

118TH CONGRESS
1ST SESSION

S. 3198

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

NOVEMBER 2, 2023

Mr. CASSIDY (for himself and Mr. GRAHAM) introduced the following bill;
which was read twice and referred to the Committee on Finance

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 (1) it is in the interests of the United States to
2 strive for environmental protection in order to pro-
3 tect human health;

4 (2) the nature of environmental challenges are
5 transnational in nature, but international coopera-
6 tive efforts, including those led by the United States,
7 have not resulted in many trading partners adopting
8 measures to address those challenges;

9 (3) the transnational issues related to environ-
10 mental protection and pollution impact the environ-
11 ment and public health in the United States and in
12 turn present national security risks because of the
13 environmental and public health risks;

14 (4) the United States—

15 (A) has adopted many environmental pro-
16 tections, including the Clean Air Act (42 U.S.C.
17 7401 et seq.), the Federal Water Pollution Con-
18 trol Act (33 U.S.C. 1251 et seq.), the Toxic
19 Substances Control Act (15 U.S.C. 2601 et
20 seq.), and more than 15 other major environ-
21 mental protection laws that—

22 (i) add costs to the production of
23 goods in order to secure the benefits of en-
24 vironmental protection and conservation ef-
25 forts; and

1 (ii) serve to meaningfully decrease
2 greenhouse gasses such as carbon dioxide
3 (CO₂), methane (CH₄), nitrous oxide
4 (N₂O), sulfur hexafluoride (SF₆),
5 hydrofluorocarbons (HFCs),
6 perfluorocarbons (PFCs), and other
7 fluorinated greenhouse gases;

8 (B) is the world's largest consumer market
9 and its economy is highly integrated into the
10 world; and

11 (C) bears responsibility to ensure that the
12 United States market does not incentivize
13 forum shopping for the production of goods to
14 jurisdictions with low environmental standards
15 to obtain a competitive cost advantage while un-
16 dermining efforts to address transnational envi-
17 ronmental and resource challenges as well as
18 global public health;

19 (5) it is necessary to apply measures to ensure
20 the environmental conservation efforts of the United
21 States are not frustrated through such forum shop-
22 ping; and

23 (6) the development needs of low-income and
24 lower-middle-income countries must be reasonably

1 taken into consideration while strengthening envi-
2 ronmental protection.

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

6 **SEC. 3. RULES OF CONSTRUCTION.**

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

16 (b) APPLICATION TO OTHER LAWS.—Nothing in this
17 Act, or any amendments made by this Act, shall be con-
18 strued to authorize new environmental standards of per-
19 formance or impact calculations of compliance to stand-
20 ards under the Clean Air Act (42 U.S.C. 7401 et seq.)
21 or any other Act which examines the environmental impact
22 of domestic production or proposed production.

23 (c) DATA COLLECTION.—Except as expressly author-
24 ized under this Act, nothing in this Act, or any amend-
25 ments made by this Act, shall be construed to authorize

1 additional authority for any agency to collect additional
 2 pollution data from a domestic producer.

3 **TITLE I—FOREIGN POLLUTION**
 4 **FEE**

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

6 (a) IN GENERAL.—Chapter 38 of the Internal Rev-
 7 enue Code of 1986 is amended by adding at the end the
 8 following new subchapter:

9 **“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 Chal-
 lenges.

“Sec. 4697. Definitions.

“Sec. 4698. Establishment process and reassessments.

10 **“SEC. 4691. IMPOSITION OF FOREIGN POLLUTION FEE.**

11 **“(a) IN GENERAL.—**

12 **“(1) IMPOSITION OF FEE.—**In the case of any
 13 covered product which is imported by a covered enti-
 14 ty into the United States after the applicable date,
 15 there is hereby imposed a fee upon entry or importa-
 16 tion of such covered product in an amount equal to
 17 the product of—

18 **“(A)** the amount of such covered product
 19 which is imported into the United States, and

20 **“(B)** the variable charge (as determined
 21 under section 4692).

1 “(2) APPLICABLE DATE.—

2 “(A) IN GENERAL.—For purposes of para-
3 graph (1), the applicable date shall be the date
4 which is 36 months after the date of enactment
5 of this subchapter.

6 “(B) POSTPONEMENT.—With respect to
7 any covered product produced in a low-income
8 country or lower-middle-income country, the
9 Secretary may extend the applicable date under
10 such clause for a period of not greater than 12
11 months if the United States Trade Representa-
12 tive issues a certification to the appropriate
13 congressional committees that such country is
14 making progress towards an international part-
15 nership agreement.

16 “(b) FEE DUE.—

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

23 “(2) SECURITY FOR FEES.—The Secretary may
24 issue such regulations or other guidance to require,
25 or may direct officers of U.S. Customs and Border

1 Protection to require, a covered entity to file with
2 the Secretary a bond or other security in such
3 amount and with such conditions as the Secretary
4 determines necessary to ensure payment of the fees
5 imposed under this section.

6 “(c) MEASUREMENT OF IMPORTED PRODUCTS.—The
7 amount of any covered product which is imported into the
8 United States shall be determined by the measure ordi-
9 narily used in the course of trade of such covered product
10 (as determined pursuant to the 6-digit HTS subheading
11 number with respect to such product).

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

17 **“SEC. 4692. DETERMINATION OF VARIABLE CHARGE.**

18 “(a) IN GENERAL.—The variable charge is an ad va-
19 lorem fee which is specific to a covered product and deter-
20 mined pursuant to the tier to which such covered product
21 is assigned.

22 “(b) TIERS.—

23 “(1) IN GENERAL.—Tiers for covered products
24 shall be established as follows:

1 “(A) For covered products for which the
2 pollution intensity difference is greater than 10
3 percent and not greater than 50 percent, tiers
4 shall be established at each 5-percentage-point
5 increment.

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

11 “(C) For covered products for which the
12 pollution intensity difference is greater than
13 200 percent, tiers shall be established at each
14 20-percentage-point increment.

15 “(2) APPLICATION OF TIERS.—

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

18 “(i) To provide for a standardized or-
19 ganization model for each covered product
20 to allow for proper implementation and ap-
21 plication of the fee imposed under section
22 4691, with such tiers to be based on the
23 different pollution intensities for a given
24 covered product based on the country of
25 origin of such covered product (or, subject

1 to section 204 of the Foreign Pollution Fee
2 Act of 2023, the manufacturer of such cov-
3 ered product).

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

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

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

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

22 “(3) ASSIGNMENT.—Each covered product shall
23 be assigned to the applicable tier which corresponds
24 to the pollution intensity difference with respect to
25 such covered product.

1 “(c) VARIABLE CHARGE.—

2 “(1) IN GENERAL.—The variable charge as-
3 signed to each tier for a covered product shall be
4 specific to the achievement of the goals in paragraph
5 (2).

6 “(2) GOALS.—

7 “(A) PHASE ONE GOALS.—During the 6-
8 year period beginning after the applicable date
9 described in section 4691(a)(2) (or, in the case
10 of any covered product added pursuant to sub-
11 section (d) or (e) of section 4695, the 6-year
12 period subsequent to the date described in sub-
13 section (f) of such section), the goal utilized for
14 establishment of the variable charge with re-
15 spect to any covered product shall be—

16 “(i) in the case of any covered product
17 for which the average pollution intensity
18 difference is greater than 50 percent, to
19 alter trade flows such that the average pol-
20 lution intensity difference associated with
21 such covered product is not greater than
22 50 percent,

23 “(ii) in the case of any covered prod-
24 uct for which the average pollution inten-
25 sity difference is greater than 25 percent

1 and not greater than 50 percent, to alter
2 trade flows such that the average pollution
3 intensity difference associated with such
4 covered product is not greater than 25 per-
5 cent, and

6 “(iii) in the case of any covered prod-
7 uct for which the average pollution inten-
8 sity difference is not greater than 25 per-
9 cent, to alter trade flows such that the av-
10 erage pollution intensity difference associ-
11 ated with such covered product is not
12 greater than 10 percent.

13 “(B) PHASE TWO GOALS.—During the 6-
14 year period subsequent to the initial 6-year pe-
15 riod described in subparagraph (A), the goal for
16 establishment of the variable charge with re-
17 spect to any covered product shall be—

18 “(i) in the case of any covered product
19 which, for the initial 6-year period de-
20 scribed in such subparagraph, was de-
21 scribed in clause (i) of such subparagraph,
22 to alter trade flows such that the average
23 pollution intensity difference associated
24 with such covered product is not greater
25 than 25 percent,

1 “(ii) in the case of any covered prod-
2 uct which, for the initial 6-year period de-
3 scribed in such subparagraph, was de-
4 scribed in clause (ii) of such subparagraph,
5 to alter trade flows such that the average
6 pollution intensity difference associated
7 with such covered product is not greater
8 than 10 percent, and

9 “(iii) in the case of any covered prod-
10 uct which, for the initial 6-year period de-
11 scribed in such subparagraph, was de-
12 scribed in clause (iii) of such subpara-
13 graph, to maintain achievement of the goal
14 described in such clause.

15 “(C) PHASE THREE GOALS.—For any year
16 subsequent to the period described in subpara-
17 graph (B), the goal for establishment of the
18 variable charge with respect to any covered
19 product shall be to alter trade flows such that
20 the average pollution intensity difference associ-
21 ated with such covered product is not greater
22 than 10 percent.

23 “(3) PROGRESSION OF VARIABLE CHARGE.—

24 “(A) IN GENERAL.—To the maximum ex-
25 tent practicable, the variable charges assigned

1 to each tier of a covered product to achieve the
2 goals described in paragraph (2) shall progress
3 through each tier in a manner consistent with
4 an increasing linear interpolation of the variable
5 charge.

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

16 “(4) MINIMIZATION OF DOMESTIC COST IN-
17 CREASES.—For purposes of this subsection, any
18 variable charge shall be established in a manner
19 which ensures that the goals described under para-
20 graph (2) are attained while minimizing any poten-
21 tial increase in domestic costs.

22 “(d) EXCEPTIONS.—

23 “(1) COMPARABLE TO BASELINE POLLUTION
24 INTENSITY.—In the case of any covered product for

1 which the pollution intensity difference is not greater
2 than 10 percent, the variable charge shall be zero.

3 “(2) INSUFFICIENT DOMESTIC PRODUCTION.—

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

9 “(B) DEFINITION.—

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

18 “(ii) APPLICABLE PERCENTAGE.—

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

22 “(aa) 5 percent, or

23 “(bb) in the case of any cov-
24 ered product described in sub-
25 clause (II), such percentage

1 below 5 percent as is determined
2 appropriate by the Secretary.

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

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

12 “(AA) national security,

13 “(BB) prevention of
14 dumping from foreign coun-
15 tries, or

16 “(CC) development of a
17 domestic industry, or

18 “(bb) for which, as a result
19 of an international partnership
20 agreement, a country which is a
21 party to such agreement pro-
22 duces not less than 5 percent of
23 United States domestic consump-
24 tion of such covered product.

1 “(C) ADJUSTMENT.—In the case of any
2 covered product for which no variable charge is
3 imposed under this section pursuant to a deter-
4 mination under subparagraph (A), the Sec-
5 retary shall—

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

8 “(ii) if the Secretary’s review deter-
9 mines that sufficient domestic production
10 has been attained with respect to such
11 product, terminate application of subpara-
12 graph (A) for such product.

13 “(D) EXCEPTION.—This paragraph shall
14 not apply with respect to any product which is
15 included as a covered product pursuant to sec-
16 tion 4695(d).

17 “(3) NATIONAL SECURITY.—

18 “(A) PRODUCT WAIVER.—

19 “(i) IN GENERAL.—The Secretary, in
20 coordination with the Secretary of Defense
21 and the Commissioner of U.S. Customs
22 and Border Protection, may reduce the
23 variable charge to zero for any covered
24 product if the Secretary determines that

1 such product is imported for purposes of
2 fulfilling a contract with—

3 “(I) the Department of Defense,

4 or

5 “(II) any contractor of the De-
6 partment of Defense.

7 “(ii) FORM.—

8 “(I) IN GENERAL.—Any reduc-
9 tion under this subparagraph shall
10 only apply to a covered product—

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

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

18 “(iii) PUBLICATION.—The Secretary
19 shall make public any reduction under this
20 subparagraph with respect to a covered
21 product unless the publication of such in-
22 formation would negatively affect national
23 security.

24 “(B) INTERNATIONAL PARTNERSHIP
25 AGREEMENTS.—In the case of—

1 “(i) any upper-middle-income country,

2 or

3 “(ii) any country which has entered

4 into a mutual defense treaty or security

5 partnership with the United States,

6 the United States Trade Representative (in con-

7 sultation with the Secretary of Defense and the

8 Secretary of State) may permit such country to

9 be subject to the requirements applicable to a

10 low-income country or a lower-middle-income

11 country under section 203 of the Foreign Pollu-

12 tion Fee Act of 2023 if completion of an inter-

13 national partnership agreement with such coun-

14 try is determined to assist in the national secu-

15 rity or geopolitical positioning of the United

16 States.

17 “(4) FREE TRADE AGREEMENT.—In the case of

18 any covered product—

19 “(A) which is produced in a country with

20 which the United States has a free trade agree-

21 ment,

22 “(B) for which all of the transforming

23 parts or components parts necessary to produce

24 such covered product are produced within—

1 “(i) any country with which the
2 United States has a free trade agreement,

3 or

4 “(ii) the United States, and

5 “(C) for which the pollution intensity dif-
6 ference is not greater than 50 percent,

7 the variable charge shall be zero.

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

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

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

16 “(f) CIRCUMVENTION.—

17 “(1) IN GENERAL.—If the Secretary (in con-
18 sultation with the United States Trade Representa-
19 tive, the appropriate congressional committees, and
20 any relevant Federal agency) determines that any
21 country is attempting to circumvent application of
22 the fee imposed under section 4691, the Secretary
23 shall adjust the variable charge in such manner as
24 deemed necessary to offset such circumvention.

1 “(2) INCLUSION.—For purposes of this sub-
2 section, circumvention of the fee imposed under sec-
3 tion 4691 shall include—

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

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

8 “(3) DETERMINATION.—If the Secretary deter-
9 mines that a country is attempting to circumvent
10 application of the fee imposed under section 4691,
11 the Secretary shall publish in the Federal Register—

12 “(A) a justification for such determination,

13 “(B) the adjusted variable charge applica-
14 ble to any covered product produced in such
15 country, and

16 “(C) the date (not later than 6 months
17 after the date of publication) on which the ad-
18 justed variable charge will begin application.

19 **“SEC. 4693. CALCULATION OF POLLUTION INTENSITY.**

20 “(a) IN GENERAL.—For purposes of determining the
21 applicable tiers for covered products under section
22 4692(b), the Secretary and the Board shall develop con-
23 sistent methods for calculating the pollution intensity of
24 any covered product which are specific to the country of
25 origin.

1 “(b) FORM.—

2 “(1) IN GENERAL.—With respect to any cov-
3 ered product, the pollution intensity of such product
4 shall be expressed based on the average pollution in-
5 tensity associated with the manufacturing of such
6 product (including point source pollution and up-
7 stream pollution) in the country of origin.

8 “(2) SPECIFICITY.—

9 “(A) IN GENERAL.—To the maximum ex-
10 tent practicable, the pollution intensity of a cov-
11 ered product shall be specific to the applicable
12 6-digit HTS subheading number.

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

18 “(3) EXCEPTION.—In the case of a covered
19 product (with the exception of a covered product de-
20 scribed in section 4695(a)(4)) for which data is not
21 available to determine pollution intensity in a man-
22 ner specific to the 6-digit HTS subheading number,
23 the Secretary and the Board may determine the pol-
24 lution intensity based on the applicable 4-digit HTS
25 heading.

1 “(c) DATA.—

2 “(1) IN GENERAL.—To the extent necessary for
3 any determination with respect to any covered prod-
4 uct, the Secretary and the Board may use—

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

7 “(B) pollution monitoring data from facili-
8 ties, satellites, and other pollution monitoring
9 tools, provided that such data—

10 “(i) is publicly available, or

11 “(ii) is not publicly available but is
12 able to be accessed and verified on a con-
13 sistent basis by the Secretary or the head
14 of any relevant Federal agency,

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

17 “(i) a product of monitored emissions,
18 and

19 “(ii) able to be verified by the Sec-
20 retary or the Board,

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

24 “(E) manufacturing and pollution data
25 which is specific to a covered product, including

1 relevant data with respect to the point source
2 pollution and upstream pollution, the industrial
3 sector which is associated with such product,
4 and the country of origin.

5 “(2) DATA PREFERENCE.—

6 “(A) IN GENERAL.—To the greatest extent
7 possible, in determining baseline pollution in-
8 tensity, the Secretary and the Board shall give
9 preference to data collected through regulatory
10 reporting methods by the Environmental Pro-
11 tection Agency.

12 “(B) DATA COLLECTION.—To the extent
13 necessary to carry out the purposes of this sub-
14 chapter, the Administrator may alter the
15 Greenhouse Gas Reporting Program (as estab-
16 lished under part 98 of title 40, Code of Fed-
17 eral Regulations) to include the reporting of
18 production from stationary sources regarding—

19 “(i) the quantity of any product pro-
20 duced, and

21 “(ii) the heading, subheading, and
22 statistical reporting number of the HTS
23 under which the product would be classi-
24 fied if the product were imported.

25 “(3) ACCESS TO INFORMATION.—

1 “(A) IN GENERAL.—The head of every rel-
2 evant Federal agency shall provide the Sec-
3 retary and the Board with any information held
4 by or otherwise available to the head of such
5 Federal agency which is relevant to the calcula-
6 tion of pollution intensity.

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

18 “(d) METHODOLOGY.—

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

23 “(A) use the best, and most granular, data
24 available in the United States to establish the

1 baseline pollution intensity with respect to such
2 product, and

3 “(B) in the case of a covered product pro-
4 duced outside of the United States, base the
5 calculation of the pollution intensity of such
6 product on the process used to establish the
7 baseline pollution intensity for such product.

8 “(2) TREATMENT OF DIFFERENT MANUFAC-
9 TURING METHODS AND LOCATIONS.—For purposes
10 of calculating the baseline pollution intensity of a
11 covered product, such calculations shall seek to ac-
12 count for differences in pollution intensity due to—

13 “(A) varied manufacturing methods,

14 “(B) differences in geographic location as-
15 sociated with upstream pollution intensity, and

16 “(C) the proportion of manufacturing of
17 such product which is associated with the meth-
18 ods and differences described in subparagraphs
19 (A) and (B) relative to total domestic produc-
20 tion of such product.

21 “(3) TREATMENT OF RECYCLED MATERIALS.—
22 Any recycled material (as defined in section
23 246.101(w) of title 40, Code of Federal Regulations)
24 shall be deemed to have a pollution intensity of zero

1 if recycled (as defined in section 246.101(x) of such
2 title) into—

3 “(A) a contributing part,

4 “(B) a component part, or

5 “(C) a covered product.

6 “(4) TREATMENT OF CARBON OXIDES.—

7 “(A) IN GENERAL.—Any carbon oxide cap-
8 tured from manufacturing processes or from
9 ambient air by the producer of a covered prod-
10 uct, or verifiably purchased by the producer of
11 a covered product as an offset from an entity
12 operating carbon capture infrastructure, shall
13 have the effect of reducing the pollution associ-
14 ated with the production of a covered product
15 if such carbon oxide is—

16 “(i) utilized in the creation of a con-
17 tributing part, component part, trans-
18 forming part, or covered product,

19 “(ii) utilized to help access a contrib-
20 uting part, component part, transforming
21 part, or covered product that is extracted
22 from a geologic formation, or

23 “(iii) verifiably sequestered in the
24 country of origin of such product in a
25 manner which provides an accurate ac-

1 counting of the storage of such carbon
2 oxide.

3 “(B) ACCOUNTING.—Any carbon oxide uti-
4 lized or sequestered as described in subpara-
5 graph (A) shall be—

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

10 “(ii) eligible to offset all forms of pol-
11 lution based on the relevant carbon dioxide
12 equivalent value.

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

15 “(A) IN GENERAL.—In the case of a cov-
16 ered product described in subparagraph (B)
17 which contains any covered component part or
18 covered transforming part, to the maximum ex-
19 tent practicable, the pollution intensity of such
20 covered component part or covered trans-
21 forming part shall be calculated based on—

22 “(i) the amount of such covered com-
23 ponent part or covered transforming part
24 originating in each country of origin (in-
25 cluding the United States) which supply

1 such covered component part or covered
2 transforming part for the covered product,
3 and

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

8 “(B) DE MINIMIS RULE.—For purposes of
9 subparagraph (A), a covered component part or
10 covered transforming part shall not be included
11 if such covered component part or covered
12 transforming part accounts for less than 5 per-
13 cent of—

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

16 “(ii) the total monetary value of the
17 covered component parts or covered trans-
18 forming parts contained in the covered
19 product, and

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

23 “(C) ADDITIONAL MEASUREMENTS.—In
24 the case of a petition to include a product which
25 contains any other covered component part or

1 covered transforming part as a covered product
 2 under section 4695(d), such petition—

3 “(i) shall provide such information as
 4 is deemed necessary to make any calcula-
 5 tion under subparagraph (A), and

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

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

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

19 “(i) located in such country, and

20 “(ii) covered by an agreement estab-
 21 lished under section 204 of the Foreign
 22 Pollution Fee Act of 2023, and

23 “(B) the pollution intensity of the product
 24 produced in such facility would otherwise lower

1 the average pollution intensity associated with
2 the production of such product in such country,
3 the pollution intensity of the product produced in
4 such facility shall not be included for purposes of
5 calculating the pollution intensity associated with
6 production of such product in the country of origin.

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

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

16 “(2) due to unavailable or unverifiable data
17 with respect to the country of origin, such deter-
18 mination required estimation through modeling
19 which was not performed for purposes of the calcula-
20 tion of the baseline pollution intensity,

21 the pollution intensity otherwise determined under this
22 section with respect to production of such covered product
23 in such country of origin shall be increased by 20 percent.

24 “(f) FOREIGN ILLUSTRATION OF POLLUTION INTEN-
25 SITY.—

1 “(1) IN GENERAL.—Any country may provide
2 the Secretary with access to any data necessary to
3 establish an alternative pollution intensity with re-
4 spect to any covered product.

5 “(2) ALTERNATIVE POLLUTION INTENSITY.—

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

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

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

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

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

24 “(3) PUBLICATION OF ALTERNATIVE POLLU-
25 TION INTENSITY VALUES.—In the case of any pollu-

1 tion intensity with respect to any covered product
2 which is adjusted pursuant to paragraph (2)—

3 “(A) the Secretary shall publish such ad-
4 justment in the Federal Register, and

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

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

9 “(1) IN GENERAL.—On or after the date of the
10 first reassessment required under section 4698, the
11 Secretary, in consultation with the United States
12 Trade Representative, may assign a product which is
13 produced by a foreign producer to a tier which is
14 different from the tier determined under section
15 4692 with respect to the country of origin in which
16 such producer is located if—

17 “(A) subsequent to the applicable date (as
18 described in section 4691(a)(2)), such foreign
19 producer has increased production of such prod-
20 uct by not less than 5 percent through the es-
21 tablishment of a new production facility or the
22 expansion of an existing production facility, and

23 “(B) the increase in production described
24 in subparagraph (A) results in an increase in
25 pollution intensity associated with production of

1 such product by such foreign producer which is
2 at least 5 percent greater than the pollution in-
3 tensity associated with production of such prod-
4 uct in such country (as determined under para-
5 graph (2)).

6 “(2) COMPARISON OF POLLUTION INTENSITY.—
7 For purposes of paragraph (1)(B), the pollution in-
8 tensity associated with production of a covered prod-
9 uct in a foreign country shall be equal to the lowest
10 pollution intensity determination with respect to pro-
11 duction of such product in such country for any pe-
12 riod beginning after the applicable date under sec-
13 tion 4691(a)(2).

14 “(3) TREATMENT OF FOREIGN OWNERSHIP.—
15 For purposes of paragraph (1), if the Secretary de-
16 termines that—

17 “(A) a foreign producer is owned, oper-
18 ated, or majority financed by—

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

23 “(ii) an entity which is headquartered
24 in the base country, and

1 **“SEC. 4695. COVERED PRODUCTS.**

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

6 “(1) Aluminum classifiable under any of head-
7 ings 7601 through 7616 of the HTS.

8 “(2) Biofuels classifiable under subheading
9 2207.10 or 2207.20, or heading 3826, of the HTS.

10 “(3) Cement classifiable under heading 2523,
11 6810, or 6811, or subheading 3824.50, of the HTS.

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

14 “(5) Glass classifiable under any of headings
15 7001 through 7020 of the HTS.

16 “(6) Hydrogen, methanol, or ammonia classifi-
17 able under heading 2814 or any of subheadings
18 2804.10, 2905.11, 3102.10, 3102.30, or 3102.80
19 the HTS.

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

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

24 “(9) Minerals classifiable under any of the fol-
25 lowing headings or subheadings of the HTS:

“2504 2825.50 3801.10

2612.10	2827.41	7401 through 7404
2804.69	2833.24	7406
2820.10	2836.91	7501 through 7504
2822.00	2844.10	8105.20
2825.20	2844.20	8105.30
2825.40	2844.30	8111.

1 “(10) Natural gas classifiable under subheading
2 2711.11 or 2711.21 of the HTS.

3 “(11) Petrochemicals classifiable under heading
4 2901 or subheading 2711.14 of the HTS.

5 “(12) Plastics classifiable under any of head-
6 ings 3901 through 3926 of the HTS.

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

10 “(14) Refined petroleum products classifiable
11 under any of headings 2710, 2712 through 2715, or
12 2803 or subheadings 2902.20, 2902.30, or 2902.44,
13 of the HTS.

14 “(15) Solar cells and panels classifiable under
15 any of subheadings 8541.42 through 8541.43 or
16 8501.71 through 8501.80 of the HTS.

17 “(16) Wind turbines classifiable under sub-
18 heading 8502.31 of the HTS.

19 “(b) DETERMINATION OF RELEVANT HTS NUM-
20 BERS.—

21 “(1) IN GENERAL.—The Secretary shall in-
22 clude, in the final rule required by section 4698, a
23 list of covered products that includes the appropriate

1 heading or subheading of the HTS for each such
2 product.

3 “(2) SCOPE.—Inclusion of a HTS code under
4 paragraph (1) shall only apply with respect to a cov-
5 ered product if such product is—

6 “(A) described in subsection (a) and not
7 subject to an exception under section
8 4692(d)(2), or

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

11 “(c) NATURALLY OCCURRING COVERED PROD-
12 UCTS.—

13 “(1) POLLUTION INTENSITY CALCULATIONS.—
14 In the case of a naturally occurring covered product
15 which is refined in a manner whereby such product
16 becomes a transforming part for multiple other
17 products (referred to in this paragraph as a ‘result-
18 ing product’), the pollution intensity associated with
19 the refining of the naturally occurring covered prod-
20 uct shall be divided between the resulting products
21 in a manner consistent with the proportion of the
22 naturally occurring product which is utilized in each
23 resulting product and the quantity of each resulting
24 product.

1 “(2) DEFINITION.—For purposes of this sub-
2 section, the term ‘naturally occurring covered prod-
3 uct’ means crude oil or minerals.

4 “(d) ADDITIONAL COVERED PRODUCTS.—

5 “(1) IN GENERAL.—An eligible entity may sub-
6 mit a petition (or, in the case of more than one eligi-
7 ble entity, may jointly submit a petition) to the Sec-
8 retary for any product (based on the 6-digit sub-
9 heading number of the product under the HTS) to
10 be included as a covered product for purposes of this
11 subchapter.

12 “(2) ELIGIBLE ENTITY.—For purposes of this
13 subsection, the term ‘eligible entity’ means, with re-
14 spect to any product—

15 “(A) a domestic producer of such product,

16 “(B) trade organizations consisting of pro-
17 ducers of such product,

18 “(C) labor unions representing individuals
19 employed in the production of such product,
20 and

21 “(D) individuals employed in the produc-
22 tion of such product.

23 “(3) THRESHOLD.—The Secretary may not ap-
24 prove a petition described in paragraph (1) with re-
25 spect to any product unless not less than 50 percent

1 of the total annual domestic production with respect
2 to such product is attributable to domestic producers
3 which are represented in such petition.

4 “(4) MEASUREMENT.—

5 “(A) IN GENERAL.—For purposes of deter-
6 mining whether the total annual domestic pro-
7 duction requirement under paragraph (3) has
8 been satisfied, the petitioners may elect whether
9 such determination shall be made on the basis
10 of—

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

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

15 “(B) TREATMENT OF TRADE ORGANIZA-
16 TIONS.—For purposes of subparagraph (A), in
17 the case of a trade organization described in
18 paragraph (2)(B), the total annual domestic
19 production attributable to any domestic pro-
20 ducer which is part of such organization shall
21 be included for purposes of determining wheth-
22 er the requirement under such subparagraph
23 has been satisfied.

24 “(C) TREATMENT OF LABOR UNIONS AND
25 INDIVIDUALS.—For purposes of subparagraph

1 (A), in the case of a labor union described in
2 paragraph (2)(C) or individuals described in
3 paragraph (2)(D) (referred to in this subpara-
4 graph as ‘petitioning employees’), the total an-
5 nual domestic production attributable to such
6 labor union or the petitioning employees shall
7 be determined based on—

8 “(i) the total production of the prod-
9 uct during the preceding year by any pro-
10 ducer that employs members of such labor
11 union or petitioning employees, and

12 “(ii) the percentage of the total num-
13 ber of employees of such producers during
14 the preceding year who are members of
15 such labor union or petitioning employees.

16 “(D) EXCLUSION OF DOUBLE COUNT-
17 ING.—In the case of more than 1 eligible entity
18 which is included in a petition, the Secretary
19 shall ensure that any production attributable to
20 each such eligible entity is not included in the
21 determination under paragraph (3) more than
22 once.

23 “(5) PETITION.—With respect to any product,
24 the petition described in paragraph (1) shall in-
25 clude—

1 “(A) the applicable HTS code with respect
2 to such product,

3 “(B) the eligible entities and the percent-
4 age of domestic production represented by such
5 eligible entities, and

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

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

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

13 “(B) utilize existing pollution intensity val-
14 ues for any covered component part, covered
15 contributing part, or covered transforming part
16 contained in the product, and

17 “(C) at the election of the petitioner, for
18 purposes of achieving an accurate calculation of
19 pollution intensity, include additional methods
20 to determine the pollution intensity of any com-
21 ponent part or transforming part which is not
22 included under subparagraph (B).

23 “(7) IMPLEMENTATION.—

24 “(A) IN GENERAL.—Not later than 30
25 days after the date on which the petition de-

1 scribed in paragraph (1) was received by the
2 Secretary, the Secretary shall determine wheth-
3 er the domestic production requirement under
4 such paragraph is satisfied with respect to the
5 product to be included as a covered product.

6 “(B) INCLUSION AS COVERED PRODUCT.—

7 For purposes of subparagraph (A), if the Sec-
8 retary determines that the domestic production
9 requirement under paragraph (3) is satisfied
10 with respect to the product—

11 “(i) such product shall be included as
12 a covered product for purposes of this sub-
13 chapter,

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

17 “(iii) such product shall be subject to
18 the rulemaking process under section
19 4698(d).

20 “(C) DETERMINATION OF POLLUTION IN-
21 TENSITY.—Subsequent to any determination
22 under subparagraph (B) to include a product as
23 a covered product for purposes of this sub-
24 chapter, the Board shall—

1 “(i) review the proposed methods for
2 determination of the pollution intensity
3 with respect to such product (as described
4 in paragraph (5)(C)), and

5 “(ii) make any adjustments necessary
6 to—

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

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

12 “(e) CRITICAL MINERALS.—

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

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

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

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

24 “(2) PUBLICATION AND RULEMAKING.—In the
25 case of any mineral which is included as a covered

1 product by the Secretary pursuant to paragraph
2 (1)—

3 “(A) the inclusion of such product as a
4 covered product shall be published in the Fed-
5 eral Register, and

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

8 “(f) APPLICATION FOR ADDITIONAL COVERED PROD-
9 UCTS.—With respect to any product included as a covered
10 product under subsection (d) or (e), imposition of the fee
11 under section 4691 shall take effect in the first calendar
12 year beginning after the issuance of the final rule de-
13 scribed in section 4698(d)(1)(B).

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

16 “(a) IN GENERAL.—

17 “(1) ESTABLISHMENT.—There is hereby estab-
18 lished the National Laboratory Advisory Board on
19 Global Pollution Challenges (referred to in this sub-
20 chapter as the ‘Board’).

21 “(2) DUTIES.—The Board shall—

22 “(A) in accordance with section 4693, es-
23 tablish methods of calculating—

1 “(i) the baseline pollution intensity, as
2 determined based on production of the cov-
3 ered product in the United States, and

4 “(ii) the respective pollution intensity
5 for production of such covered product in
6 any foreign country,

7 “(B) provide recommendations for rule-
8 making and reassessments in accordance with
9 section 4698, and

10 “(C) provide assistance with regard to sub-
11 sections (f) and (g) of section 4693, as well as
12 any other requests from the Secretary.

13 “(3) CHAIR.—The chair of the Board (referred
14 to in this section as the ‘Chair’) shall be the Direc-
15 tor of the National Energy Technology Laboratory.

16 “(4) DEPUTY CHAIRS.—The deputy chairs of
17 the Board (referred to in this section as the ‘Deputy
18 Chairs’) shall be—

19 “(A) the Director of Idaho National Lab-
20 oratory,

21 “(B) the Director of the National Renew-
22 able Energy Laboratory,

23 “(C) the Director of the Pacific Northwest
24 National Laboratory, and

1 “(D) the Chair of the Council of Environ-
2 mental Quality.

3 “(5) OTHER BOARD MEMBERS.—

4 “(A) IN GENERAL.—In addition to the
5 Chair and Deputy Chairs, the Board shall con-
6 sist of—

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

10 “(ii) 1 representative from each rel-
11 evant Federal agency, as designated by
12 such agency.

13 “(B) APPOINTMENT.—

14 “(i) INITIAL APPOINTMENT.—For
15 purposes of subparagraph (A)(i), each in-
16 dustrial sector described in paragraphs (1)
17 through (16) of section 4695(a) shall (pur-
18 suant to clause (ii)) designate the rep-
19 resentatives to serve for the 36-month pe-
20 riod subsequent to the date of enactment
21 of this subchapter.

22 “(ii) APPOINTMENT PROCESS.—The
23 Secretary shall establish a process by
24 which—

1 “(I) an individual who would sat-
2 isfy the requirements described in
3 subparagraph (C) can be nominated
4 (including by self-nomination) to serve
5 as a representative on the Board,

6 “(II) allows each domestic pro-
7 ducer of the relevant industrial sector
8 the opportunity to elect individuals
9 nominated under subclause (I) to
10 serve on the Board,

11 “(III) any representative elected
12 to serve on the Board is designated in
13 a timely manner with respect to rel-
14 evant rulemakings under section
15 4698, and

16 “(IV) a new round of nomina-
17 tions and elections occurs for each re-
18 assessment under section 4698(c).

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

23 “(i) manufactures a product which is
24 included under paragraphs (1) through
25 (16) of section 4695(a), and

1 “(ii) has annual revenues of greater
2 than \$40,000,000.

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

9 “(7) STAFF.—

10 “(A) IN GENERAL.—With respect to car-
11 rying out any duties described in paragraph (2),
12 any laboratory described in paragraph (3) or
13 (4) may designate staff to assist with such du-
14 ties.

15 “(B) DETAILEES.—Upon the Board’s re-
16 quest, the Administrator, the Secretary of En-
17 ergy, and the Director of the Office of Science
18 and Technology Policy shall detail, without re-
19 imbursement, employees from each agency to
20 assist the Board in carrying out its duties
21 under this section.

22 “(b) FAILURE TO SUBMIT RECOMMENDATIONS.—In
23 any case in which the Board fails to timely transmit a
24 recommendation under section 4698, the Secretary may

1 establish rules, or alter reassessments, required under this
2 section or section 4698 without consultation of the Board.

3 “(c) NO CAUSE OF ACTION.—Any recommendation,
4 verification, or report issued by the Board under this sec-
5 tion shall not create or give rise to any claim or cause
6 of action.

7 **“SEC. 4697. DEFINITIONS.**

8 “(a) IN GENERAL.—For purposes of this sub-
9 chapter—

10 “(1) ADMINISTRATOR.—The term ‘Adminis-
11 trator’ means the Administrator of the Environ-
12 mental Protection Agency.

13 “(2) APPROPRIATE CONGRESSIONAL COMMIT-
14 TEES.—The term ‘appropriate congressional com-
15 mittees’ means the Committee on Finance of the
16 Senate and the Committee on Ways and Means of
17 the House of Representatives.

18 “(3) BASELINE POLLUTION INTENSITY.—The
19 term ‘baseline pollution intensity’ means the pollu-
20 tion intensity associated with production of a cov-
21 ered product in the United States.

22 “(4) CARBON DIOXIDE EQUIVALENT.—The
23 term ‘carbon dioxide equivalent’ means, with respect
24 to a greenhouse gas, the quantity of such gas that
25 has a global warming potential equivalent, deter-

1 mined over a 100-year period, to 1 metric ton of car-
2 bon dioxide, as determined pursuant to table A-1 of
3 subpart A of part 98 of title 40, Code of Federal
4 Regulations, as in effect on January 1, 2023.

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

9 “(6) CONTRIBUTING PART.—The term ‘contrib-
10 uting part’ means, with respect to a covered product,
11 any product which was used in the creation of such
12 covered product in a manner which is consistent
13 with—

14 “(A) combustion of such product to pro-
15 vide energy to produce the covered product, or

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

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

21 “(A) the country in which a covered prod-
22 uct was produced, or

23 “(B) the last country in which a covered
24 product was substantially transformed,

1 as determined in a manner consistent with U.S.
2 Customs and Border Protection procedures, directly
3 prior to importation into the United States.

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

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

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

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

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

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

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

23 “(13) EXPORT OR DEVELOPMENT FINANC-
24 ING.—The term ‘export or development financing’
25 means financing—

1 “(A) for the purposes of—

2 “(i) developing international produc-
3 tion capacity, or

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

8 “(B) which is provided by—

9 “(i) the Department of Energy,

10 “(ii) the Department of Commerce,

11 “(iii) the Department of State,

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

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

16 “(vi) the Trade and Development
17 Agency,

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

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

22 “(14) FREE TRADE AGREEMENT.—The term
23 ‘free trade agreement’ means an agreement with 1
24 or more countries which—

1 “(A) reduces or eliminates tariffs and non-
2 tariff barriers between the countries party to
3 such agreement, and

4 “(B) is approved by Congress.

5 “(15) GREENHOUSE GAS.—The term ‘green-
6 house gas’ has the meaning given such term in sec-
7 tion 98.6 of title 40, Code of Federal Regulations
8 (as in effect on the date of enactment of this sub-
9 chapter).

10 “(16) HTS.—The term ‘HTS’ means the Har-
11 monized Tariff Schedule of the United States.

12 “(17) INTERNATIONAL PARTNERSHIP AGREE-
13 MENT.—The term ‘international partnership agree-
14 ment’ means an international partnership agreement
15 established pursuant to title II of the Foreign Pollu-
16 tion Fee Act of 2023.

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

21 “(19) POINT SOURCE POLLUTION.—The term
22 ‘point source pollution’ means pollution emitted into
23 the ambient air at the site of the manufacturing of
24 a product.

1 “(20) POLLUTION.—The term ‘pollution’ means
2 greenhouse gas emissions.

3 “(21) POLLUTION INTENSITY.—The term ‘pol-
4 lution intensity’ means the amount of greenhouse
5 gases (as determined under section 4693), expressed
6 in metric tons of carbon dioxide equivalent, which
7 are emitted into the atmosphere in the production of
8 a single unit of a covered product (as determined
9 pursuant to section 4691(c)).

10 “(22) POLLUTION INTENSITY DIFFERENCE.—
11 The term ‘pollution intensity difference’ means, with
12 respect to any covered product, the difference (ex-
13 pressed as a percentage) between—

14 “(A) the pollution intensity associated with
15 production of such product in the country of or-
16 igin, and

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

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

22 “(A) a manufacturing process, or

23 “(B) in the case of a geologic resource, ex-
24 traction.

1 “(24) PRODUCT.—The term ‘product’ means
2 any article, regardless of whether such article is—

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

4 or

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

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

9 “(A) the Department of the Treasury,

10 “(B) the Department of Energy,

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

13 “(D) the Department of Commerce,

14 “(E) the Department of State,

15 “(F) the Environmental Protection Agen-
16 cy,

17 “(G) the Council on Environmental Qual-
18 ity,

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

21 “(I) the Department of Homeland Secu-
22 rity.

23 “(26) TRANSFORMING PART.—The term ‘trans-
24 forming part’ means a product which is substantially
25 transformed or refined into another product.

1 “(27) UPSTREAM POLLUTION.—The term ‘up-
2 stream pollution’ means, with respect to any covered
3 product—

4 “(A) the pollution associated with all cov-
5 ered component parts, covered contributing
6 parts, and covered transforming parts, and

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

10 “(b) WORLD BANK CLASSIFICATIONS.—For purposes
11 of this subchapter—

12 “(1) IN GENERAL.—Subject to paragraph (2),
13 the terms ‘high-income country’, ‘upper-middle-in-
14 come country’, ‘lower-middle-income country’, and
15 ‘low-income country’ shall be defined based on the
16 classification of the economy of a country by the
17 World Bank.

18 “(2) HIGH-INCOME AND UPPER-MIDDLE-IN-
19 COME COUNTRIES.—In the case of any country
20 which, as of January 1, 2023, is classified by the
21 World Bank as a high-income country or an upper-
22 middle-income country, such country shall not be eli-
23 gible to be reclassified as a lower-middle-income
24 country or a low-income country.

1 **“SEC. 4698. ESTABLISHMENT PROCESS AND REASSESS-**
2 **MENTS.**

3 “(a) IN GENERAL.—The processes established under
4 this section shall be utilized to—

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

7 “(2) perform any required reassessment.

8 “(b) INITIAL RULEMAKING.—

9 “(1) CLASSIFICATION OF COVERED PROD-
10 UCTS.—Not later than 12 months after the date of
11 enactment of this subchapter, the Secretary shall
12 issue a final rule for purposes of—

13 “(A) determining the appropriate heading
14 or subheading number of the HTS for each cov-
15 ered product (as required under section
16 4695(b)); and

17 “(B) determining the appropriate measure-
18 ment of any covered product (as described in
19 section 4691(e)).

20 “(2) POLLUTION INTENSITY CALCULATIONS.—

21 “(A) IN GENERAL.—Not later than 18
22 months after the date of enactment of this sub-
23 chapter, the Secretary shall publish a final rule
24 establishing—

25 “(i) in a manner consistent with sec-
26 tion 4693, the pollution intensity with re-

1 spect to each covered product and country
2 of origin, and

3 “(ii) methods for any foreign country
4 to establish an alternative pollution inten-
5 sity with respect to any covered product
6 pursuant to subsection (f) of such section.

7 “(B) CIRCUMVENTION.—Not later than 36
8 months after the date of enactment of this sub-
9 chapter, the Secretary shall publish a final rule
10 to address producers described in section
11 4693(g).

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

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

25 “(c) REASSESSMENT.—

1 “(1) IN GENERAL.—Not later than 3 years
2 after the date of the issuance of any final rule de-
3 scribed in subsection (b), and every 3 years there-
4 after, the Secretary shall reassess and, as necessary,
5 issue a final rule to adjust, the existing final rule.

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

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

20 “(4) INTERNATIONAL PARTNERSHIPS.—In the
21 case of an international partnership agreement, the
22 Secretary may, at the time of the establishment of
23 such agreement and in a manner consistent with
24 such agreement, issue a final rule to adjust the pol-
25 lution intensity for any covered product (as deter-

1 mined pursuant to subsection (b)(2)) produced in a
2 country which is a party to such agreement.

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

8 “(d) ADDITIONAL COVERED PRODUCTS.—

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

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

21 “(B) not later than 6 months after the
22 issuance of the final rule described in subpara-
23 graph (A), the Secretary shall issue a final rule
24 establishing the variable charge for such cov-

1 ered product consistent with the requirements
2 under section 4692.

3 “(2) REASSESSMENTS.—

4 “(A) IN GENERAL.—Except as provided in
5 subparagraph (B), any classification or rule es-
6 tablished pursuant to paragraph (1) with re-
7 spect to any covered product shall remain in ef-
8 fect under the next reassessment under sub-
9 section (c).

10 “(B) EXCEPTION.—With respect to any
11 product included as a covered product under
12 subsection (d) or (e) of section 4695, if the date
13 for imposition of the fee under section 4691 (as
14 determined pursuant to section 4695(f)) is less
15 than 1 year from the date of the next reassess-
16 ment under subsection (c), such product shall
17 not be subject to such reassessment.

18 “(e) PROCESS.—

19 “(1) BOARD RECOMMENDATIONS.—Not later
20 than 6 months prior to—

21 “(A) the date on which any final rule is re-
22 quired to be issued under paragraph (1), (2), or
23 (3) of subsection (b), and

24 “(B) the date on which any reassessment
25 is required to be made under subsection (c)(1),

1 the Board shall provide recommendations to the Sec-
2 retary with respect to such final rule or reassess-
3 ment.

4 “(2) NOTICE.—Not later than 30 days after re-
5 ceiving the recommendations of the Board provided
6 under paragraph (1), the Secretary shall—

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

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

13 “(3) COMMENT.—Following the notice under
14 paragraph (2)(A), the Secretary shall provide a pub-
15 lic comment period of not less than 60 days.

16 “(4) CONSULTATION.—Prior to the issuance of
17 any final rule or reassessment under this section re-
18 garding the appropriate classification of covered
19 products, the Secretary shall consult with—

20 “(A) the United States Trade Representa-
21 tive,

22 “(B) the United States International
23 Trade Commission,

24 “(C) the Commissioner of U.S. Customs
25 and Border Protection, and

1 “(D) all other relevant Federal agencies.

2 “(5) PUBLICATION.—The publication of any
3 final rule required under this section shall include a
4 statement from the Secretary explaining any devi-
5 ation from the recommendations submitted by the
6 Board pursuant to paragraph (1).

7 “(f) JUDICIAL REVIEW.—

8 “(1) IN GENERAL.—The United States Court of
9 Appeals for the District of Columbia Circuit shall
10 have original and exclusive jurisdiction over any
11 claim with respect to any final rule issued under this
12 section.

13 “(2) LIMITATION.—No final rule issued under
14 this section shall be subject to judicial review un-
15 less—

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

18 “(B) the person filing such claim—

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

21 “(ii)(I) demonstrates that—

22 “(aa) application of such rule will
23 result in the infliction of a direct and
24 tangible harm to such person, and

1 “(bb) the rulemaking process was
2 conducted in a manner that was in-
3 tended to directly harm such person,
4 or

5 “(II) demonstrates that such final
6 rule—

7 “(aa) altered the recommenda-
8 tions made by the Board, and

9 “(bb) would limit the ability to
10 attain the goals established under sec-
11 tion 4692(c)(2).

12 “(3) ACCEPTABLE ACTION.—Notwithstanding
13 any claim or cause of action filed with respect to any
14 provision of this subchapter—

15 “(A) the applicable date described in sec-
16 tion 4691(a)(2),

17 “(B) the application of reassessment pur-
18 suant to subsection (c), and

19 “(C) with respect to covered products in-
20 cluded pursuant to subsection (d) or (e) of sec-
21 tion 4695, the date for imposition of the fee
22 under section 4691 to take effect (as deter-
23 mined under section 4695(f)),

24 shall not be subject to judicial review and shall not
25 be subject to delay or suspension.”.

1 **TITLE** **II—INTERNATIONAL**
2 **PARTNERSHIP AGREEMENTS**
3 **RELATING TO POLLUTION**
4 **FEES**

5 **SEC. 201. INTERNATIONAL PARTNERSHIP AGREEMENTS.**

6 (a) **IN GENERAL.**—The United States Trade Rep-
7 resentative, at the direction of the President, may—

8 (1) engage in negotiations with countries to en-
9 courage the establishment and expansion of inter-
10 national partnership agreements, as provided in this
11 title;

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

15 (3)(A) implement such an agreement in accord-
16 ance with subsection (e); or

17 (B) submit a proposal to Congress under sub-
18 section (f) with respect to such an agreement and
19 implement the agreement following the approval of
20 Congress in a manner consistent with that sub-
21 section; and

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

24 (b) **CONSULTATION DURING NEGOTIATION FOR**
25 **INTERNATIONAL PARTNERSHIP AGREEMENTS.**—

1 (1) IN GENERAL.—With respect to negotiations
2 for an international partnership agreement under
3 this title, the Trade Representative shall—

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

8 (B) provide to those committees, including
9 staff with appropriate security clearances, ac-
10 cess to the text of any negotiating proposal or
11 any other document presented by the United
12 States or another party to the negotiations that
13 presents concepts or considerations for the ne-
14 gotiations not later than 5 business days before
15 the proposal or other document is formally
16 brought up for consideration in the negotia-
17 tions.

18 (2) DESIGNATION OF ADVISORS.—The chair-
19 person and ranking member of each of the appro-
20 priate congressional committees may each designate
21 not more than 5 Members of Congress on their com-
22 mittee and not more than 4 individuals on the staff
23 of that committee as official advisors to negotiations.

24 (3) BRIEFING.—

1 (A) IN GENERAL.—The Trade Representa-
2 tive shall brief the appropriate congressional
3 committees before and after every negotiation
4 session in relation to an international partner-
5 ship agreement.

6 (B) TIMING.—A briefing required by sub-
7 paragraph (A) following a negotiating session
8 shall take place not later than 5 business days
9 following the session.

10 (c) REQUIREMENTS FOR INTERNATIONAL PARTNER-
11 SHIP AGREEMENTS.—

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

16 (2) PARTICIPATION.—

17 (A) IN GENERAL.—Subject to the require-
18 ments under paragraph (3), the United States
19 may enter into an international partnership
20 agreement under this title with—

21 (i) one country;

22 (ii) multiple countries; or

23 (iii) a group of countries participating
24 in an international forum such as the
25 Organisation for Economic Co-operation

1 and Development or the Group of Seven
2 (G7).

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

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

13 (ii) do not require alterations to sub-
14 chapter E of the Internal Revenue Code of
15 1986, as added by title I.

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

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

23 (B) maintenance of the ability of a country
24 that is a party to the agreement to determine

1 methods of pollution reduction within that
2 country;

3 (C) elimination of any fee or charge be-
4 tween countries that are parties to the agree-
5 ment in a manner compatible to the process de-
6 scribed in section 202;

7 (D) elimination or reduction of other du-
8 ties, import fees, and trade barriers maintained
9 by the country related to covered products;

10 (E) compatible pollution monitoring, re-
11 porting, and verification methods that—

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

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

22 (iii) allow for each country that is a
23 party to the agreement to consistently vali-
24 date the monitoring and reporting informa-
25 tion of the other countries that are parties

1 to the agreement with respect to products
2 covered by the agreement;

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

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

8 (H) processes for how to add—

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

11 (ii) additional covered products to the
12 agreement.

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

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

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

23 (ii) provide validation of pollution in-
24 tensity calculations and other requirements
25 under paragraph (3); and

1 (iii) adjudicate discrepancies with re-
2 spect to such data and requirements be-
3 tween countries that are parties to the
4 agreement.

5 (B) LIMITATIONS.—

6 (i) ACCESS TO INFORMATION.—An
7 international partnership agreement en-
8 tered into under this title is required to
9 provide for each country that is a party to
10 the agreement to maintain the ability to
11 access and validate any pollution informa-
12 tion related to other countries that are
13 parties to the agreement.

14 (ii) SCOPE OF ADJUDICATION.—

15 (I) IN GENERAL.—An entity de-
16 scribed in subparagraph (A) may ad-
17 judicate discrepancies between coun-
18 tries that are parties to an inter-
19 national partnership agreement en-
20 tered into under this title only to the
21 extent that such discrepancies relate
22 to requirements under the agreement.

23 (II) IMPACT ON DOMESTIC
24 LAWS.—An entity described in sub-
25 paragraph (A) may not alter the do-

1 mestic law of a country that is a party
2 to an international partnership agree-
3 ment entered into under this title, in-
4 cluding subchapter E of the Internal
5 Revenue Code of 1986, as added by
6 title I.

7 (d) TIMELINE.—

8 (1) IN GENERAL.—The requirements described
9 in subsection (c) with respect to an international
10 partnership agreement are required to be achieved—

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

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

17 (2) APPLICABILITY OF BENEFITS.—

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

23 (B) TERMINATION.—The United States
24 shall maintain the right to terminate an inter-
25 national partnership agreement if the require-

1 ments under subsection (c) are not met in the
2 time described in paragraph (1).

3 (e) EX ANTE CONGRESSIONAL-EXECUTIVE INTER-
4 NATIONAL PARTNERSHIP AGREEMENTS.—

5 (1) IN GENERAL.—The United States Trade
6 Representative may, at the direction of the Presi-
7 dent, enter into and carry out an international part-
8 nership agreement entered into under this title with-
9 out the approval of Congress if the agreement—

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

12 (B) does not require any alteration of sub-
13 chapter E of the Internal Revenue Code of
14 1986, as added by title I.

15 (2) EFFECT.—An agreement described in para-
16 graph (1) that complies with the requirements under
17 subsection (c) shall qualify as an international part-
18 nership agreement for purposes of section 4694 of
19 the Internal Revenue Code of 1986, as added by
20 title I.

21 (3) PUBLICATION; CONGRESSIONAL REVIEW.—
22 An agreement entered into under this subsection
23 shall be—

24 (A) published in the Federal Register; and

1 (B) treated as a final rule prepared by an
2 agency, including with respect to review by
3 Congress under chapter 8 of title 5, United
4 States Code (commonly referred to as the
5 “Congressional Review Act”).

6 (f) EX POST CONGRESSIONAL-EXECUTIVE INTER-
7 NATIONAL PARTNERSHIP AGREEMENTS.—

8 (1) IN GENERAL.—An agreement shall be treat-
9 ed as a congressional-executive agreement and enter
10 into force only if a joint resolution of approval is en-
11 acted in accordance to this subsection if any alter-
12 ation of subchapter E of the Internal Revenue Code
13 of 1986, as added by title I, is required to imple-
14 ment the agreement.

15 (2) SUBMISSION TO CONGRESS AND PUBLICA-
16 TION OF AGREEMENT.—The President shall—

17 (A) post the text of an agreement de-
18 scribed in paragraph (1) on a publicly available
19 website of the Office of the United States
20 Trade Representative for not less than 5 busi-
21 ness days; and

22 (B) submit to Congress on a day on which
23 both Houses of Congress are in session a copy
24 of the final legal text of the agreement, together
25 with—

1 (i) an identification of any United
2 States laws that may be inconsistent with
3 the text; and

4 (ii) a statement of any administrative
5 action proposed to implement the agree-
6 ment.

7 (3) JOINT RESOLUTIONS OF APPROVAL.—

8 (A) DEFINITION.—In this paragraph, the
9 term “joint resolution of approval” means only
10 a joint resolution the matter after the resolving
11 clause of which is as follows: “That Congress
12 approves _____, submitted to Congress on
13 _____”, with the first blank space being
14 filled with the name of the applicable inter-
15 national partnership agreement entered into
16 under this title and the second blank space
17 being filled with the appropriate date.

18 (B) INTRODUCTION.—A joint resolution
19 approving an agreement described in paragraph
20 (1) may be introduced in either House of Con-
21 gress by the chairperson or ranking member of
22 one of the appropriate congressional commit-
23 tees.

24 (C) PROCEDURES IN HOUSE AND SEN-
25 ATE.—Except as provided in this paragraph,

1 the provisions of subsections (d), (e), and (f) of
2 section 152 of the Trade Act of 1974 (19
3 U.S.C. 2192) shall apply with respect to a joint
4 resolution of approval under this paragraph to
5 the same extent and in the same manner as
6 such provisions apply with respect to a joint
7 resolution described in subsection (a) of that
8 section.

9 (D) REFERRAL.—A joint resolution of ap-
10 proval shall be referred exclusively to the appro-
11 priate congressional committees.

12 (E) DISCHARGE.—If the committee of ei-
13 ther House to which a joint resolution of ap-
14 proval has been referred has not reported it by
15 the close of the 40th day after its introduction
16 (excluding any day described in section 154(b)
17 of the Trade Act of 1974 (19 U.S.C. 2194(b))),
18 that committee shall be automatically dis-
19 charged from further consideration of the joint
20 resolution and the joint resolution shall be
21 placed on the appropriate calendar.

22 (F) CONSIDERATION.—

23 (i) IN GENERAL.—It is not in order
24 for—

1 (I) the Senate to consider any
2 joint resolution of approval unless the
3 joint resolution has been reported by
4 the Committee on Finance or the
5 committee has been discharged from
6 consideration of the joint resolution
7 under subparagraph (E); or

8 (II) the House of Representatives
9 to consider any joint resolution of ap-
10 proval unless it has been reported by
11 the Committee on Ways and Means or
12 the committee has been discharged
13 from consideration of the joint resolu-
14 tion under subparagraph (E).

15 (ii) MOTION TO PROCEED IN HOUSE
16 OF REPRESENTATIVES.—A motion in the
17 House of Representatives to proceed to the
18 consideration of a joint resolution of ap-
19 proval may be made only on the second
20 legislative day after the calendar day on
21 which the Member making the motion an-
22 nounces to the House the intention of the
23 Member to do so.

1 (4) RULES OF SENATE AND HOUSE OF REP-
2 REPRESENTATIVES.—This subsection is enacted by Con-
3 gress—

4 (A) as an exercise of the rulemaking power
5 of the Senate and the House of Representa-
6 tives, respectively, and as such is deemed a part
7 of the rules of each House, respectively, and su-
8 persedes other rules only to the extent that it
9 is inconsistent with such other rules; and

10 (B) with the full recognition of the con-
11 stitutional right of either House to change the
12 rules (so far as relating to the procedures of
13 that House) at any time, in the same manner,
14 and to the same extent as any other rule of that
15 House.

16 (g) INCLUSION IN OTHER INTERNATIONAL AGREE-
17 MENTS.—

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

24 (A) a free trade agreement;

1 (B) an international agreement relating to
2 environmental protections, sustainable develop-
3 ment, or climate; or

4 (C) a trade agreement involving inter-
5 national organizations such as the Organisation
6 for Economic Co-operation and Development,
7 the Group of Seven (G7), or any similar organi-
8 zation.

9 (h) RESTRICTIONS ON NEGOTIATIONS.—

10 (1) NONMARKET ECONOMY COUNTRIES.—The
11 authority provided by this section does not include
12 the authority to negotiate or enter into an agree-
13 ment with a nonmarket economy country if the
14 country is—

15 (A) an upper middle-income country; or

16 (B) a high-income country.

17 (2) DOMESTIC POLICIES.—The authority pro-
18 vided by this section does not include the authority
19 to negotiate or enter into an agreement that would
20 establish carbon taxes, fees, pricing, or other mecha-
21 nisms that impose additional costs on products pro-
22 duced by a domestic producer by the United States.

1 **SEC. 202. APPLICATION OF FOREIGN POLLUTION FEE IN**
2 **PARTNERSHIPS.**

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

11 (b) **FAILURE TO MEET REQUIREMENTS.**—If a cov-
12 ered product is produced in a country that is a party to
13 an international partnership agreement entered into under
14 this title but does not meet the requirement described in
15 subsection (a), the fee applied under section 4691 of the
16 Internal Revenue Code of 1986, as added by title I, with
17 respect to the covered product shall be determined based
18 on the applicable tier (as described in paragraph (2) of
19 section 4692(e) of the Internal Revenue Code of 1986, as
20 added by title I) associated with—

21 (1) the pollution intensity difference; reduced
22 by

23 (2) 50 percentage points.

24 (c) **TREATMENT OF LOW-INCOME AND LOWER-MID-**
25 **DLE INCOME COUNTRIES.**—

1 (1) IN GENERAL.—During the 5-year period
2 following the entry into force of an international
3 partnership agreement under this title between the
4 United States and a low-income country or lower-
5 middle-income country—

6 (A) the pollution intensity requirement de-
7 scribed in subsection (a) shall be considered to
8 be met with respect to covered products pro-
9 duced in the country; and

10 (B) no fee shall be applied to covered prod-
11 ucts imported from that country.

12 (2) MODIFICATIONS TO REQUIREMENTS.—

13 (A) IN GENERAL.—During the 10-year pe-
14 riod beginning after the completion of the 5-
15 year period described in paragraph (1), the pol-
16 lution intensity requirement described in sub-
17 section (a) shall be considered to be met with
18 respect to a covered product produced in a
19 country described in paragraph (1) if new ca-
20 pacity in that country for the production of the
21 covered product developed during the 10-year
22 period described in paragraph (1) is not more
23 than 50 percent more pollution intense than the
24 baseline pollution intensity at the time of the

1 entry into force of the international partnership
2 agreement.

3 (B) FUTURE DEVELOPMENT.—For the 10-
4 year period beginning after the completion of
5 the 10-year period described in subparagraph
6 (A), and each 10-year period thereafter, the
7 pollution intensity requirement described in
8 subsection (a) shall be considered to be met
9 with respect to a covered product produced in
10 a country described in paragraph (1) if new ca-
11 pacity in that country for the production of the
12 covered product developed during the preceding
13 10-year period is not more than 25 percent
14 more pollution intense than the baseline pollu-
15 tion intensity at the beginning of such pre-
16 ceding 10-year period.

17 (3) APPLICATION OF FEE.—If the requirements
18 described in paragraph (1) or (2), as applicable, are
19 not met with respect to a covered product, the fee
20 specified in subsection (b) shall apply.

21 (d) TREATMENT OF CIRCUMVENTION.—Nothing in
22 this section shall supersede section 4693(g) of the Internal
23 Revenue Code of 1986, as added by title I, with respect
24 to potential circumvention of the fee assessed under sec-
25 tion 4691 of such Code if—

1 (1) a determination is made under such section
2 4693(g) with respect to a producer; and

3 (2) the producer is owned, operated, or financed
4 in or by a country that is not a party to an inter-
5 national partnership agreement entered into under
6 this title.

7 **SEC. 203. SUPPORT FOR PARTICIPATION OF LOW-INCOME**
8 **AND LOWER-MIDDLE-INCOME COUNTRIES IN**
9 **INTERNATIONAL PARTNERSHIP AGREE-**
10 **MENTS.**

11 (a) IN GENERAL.—The United States Trade Rep-
12 resentative, at the direction of the President, may include,
13 in an international partnership agreement entered into
14 under this title with a low-income country or a lower-mid-
15 dle-income country, provisions providing for—

16 (1) the provision of treatment described in sec-
17 tion 202(c) to that country;

18 (2) the extension of untied or tied aid through
19 a United States export, development, or trade agen-
20 cy for energy or manufacturing technologies and
21 projects;

22 (3) lower initial requirements relating to pollu-
23 tion data monitoring and alternative methods to
24 more accurately project and model pollution under
25 the agreement;

1 (4) support for expansion of monitoring and re-
2 porting of pollution; and

3 (5) technical assistance to ensure full compli-
4 ance with the terms of the agreement.

5 (b) BENCHMARKS AND REQUIREMENTS.—

6 (1) IN GENERAL.—The United States Trade
7 Representative shall establish benchmarks or re-
8 quirements to assess the progress of a country de-
9 scribed in subsection (a) in fully implementing the
10 terms of the international partnership agreement en-
11 tered into under this title.

12 (2) BENCHMARKS.—The benchmarks and re-
13 quirements established under paragraph (1) with re-
14 spect to a country shall include—

15 (A) improving methods of monitoring, re-
16 porting, and verifying pollution levels;

17 (B) if, after the entry into force of the
18 international partnership agreement, new man-
19 ufacturing or production capacity for a covered
20 product is built in the country but that capacity
21 is owned or operated, or the majority of the fi-
22 nancing for that capacity is provided, by an en-
23 tity associated with a country that is not a
24 party to an international partnership agree-
25 ment, treating the new capacity—

- 1 (i) at the pollution intensity of the
2 country that is not a party to an inter-
3 national partnership agreement if the pol-
4 lution intensity for the covered product
5 produced in that country is greater than
6 the pollution intensity of the covered prod-
7 uct produced in the country that is a party
8 to the international partnership agreement;
- 9 (ii) as not eligible for the treatment of
10 a country that is a party to an inter-
11 national partnership agreement described
12 in section 202; and
- 13 (iii) in accordance to the requirements
14 of section 4694 of the Internal Revenue
15 Code of 1986, as added by title I;
- 16 (C) if, after the entry into force of the
17 international partnership agreement, the owner-
18 ship, a stake of ownership, or operation of man-
19 ufacturing or production capacity for a covered
20 product that is in operation on the date of
21 entry into force is transferred to an entity in a
22 country that is not a party to an international
23 partnership agreement, treating such capac-
24 ity—

1 (i) at the pollution intensity of the
2 country that is not a party to an inter-
3 national partnership agreement if the pol-
4 lution intensity for the covered product
5 produced in that country is greater than
6 the pollution intensity of the covered prod-
7 uct produced in the country that is a party
8 to the international partnership agreement;

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

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

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

21 (c) TERMINATION.—The United States shall main-
22 tain the authority to terminate the application of the pro-
23 visions described in subsection (a) to a country if the coun-
24 try does not meet the benchmarks and requirements under
25 subsection (b).

1 (d) INCLUSION OF OTHER INTERNATIONAL PART-
2 NERS.—To the maximum extent practicable, the United
3 States shall seek to include additional high-income coun-
4 tries and upper-middle-income countries in international
5 partnership agreements entered into under this title with
6 low-income countries or lower-middle-income countries.

7 **SEC. 204. FACILITY-SPECIFIC AGREEMENTS RELATING TO**
8 **POLLUTION FEES.**

9 (a) AUTHORITY TO NEGOTIATE FACILITY-SPECIFIC
10 AGREEMENTS.—The United States Trade Representative
11 may negotiate, in coordination with the Secretary of the
12 Treasury and the Administrator of the Environmental
13 Protection Agency, an agreement with a facility located
14 in a foreign country that allows products produced at the
15 facility to be treated at a pollution intensity specific to
16 the facility.

17 (b) REQUIREMENTS.—To be eligible for an agree-
18 ment under subsection (a), a facility is required to—

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

24 (A) the Clean Air Act (42 U.S.C. 7401 et
25 seq.);

1 (B) the Federal Water Pollution Control
2 Act (33 U.S.C. 1251 et seq.) (commonly known
3 as the “Clean Water Act”);

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

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

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

11 (3) provide real-time access to physical pollu-
12 tion monitoring by United States officials or their
13 designees;

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

17 (5) if the pollution intensity of the facility is
18 higher than the pollution intensity of the United
19 States or the least pollution intense foreign country
20 that is a party to an international partnership agree-
21 ment entered into under this title with the United
22 States—

23 (A) provide actionable benchmarks to de-
24 crease the pollution intensity of the facility so
25 that pollution intensity is equal to or less than

1 the pollution intensity of the United States or
2 such other country not later than 10 years after
3 entering into an agreement under subsection
4 (a);

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

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

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

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

23 (6) account for any upstream pollution—

24 (A) at the level associated with the pollu-
25 tion intensity of the country in which the con-

1 tributing part or transforming part is produced,
2 unless the part is covered by an agreement en-
3 tered into under subsection (a); or

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

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

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

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

19 (1) the Trade Representative—

20 (A) informs the appropriate congressional
21 committees of the intention of the Trade Rep-
22 resentative to pursue negotiations with the fa-
23 cility not less than 2 business days after com-
24 mencing negotiations;

1 (B) shares the text of the proposed agree-
2 ment with the appropriate congressional com-
3 mittees for not less than the lesser of—

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

6 (ii) 60 calendar days; and

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

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

14 (d) TREATMENT OF THE AGREEMENT.—

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

23 (2) RESTRICTIONS.—Under no circumstances
24 may an agreement entered into under this section

1 require the United States to alter the implementa-
2 tion of this Act.

3 (e) INELIGIBILITY OF STATE-OWNED FACILITIES IN
4 NONMARKET ECONOMY COUNTRIES.—A facility in a non-
5 market economy country is not eligible for an agreement
6 under this section if the facility—

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

10 (2) has received financing, including in the
11 form of a tax credit or a limit on tax liability, to op-
12 erate the facility by the government of the country
13 or an entity owned or controlled by that government.

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

17 **SEC. 205. DEFINITIONS.**

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

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