
18 of the Energy Independence and Security Act of
19 2007 (42 U.S.C. 17321).

20 (8) PRODUCT EMISSIONS INTENSITY.—

21 (A) IN GENERAL.—The term “product
22 emissions intensity” means the quantity of
23 greenhouse gases emitted to the atmosphere as
24 a result of the extraction, production, proc-
25 essing, manufacture, and assembly, as applica-

1 ble, of 1 unit of a covered product, including
2 the greenhouse gas emissions of an upstream
3 input that is incorporated into a downstream
4 covered product.

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

11 (i) metric tons of CO₂-e per metric
12 ton of a covered product;

13 (ii) metric tons of CO₂-e per dollar
14 value of a covered product; or

15 (iii) any other unit of measurement
16 that the Secretary determines to be appro-
17 priate.

18 (9) SECRETARY.—The term “Secretary” means
19 the Secretary of Energy.

20 (b) STUDY.—

21 (1) IN GENERAL.—Not later than 2 years after
22 the date of enactment of this Act, and not less fre-
23 quently than once every 5 years thereafter, the Sec-
24 retary, in coordination with the Secretary of Com-
25 merce (including appropriate officials of the Bureau

1 of the Census and the International Trade Adminis-
2 tration); the Administrator of the Environmental
3 Protection Agency; the United States Trade Rep-
4 resentative; the Secretary of Homeland Security; the
5 Secretary of State; and such other Federal officials
6 as the Secretary determines to be appropriate, shall
7 conduct, and submit to the appropriate committees
8 of Congress a report describing the results of, a
9 study—

10 (A) to determine the average product emis-
11 sions intensity of each category of covered prod-
12 ucts produced in the United States;

13 (B) to identify gaps in product emissions
14 intensity data for categories of covered products
15 produced in the United States;

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

22 (i) the implementation of the meas-
23 ures described in section 40416(a) of the
24 Infrastructure Investment and Jobs Act
25 (42 U.S.C. 18776(a)); and

1 (ii) the international energy data re-
2 sources described in that section;

3 ~~(D) to identify any issues with verifying~~
4 the average product emissions intensity data for
5 covered products produced in covered countries;
6 and

7 ~~(E) to determine the relative average prod-~~
8 uct emissions intensity of each category of cov-
9 ered products produced in the United States
10 compared to the average product emissions in-
11 tensity of each category of covered products
12 produced in covered countries.

13 ~~(2) REQUIREMENTS.—~~

14 ~~(A) IN GENERAL.—~~The report submitted
15 under paragraph ~~(1)~~ shall include—

16 (i) a detailed, specific, and trans-
17 parent description of the methodology used
18 to determine the average product emissions
19 intensity of a category of covered products
20 under subparagraphs ~~(A)~~ and ~~(C)~~ of that
21 paragraph;

22 (ii) a record of all sources of data
23 used to determine the average product
24 emissions intensity of a category of covered

1 products under subparagraphs (A) and (C)
2 of that paragraph; and

3 (iii) the heading or subheading of the
4 Harmonized Tariff Schedule of the United
5 States associated with each covered prod-
6 uct for which the average product emis-
7 sions intensity of a category of covered
8 products is determined under subpara-
9 graphs (A) and (C) of that paragraph.

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

20 (C) REUSE OF END-OF-LIFE MATERIALS.—
21 In determining the average product emissions
22 intensity of a category of covered products
23 under subparagraphs (A) and (C) of paragraph
24 (1), the Secretary shall favorably consider the

1 reuse of end-of-life materials in place of virgin
2 raw materials.

3 ~~(3)~~ COORDINATION AMONG PRIMARY STUDY
4 PARTICIPANTS.—In carrying out paragraph (1), the
5 Secretary, the Secretary of Commerce, the Adminis-
6 trator of the Environmental Protection Agency, the
7 United States Trade Representative, the Secretary
8 of Homeland Security, the Secretary of State, and
9 such other Federal officials as the Secretary deter-
10 mines to be appropriate shall establish procedures to
11 facilitate timely and efficient data sharing for pur-
12 poses of carrying out that paragraph, including, if
13 appropriate, by designating appropriate individuals
14 with appropriate qualifications to review any data
15 shared.

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

1 ~~(5) CONSULTATION AND COORDINATION WITH~~
2 ~~INDUSTRY.—In carrying out paragraph (1), the Sec-~~
3 ~~retary, in coordination with the Secretary of Com-~~
4 ~~merce, shall establish—~~

5 ~~(A) a process to receive data from industry~~
6 ~~partners; and~~

7 ~~(B) a process pursuant to which industry~~
8 ~~may request that a product be—~~

9 ~~(i) included on the list of covered~~
10 ~~products maintained under subsection~~
11 ~~(a)(6)(B); and~~

12 ~~(ii) analyzed as a covered product in~~
13 ~~subsequent studies and reports under that~~
14 ~~paragraph.~~

15 ~~(6) INTERNATIONAL COORDINATION.—~~

16 ~~(A) IN GENERAL.—In carrying out para-~~
17 ~~graph (1), the Secretary, the Secretary of~~
18 ~~State, and the United States Trade Representa-~~
19 ~~tive shall make every effort to coordinate with~~
20 ~~the governments of covered countries—~~

21 ~~(i) to inform the determination of av-~~
22 ~~erage emissions intensity values;~~

23 ~~(ii) to advance common emissions ac-~~
24 ~~counting methodologies and data formats;~~
25 ~~and~~

1 (iii) to improve overall data avail-
2 ability and quality.

3 (B) CONSULTATION.—In any case in which
4 a covered country is credibly collaborating with
5 the Secretary by supporting the collection, anal-
6 ysis, or verification of data, the Secretary may
7 give that covered country—

8 (i) a right to consultation with respect
9 to the determination of the average prod-
10 uct emissions intensity of 1 or more cat-
11 egories of covered products produced in
12 that covered country;

13 (ii) an opportunity to discuss chosen
14 data; and

15 (iii) an opportunity to fill data gaps.

16 (7) DATA AVAILABILITY.—

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

19 (i) take note of any instances in which
20 there is not sufficient data to precisely de-
21 termine the average product emissions in-
22 tensity of a category of covered products
23 under subparagraph (A) or (C) of that
24 paragraph;

1 (ii) include in the report submitted
2 under that paragraph—

3 (I) a notation with respect to
4 each instance noted under clause (i);
5 and

6 (II) an explanation for that nota-
7 tion;

8 (iii) identify any issues with verifying
9 the average product emissions intensity
10 data for categories of covered products
11 under subparagraph (A) or (C) of that
12 paragraph; and

13 (iv) identify any gaps in product emis-
14 sions intensity data for covered products or
15 categories of covered products produced in
16 the United States.

17 (B) REQUIREMENT.—For each instance
18 noted under subparagraph (A)(i), the Secretary
19 shall determine the average product emissions
20 intensity of the next highest aggregation of cat-
21 egories of covered products for which data are
22 available.

23 (C) CONSIDERATIONS.—In determining
24 whether there are sufficient data to precisely
25 determine the average product emissions inten-

1 sity of a covered product or category of covered
2 products under subparagraph (A)(i), the Sec-
3 retary shall consider the following factors:

4 (i) The public availability of statistics
5 on greenhouse gas emissions for particular
6 industries from government sources and
7 international organizations.

8 (ii) The public availability of data on
9 the quantity and source of inputs, such as
10 electricity, consumed by particular indus-
11 tries.

12 (iii) The extent to which the data de-
13 scribed in clauses (i) and (ii) cover a rep-
14 resentative group of producers within an
15 industry.

16 (iv) The transparency in the method
17 used to collect, analyze, summarize, and
18 publish the data described in clauses (i)
19 and (ii).

20 (v) Whether there are other factors
21 that may impact the precision of the data
22 described in clauses (i) and (ii).

23 (vi) The recency of the data described
24 in clauses (i) and (ii).

1 (e) **PUBLIC DATABASE.**—The Secretary shall estab-
2 lish a public online database of—

3 (1) the average product emissions intensity data
4 collected under subparagraphs (A) and (C) of sub-
5 section (b)(1); and

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

9 (d) **UPDATES.**—Not less frequently than once every
10 5 years, the Secretary shall update—

11 (1) the database established under subsection
12 (e); and

13 (2) the list of covered products maintained
14 under subsection (a)(6)(B).

15 **SECTION 1. SHORT TITLE.**

16 *This Act may be cited as the “Providing Reliable, Ob-*
17 *jective, Verifiable Emissions Intensity and Transparency*
18 *Act of 2024” or the “PROVE IT Act of 2024”.*

19 **SEC. 2. STUDY ON GREENHOUSE GAS EMISSIONS INTEN-**
20 **SITY OF CERTAIN PRODUCTS PRODUCED IN**
21 **THE UNITED STATES AND IN CERTAIN FOR-**
22 **EIGN COUNTRIES.**

23 (a) **DEFINITIONS.**—*In this section:*

1 (1) *APPROPRIATE COMMITTEES OF CONGRESS.*—

2 *The term “appropriate committees of Congress”*
3 *means—*

4 (A) *the Committee on Environment and*
5 *Public Works of the Senate;*

6 (B) *the Committee on Energy and Natural*
7 *Resources of the Senate; and*

8 (C) *the Committee on Energy and Com-*
9 *merce of the House of Representatives.*

10 (2) *AVERAGE PRODUCT EMISSIONS INTENSITY.*—

11 *The term “average product emissions intensity”*
12 *means the national average of the product emissions*
13 *intensity of a category of covered products produced*
14 *in, as applicable—*

15 (A) *the United States; or*

16 (B) *a covered country.*

17 (3) *CARBON DIOXIDE-EQUIVALENT; CO₂-E.*—*The*

18 *term “carbon dioxide-equivalent” or “CO₂-e” means*
19 *the number of metric tons of carbon dioxide emissions*
20 *with the same global warming potential as one metric*
21 *ton of another greenhouse gas.*

22 (4) *CATEGORY OF COVERED PRODUCTS.*—

23 (A) *IN GENERAL.*—*The term “category of*
24 *covered products” means—*

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

8 (ii) any other category of covered prod-
 9 ucts, as determined by the Secretary, con-
 10 sisting of products covered by 1 or more
 11 headings or subheadings of the Harmonized
 12 Tariff Schedule of the United States.

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

19 (i) Aluminum (any of 7601 through
 20 7608).

21 (ii) Articles of aluminum (any of 7609
 22 through 7616).

23 (iii) Articles of cement (6810 or 6811).

24 (iv) Articles of iron and steel (any of
 25 7307 through 7326).

- 1 (v) *Articles of plastic (any of 3916*
2 *through 3926).*
- 3 (vi) *Biofuels (2207.10, 2207.20, or*
4 *3826).*
- 5 (vii) *Cement (2523 or 3824.5).*
- 6 (viii) *Crude oil (2709).*
- 7 (ix) *Fertilizer (2808, 2814, 2834.21, or*
8 *any of 3101 through 3105).*
- 9 (x) *Glass (any of 7001 through 7020).*
- 10 (xi) *Hydrogen (2804.10).*
- 11 (xii) *Iron and steel (any of 7201*
12 *through 7306).*
- 13 (xiii) *Lithium-ion batteries (8507.60).*
- 14 (xiv) *Natural gas (2711.11 or*
15 *2711.21).*
- 16 (xv) *Petrochemicals (2901 or 2711.14).*
- 17 (xvi) *Plastics (any of 3901 through*
18 *3915).*
- 19 (xvii) *Pulp and paper (any of 4701*
20 *through 4707 or 4801 through 4813).*
- 21 (xviii) *Refined strategic and critical*
22 *minerals, including copper, cobalt, graphite,*
23 *lithium, manganese, and nickel (2825.50,*
24 *2827.41, any of 7401 through 7404, 7406,*
25 *2822.00, 8105.20, 8105.30, 2504, 3801.10,*

1 2836.91, 2825.20, 2820.10, 8111, 2825.40,
2 *any of 7501 through 7504, or 2833.24).*

3 *(xix) Refined petroleum products*
4 *(2710, 2712, 2713, 2714, 2715, 2902.20,*
5 *2902.30, or 2902.44).*

6 *(xx) Solar cells and panels (any of*
7 *8541.42 through 8541.43).*

8 *(xxi) Uranium (2612.10, 2844.10,*
9 *2844.20, or 2844.30).*

10 *(xxii) Wind turbines (8502.31).*

11 *(C) CLARIFICATION.—If, after the Secretary*
12 *begins the first study under subsection (b), the*
13 *headings or subheadings of the Harmonized Tar-*
14 *iff Schedule of the United States are changed, or*
15 *any products are added to or removed from a*
16 *heading or subheading, the Secretary may con-*
17 *tinue, in that or any subsequent study, to study*
18 *the applicable products as if the applicable*
19 *change had not occurred.*

20 *(5) COVERED COUNTRY.—The term “covered*
21 *country” means each of the following:*

22 *(A) A country that is a member of the*
23 *Group of Seven.*

24 *(B) A country that is a signatory to a free*
25 *trade agreement with the United States that is*

1 in effect as of the date on which the Secretary be-
2 gins a study under subsection (b)(1).

3 (C) A foreign country of concern (as defined
4 in section 9901 of the William M. (Mac) Thorn-
5 berry National Defense Authorization Act for
6 Fiscal Year 2021 (15 U.S.C. 4651)).

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

11 (i) 1 or more categories of covered
12 products; or

13 (ii) upstream inputs for 1 or more cat-
14 egories of covered products.

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

20 (6) COVERED PRODUCT.—

21 (A) IN GENERAL.—The term “covered prod-
22 uct” means a product covered by—

23 (i) any of the headings or subheadings
24 of the Harmonized Tariff Schedule of the
25 United States described parenthetically in

1 *subparagraph (B) of paragraph (4), subject*
2 *to subparagraph (C) of that paragraph; or*
3 *(ii) any other heading or subheading of*
4 *the Harmonized Tariff Schedule of the*
5 *United States included within a category of*
6 *covered products determined by the Sec-*
7 *retary in accordance with paragraph*
8 *(4)(A)(ii).*

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

14 *(7) GREENHOUSE GAS.—The term “greenhouse*
15 *gas” has the meaning given the term in section 901*
16 *of the Energy Independence and Security Act of 2007*
17 *(42 U.S.C. 17321).*

18 *(8) PRODUCT EMISSIONS INTENSITY.—*

19 *(A) IN GENERAL.—The term “product emis-*
20 *sions intensity” means the quantity of green-*
21 *house gases emitted to the atmosphere as a result*
22 *of the extraction, production, processing, manu-*
23 *facture, assembly, and transport, as applicable,*
24 *of 1 unit of a covered product, including the*
25 *greenhouse gas emissions of an upstream input*

1 that is incorporated into a downstream covered
2 product.

3 (B) *UNITS OF MEASUREMENT.*—The Sec-
4 retary, in coordination with the Administrator
5 of the Environmental Protection Agency, shall
6 designate the units of measurement in which the
7 product emissions intensity of a covered product
8 shall be expressed, which may include—

9 (i) metric tons of CO₂-e per metric ton
10 of a covered product;

11 (ii) metric tons of CO₂-e per dollar
12 value of a covered product; or

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

16 (9) *SECRETARY.*—The term “Secretary” means
17 the Secretary of Energy.

18 (b) *STUDY.*—

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

1 *Protection Agency, the United States Trade Rep-*
2 *resentative, the Secretary of Homeland Security, the*
3 *Secretary of State, the Secretary of Agriculture, and*
4 *such other Federal officials as the Secretary deter-*
5 *mines to be appropriate, shall conduct, and submit to*
6 *the appropriate committees of Congress a report de-*
7 *scribing the results of, a study—*

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

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

14 *(C) subject to paragraph (3)(B), to deter-*
15 *mine the average product emissions intensity of*
16 *each category of covered products produced in*
17 *each covered country, which may incorporate, as*
18 *the Secretary determines to be appropriate, find-*
19 *ings from—*

20 *(i) the implementation of the measures*
21 *described in section 40416(a) of the Infra-*
22 *structure Investment and Jobs Act (42*
23 *U.S.C. 18776(a));*

24 *(ii) the international energy data re-*
25 *sources described in that section; and*

1 (iii) other existing data sources, in-
2 cluding—

3 (I) the Greenhouse Gas Reporting
4 Program of the Environmental Protec-
5 tion Agency;

6 (II) the Annual Integrated Eco-
7 nomic Survey and the Economic Cen-
8 sus of the Bureau of the Census;

9 (III) official trade statistics of the
10 United States International Trade
11 Commission; and

12 (IV) other relevant data sources,
13 including those described in para-
14 graphs (5) through (7);

15 (D) to identify any issues with verifying the
16 average product emissions intensity data for cov-
17 ered products produced in each covered country;
18 and

19 (E) to determine the relative average prod-
20 uct emissions intensity of each category of cov-
21 ered products produced in the United States
22 compared to the average product emissions in-
23 tensity of each category of covered products pro-
24 duced in each covered country.

25 (2) *PRIORITIZATION.*—

1 (A) *IN GENERAL.*—Subject to subparagraph
2 (B), in conducting the study under paragraph
3 (1), the Secretary shall complete all elements of
4 the study described in subparagraphs (A)
5 through (E) of that paragraph within the appli-
6 cable 2- or 5-year timeframe.

7 (B) *PRIORITIZATION DUE TO DATA OR TIME*
8 *CONSTRAINTS.*—If completion of all elements de-
9 scribed in subparagraphs (A) through (E) of
10 paragraph (1) with respect to a study under that
11 paragraph is precluded by data or time con-
12 straints, the Secretary shall adhere to the appli-
13 cable 2- or 5-year timeframe by prioritizing the
14 study of—

15 (i) higher priority categories of covered
16 products, as described in subparagraph (C);
17 and

18 (ii) higher priority covered countries,
19 starting with those that are among the 5
20 largest global exporters or the 5 largest
21 sources of imports into the United States.

22 (C) *ORDER OF PRIORITY DESCRIBED.*—The
23 order of priority described in subparagraph
24 (B)(i) is as follows:

1 (i) *First, categories of covered products*
2 *subject to international border carbon ad-*
3 *justment mechanisms, such as the Carbon*
4 *Border Adjustment Mechanism of the Euro-*
5 *pean Union, including the categories of cov-*
6 *ered products described in each of—*

7 (I) *clause (i) of subsection*
8 *(a)(4)(B) (aluminum);*

9 (II) *clause (ii) of that subsection*
10 *(articles of aluminum);*

11 (III) *clause (iii) of that subsection*
12 *(articles of cement);*

13 (IV) *clause (iv) of that subsection*
14 *(articles of iron and steel);*

15 (V) *clause (vii) of that subsection*
16 *(cement);*

17 (VI) *clause (ix) of that subsection*
18 *(fertilizer);*

19 (VII) *clause (xi) of that subsection*
20 *(hydrogen); and*

21 (VIII) *clause (xii) of that sub-*
22 *section (iron and steel).*

23 (ii) *Second, categories of covered prod-*
24 *ucts relating to other emissions-intensive,*
25 *trade-exposed industries, including the cat-*

1 *egories of covered products described in each*
2 *of—*

3 *(I) clause (v) of subsection*
4 *(a)(4)(B) (articles of plastic);*

5 *(II) clause (x) of that subsection*
6 *(glass);*

7 *(III) clause (xvi) of that sub-*
8 *section (plastics); and*

9 *(IV) clause (xvii) of that sub-*
10 *section (pulp and paper).*

11 *(iii) Third, categories of covered prod-*
12 *ucts relating to fuels, including biofuels and*
13 *uranium, or other energy materials, includ-*
14 *ing the categories of covered products de-*
15 *scribed in each of—*

16 *(I) clause (vi) of subsection*
17 *(a)(4)(B) (biofuels);*

18 *(II) clause (viii) of that subsection*
19 *(crude oil);*

20 *(III) clause (xiii) of that sub-*
21 *section (lithium-ion batteries);*

22 *(IV) clause (xiv) of that subsection*
23 *(natural gas);*

24 *(V) clause (xv) of that subsection*
25 *(petrochemicals);*

1 (VI) clause (xviii) of that sub-
2 section (refined strategic and critical
3 minerals);

4 (VII) clause (xix) of that sub-
5 section (refined petroleum products);

6 (VIII) clause (xx) of that sub-
7 section (solar cells and panels);

8 (IX) clause (xxi) of that sub-
9 section (uranium); and

10 (X) clause (xxii) of that subsection
11 (wind turbines).

12 (D) *FLEXIBILITY.*—*The Secretary may ac-*
13 *celerate the timeline for the collection and anal-*
14 *ysis of data relating to any category of covered*
15 *products or any covered country if there is a rea-*
16 *sonable justification for the utility of accel-*
17 *erating the collection and analysis of that data,*
18 *such as a new trade negotiation, a new market*
19 *opportunity for the export of covered products*
20 *from the United States, or another justification.*

21 (3) *REQUIREMENTS.*—

22 (A) *IN GENERAL.*—*In the report submitted*
23 *under paragraph (1), the Secretary shall in-*
24 *clude—*

1 (i) a detailed, specific, and transparent
2 description of the methodology, developed in
3 coordination with the Administrator of the
4 Environmental Protection Agency, used to
5 determine the average product emissions in-
6 tensity of a category of covered products
7 under subparagraphs (A) and (C) of that
8 paragraph;

9 (ii) a record of all sources of data used
10 to determine the average product emissions
11 intensity of a category of covered products
12 under subparagraphs (A) and (C) of that
13 paragraph; and

14 (iii) the heading or subheading of the
15 Harmonized Tariff Schedule of the United
16 States associated with each covered product
17 for which the average product emissions in-
18 tensity of a category of covered products is
19 determined under subparagraphs (A) and
20 (C) of that paragraph.

21 (B) CERTAIN COVERED COUNTRIES.—In
22 carrying out subparagraph (C) of paragraph (1),
23 the Secretary may limit the study under that
24 paragraph to categories of covered products with
25 respect to which the applicable covered country

1 *holds more than a de minimis share of the global*
2 *market share of that category of covered prod-*
3 *ucts.*

4 (C) *REUSE OF END-OF-LIFE MATERIALS.—*
5 *In determining the average product emissions in-*
6 *tensity of a category of covered products under*
7 *subparagraphs (A) and (C) of paragraph (1), the*
8 *Secretary shall favorably consider the reuse of*
9 *end-of-life materials in place of virgin raw mate-*
10 *rials.*

11 (4) *COORDINATION AMONG PRIMARY STUDY PAR-*
12 *TICIPANTS.—In carrying out paragraph (1), the Sec-*
13 *retary, the Secretary of Commerce, the Administrator*
14 *of the Environmental Protection Agency, the United*
15 *States Trade Representative, the Secretary of Home-*
16 *land Security, the Secretary of State, and such other*
17 *Federal officials as the Secretary determines to be ap-*
18 *propriate shall establish procedures to facilitate time-*
19 *ly and efficient sharing of methodologies, data, or*
20 *other information and expertise for purposes of car-*
21 *rying out that paragraph, including, if appropriate,*
22 *by designating appropriate individuals with appro-*
23 *priate qualifications to review any data shared.*

24 (5) *CONSULTATION AND COORDINATION WITH*
25 *OTHERS.—In carrying out paragraph (1), the Sec-*

1 *retary may consult and enter into agreements with*
2 *institutions having relevant data or data collection or*
3 *analysis capabilities, such as the National Labora-*
4 *tories, the National Institute of Standards and Tech-*
5 *nology, the National Academy of Sciences, the Inter-*
6 *national Energy Agency, the Organisation for Eco-*
7 *nomic Co-operation and Development, and relevant*
8 *academic and non-governmental partners.*

9 *(6) CONSULTATION AND COORDINATION WITH IN-*
10 *DUSTRY PARTNERS.—*

11 *(A) IN GENERAL.—In carrying out para-*
12 *graph (1), the Secretary, in coordination with*
13 *the Secretary of Commerce, shall—*

14 *(i) establish a process to receive data*
15 *from industry partners on a voluntary*
16 *basis, which the Secretary may incorporate*
17 *at the discretion of the Secretary;*

18 *(ii) coordinate with existing industry*
19 *emissions reporting mechanisms, to the ex-*
20 *tent that the Secretary determines appro-*
21 *priate; and*

22 *(iii) establish a process pursuant to*
23 *which industry partners may request that—*

1 (I) a product be included on the
2 list of covered products maintained
3 under subsection (a)(6)(B);

4 (II) a product be analyzed as a
5 covered product in subsequent studies
6 and reports under that paragraph; and

7 (III) certain data be treated as
8 confidential business information, the
9 disclosure of which may be limited
10 with respect to—

11 (aa) the public database de-
12 scribed in subsection (c); and

13 (bb) the report submitted
14 under paragraph (1).

15 (B) *LIMITATION.*—Nothing in this para-
16 graph affects how data may be treated pursuant
17 to any other law or authority with respect to—

18 (i) the proprietary status of the data;

19 or

20 (ii) any other protection from public
21 disclosure.

22 (7) *INTERNATIONAL COORDINATION.*—

23 (A) *IN GENERAL.*—In carrying out para-
24 graph (1), the Secretary, the Secretary of Com-
25 merce, the Administrator of the Environmental

1 *Protection Agency, the United States Trade Rep-*
2 *resentative, and the Secretary of State shall*
3 *make every effort to coordinate with the govern-*
4 *ments of covered countries—*

5 *(i) to inform the determination of av-*
6 *erage emissions intensity values;*

7 *(ii) to advance common emissions ac-*
8 *counting methodologies and data formats;*
9 *and*

10 *(iii) to improve overall data avail-*
11 *ability and quality.*

12 *(B) CONSULTATION.—In any case in which*
13 *a covered country is credibly collaborating with*
14 *the Secretary by supporting the collection, anal-*
15 *ysis, or verification of data, the Secretary may*
16 *give that covered country—*

17 *(i) a right to consultation with respect*
18 *to the determination of the average product*
19 *emissions intensity of 1 or more categories*
20 *of covered products produced in that covered*
21 *country;*

22 *(ii) an opportunity to discuss chosen*
23 *data; and*

24 *(iii) an opportunity to fill data gaps.*

25 *(8) DATA AVAILABILITY.—*

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

3 (i) *take note of any instances in which*
4 *there is not sufficient data to estimate with*
5 *reasonable accuracy the average product*
6 *emissions intensity of a category of covered*
7 *products under subparagraph (A) or (C) of*
8 *that paragraph;*

9 (ii) *include in the report submitted*
10 *under that paragraph—*

11 (I) *a notation with respect to each*
12 *instance noted under clause (i); and*

13 (II) *an explanation for that nota-*
14 *tion;*

15 (iii) *identify any gaps in product*
16 *emissions intensity data for covered prod-*
17 *ucts or categories of covered products pro-*
18 *duced in the United States; and*

19 (iv) *coordinate with the United States*
20 *Trade Representative to assess the feasi-*
21 *bility of implementing, within existing au-*
22 *thority, a requirement for importers to pro-*
23 *vide data to fill any gaps in product emis-*
24 *sions intensity data for covered products or*

1 *categories of covered products imported into*
2 *the United States.*

3 (B) *REQUIREMENT.*—*For each instance*
4 *noted under subparagraph (A)(i), the Secretary*
5 *shall estimate with reasonable accuracy the aver-*
6 *age product emissions intensity of the next high-*
7 *est aggregation of categories of covered products*
8 *for which data are available.*

9 (C) *CONSIDERATIONS.*—*In determining*
10 *whether there are sufficient data to estimate with*
11 *reasonable accuracy the average product emis-*
12 *sions intensity of a covered product or category*
13 *of covered products under subparagraph (A)(i),*
14 *the Secretary shall consider the following factors:*

15 (i) *The public availability of statistics*
16 *on greenhouse gas emissions for particular*
17 *industries from government sources and*
18 *international organizations.*

19 (ii) *The public availability of data on*
20 *the quantity and source of inputs, such as*
21 *electricity, consumed by particular indus-*
22 *tries.*

23 (iii) *The extent to which the data de-*
24 *scribed in clauses (i) and (ii) cover a rep-*

1 *representative group of producers within an in-*
2 *dustry.*

3 *(iv) The transparency in the method*
4 *used to collect, analyze, summarize, and*
5 *publish the data described in clauses (i) and*
6 *(ii).*

7 *(v) Whether there are other factors that*
8 *may impact the accuracy of the data used.*

9 *(vi) The recency of the data used.*

10 *(c) PUBLIC DATABASE.—The Secretary shall establish*
11 *a public online database, or leverage an existing public on-*
12 *line database, for—*

13 *(1) the average product emissions intensity data*
14 *collected under subparagraphs (A) and (C) of sub-*
15 *section (b)(1); and*

16 *(2) the relative average product emissions inten-*
17 *sity of covered products determined under subpara-*
18 *graph (E) of that subsection.*

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

21 *(1) the database established under subsection (c);*
22 *and*

23 *(2) the list of covered products maintained under*
24 *subsection (a)(6)(B).*

1 (e) *PRIORITIZATION OF UPDATES.*—*The Secretary*
2 *shall prioritize updating data for categories of covered prod-*
3 *ucts for which data already exists in the database estab-*
4 *lished under subsection (c), with the goal of adding data*
5 *for additional categories of covered products and additional*
6 *covered countries as available.*

7 (f) *CLARIFICATION.*—*Nothing in this Act provides any*
8 *new authority to any Federal agency—*

9 (1) *to impose, collect, or enforce a greenhouse gas*
10 *emissions tax, fee, duty, price, or charge; or*

11 (2) *to establish a new mandatory reporting re-*
12 *quirement (including by regulation) with respect to*
13 *the domestic production of any category of covered*
14 *products.*

Calendar No. 311

118TH CONGRESS
2^D SESSION

S. 1863

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.

JANUARY 25, 2024

Reported with an amendment