

117TH CONGRESS  
1ST SESSION

# H. R. 4534

To amend the Internal Revenue Code of 1986 to establish a border carbon adjustment for the importation of certain goods.

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## IN THE HOUSE OF REPRESENTATIVES

JULY 19, 2021

Mr. PETERS (for himself and Mr. PANETTA) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committees on Science, Space, and Technology, Energy and Commerce, Foreign Affairs, and Education and Labor, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To amend the Internal Revenue Code of 1986 to establish a border carbon adjustment for the importation of certain goods.

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 “Fair, Affordable, Inno-  
5 vative, and Resilient Transition and Competition Act” or  
6 the “FAIR Transition and Competition Act”.

1 **SEC. 2. BORDER CARBON ADJUSTMENT.**

2 The Internal Revenue Code of 1986 is amended by  
3 adding at the end the following new subtitle:

4 **“Subtitle L—Border Carbon**  
5 **Adjustment**

“CHAPTER 101—BORDER CARBON ADJUSTMENT

6 **“CHAPTER 101—BORDER CARBON**  
7 **ADJUSTMENT**

“Sec. 9901. Definitions.

“Sec. 9902. Determination of domestic environmental cost incurred.

“Sec. 9903. Determination of emissions for each sector.

“Sec. 9904. Border carbon adjustment.

“Sec. 9905. Administration of border carbon adjustment.

“Sec. 9906. Allocation of carbon border fee adjustment revenues.

8 **“SEC. 9901. DEFINITIONS.**

9 “For purposes of this subtitle:

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

13 “(2) BASELINE EMISSIONS.—The term ‘baseline  
14 emissions’ means the average greenhouse gas emis-  
15 sions of a company’s relevant sector, as determined  
16 under section 9903(a).

17 “(3) BENCHMARK EMISSIONS.—The term  
18 ‘benchmark emissions’ means the greenhouse gas  
19 emissions of the highest emitting sites within a com-  
20 pany’s relevant sector in the United States, as deter-  
21 mined under section 9903(b).

1           “(4) BORDER CARBON ADJUSTMENT.—The  
2 term ‘border carbon adjustment’ means the fee im-  
3 posed pursuant to section 9904.

4           “(5) CO<sub>2</sub>-e.—The term ‘CO<sub>2</sub>-e’ means the num-  
5 ber of metric tons of carbon dioxide emissions with  
6 the same global warming potential as one metric ton  
7 of another greenhouse gas.

8           “(6) COVERED FUEL.—The term ‘covered fuel’  
9 means natural gas, petroleum, coal, or any other  
10 product derived from natural gas, petroleum, or coal  
11 that is used or may be used so as to emit green-  
12 house gases to the atmosphere.

13           “(7) COVERED GOOD.—The term ‘covered good’  
14 means a covered fuel or a product produced within  
15 a sector.

16           “(8) DOMESTIC ENVIRONMENTAL COST IN-  
17 CURRED.—The term ‘domestic environmental cost  
18 incurred’ means the amount determined under sec-  
19 tion 9902.

20           “(9) GREENHOUSE GAS.—The term ‘greenhouse  
21 gas’ has the same meaning given such term under  
22 paragraph (3) of section 901 of the Energy Inde-  
23 pendence and Security Act of 2007 (42 U.S.C.  
24 17321).

1           “(10) GREENHOUSE GAS CONTENT.—The term  
2           ‘greenhouse gas content’ means the amount of  
3           greenhouse gases, expressed in metric tons of CO<sub>2</sub>-  
4           e, which would be emitted to the atmosphere by the  
5           use of a covered fuel.

6           “(11) IMPORTED.—Irrespective of any other  
7           definition in law or treaty, the term ‘imported’  
8           means to have landed on, brought into, or intro-  
9           duced into any place subject to the jurisdiction of  
10          the United States from a person or place outside the  
11          United States.

12          “(12) IMPORTER.—The term ‘importer’ means  
13          a person who, for any reason, brings a product from  
14          a foreign country into the United States for con-  
15          sumption, use, or warehousing.

16          “(13) PRODUCTION GREENHOUSE GAS EMIS-  
17          SIONS.—The term ‘production greenhouse gas emis-  
18          sions’ means the quantity of greenhouse gases, ex-  
19          pressed in metric tons of CO<sub>2</sub>-e, emitted to the at-  
20          mosphere resulting from the production, manufac-  
21          ture, or assembly of a product, as determined under  
22          section 9905.

23          “(14) SECRETARY.—The term ‘Secretary’  
24          means the Secretary of the Treasury, or the Sec-  
25          retary’s delegate.

1           “(15) SECTOR.—The term ‘sector’ means in-  
2 industrial facilities which produce one of the following  
3 products:

4           “(A) Steel.

5           “(B) Aluminum.

6           “(C) Cement.

7           “(D) Iron.

8           “(E) Any product identified pursuant to  
9 section 9905(e).

10           “(F) Any product for which greater than  
11 50 percent the composition of such product con-  
12 sist of a product described in subparagraphs  
13 (A) through (E).

14           “(16) STATE.—The term ‘State’ means any of  
15 the 50 States, the District of Columbia, or the Com-  
16 monwealth of Puerto Rico.

17           “(17) UPSTREAM GREENHOUSE GAS EMIS-  
18 SIONS.—The term ‘upstream greenhouse gas emis-  
19 sions’ means the quantity of greenhouse gases, ex-  
20 pressed in metric tons of CO<sub>2</sub>-e, emitted to the at-  
21 mosphere resulting from the extraction, processing,  
22 transportation, financing, or other preparation of a  
23 covered fuel for use, as determined under section  
24 9905.

1 **“SEC. 9902. DETERMINATION OF DOMESTIC ENVIRON-**  
2 **MENTAL COST INCURRED.**

3 “Not later than July 1, 2023, and annually there-  
4 after, the Secretary (in coordination with the Director of  
5 the Office of Management and Budget, the Secretary of  
6 Commerce, the Secretary of Energy, the Administrator,  
7 the Secretary of Agriculture, the Secretary of Transpor-  
8 tation, the United States Trade Representative, and the  
9 Secretary of the Interior) shall determine the domestic en-  
10 vironmental cost incurred for each sector, and for the pro-  
11 duction of each covered fuel, based on the average cost  
12 incurred by companies within such sector (or, in the case  
13 of a covered fuel, the average cost incurred to produce  
14 such fuel) to comply with any Federal, State, regional, or  
15 local law, regulation, policy or program which is—

16 “(1) in effect at the time of such determination,  
17 including any such law, regulation, policy, or pro-  
18 gram which is implemented after the date of enact-  
19 ment of the FAIR Transition and Competition Act,  
20 and

21 “(2) designed to limit or reduce greenhouse gas  
22 emissions, including—

23 “(A) the Clean Air Act (42 U.S.C. 7401),

24 “(B) greenhouse gas emissions standards  
25 for passenger cars and light trucks, and

1           “(C) any State, regional, or local law, reg-  
2           ulation, policy, or program that imposes a cap-  
3           and-trade system with respect to, or a tax or  
4           fee on, carbon dioxide.

5   **“SEC. 9903. DETERMINATION OF EMISSIONS FOR EACH SEC-**  
6                                   **TOR.**

7           “(a) BASELINE EMISSIONS.—Not later than July 1,  
8   2023, and annually thereafter, the Administrator shall de-  
9   termine and publish the average greenhouse gas emissions  
10 of each sector during the prior calendar year in order to  
11 demonstrate the amount of progress made in reducing  
12 greenhouse gas emissions in the United States.

13          “(b) BENCHMARK EMISSIONS.—Not later than July  
14 1, 2023, and annually thereafter, the Administrator shall  
15 determine and publish the production greenhouse gas  
16 emissions for the top 1 percent of the emitting production  
17 sites within each sector in the United States during the  
18 prior calendar year.

19   **“SEC. 9904. BORDER CARBON ADJUSTMENT.**

20          “(a) BORDER CARBON ADJUSTMENT.—Beginning on  
21 January 1, 2024, in the case of any importer that imports  
22 a covered good into the United States, there shall be im-  
23 posed a fee—

24                   “(1) in the case of a covered fuel, in an amount  
25                   equal to the product of—

1           “(A) the domestic environmental cost in-  
2           curred in the production of such fuel, multiplied  
3           by

4           “(B) the upstream greenhouse gas emis-  
5           sions of such fuel,

6           “(2) in the case of a product produced within  
7           a sector which is not a covered fuel, in an amount  
8           equal to the product of—

9           “(A) the domestic environmental cost in-  
10          curred for the sector in which such product was  
11          produced, multiplied by

12          “(B) the production greenhouse gas emis-  
13          sions of the product, or

14          “(3) in the case of a product produced within  
15          a sector for which reliable data with respect to the  
16          production greenhouse gas emissions of such product  
17          is not available, in an amount equal to the product  
18          of—

19          “(A) the benchmark emissions for the sec-  
20          tor which produced such product, multiplied by

21          “(B) the domestic environmental cost in-  
22          curred for the sector in which such product was  
23          produced.

24          “(b) EXEMPTIONS.—



1           “(1) IN GENERAL.—Not later than July 1,  
2           2023, and annually thereafter, the Secretary shall  
3           publish an annual report which identifies all applica-  
4           ble countries, with any covered good imported from  
5           an applicable country during the calendar year be-  
6           ginning after the date of publication of such report  
7           to be exempt from the border carbon adjustment.

8           “(2) APPLICABLE COUNTRIES.—For purposes  
9           of this subsection, the term ‘applicable country’  
10          means—

11           “(A) any country included on the list of  
12           Least Developed Countries on the most recent  
13           Development Assistance Committee List of Of-  
14           ficial Development Assistance Recipients pub-  
15           lished by the Organisation for Economic Co-op-  
16           eration and Development, and

17           “(B) any country which—

18           “(i) does not impose a border carbon  
19           adjustment on products produced or manu-  
20           factured in the United States, and

21           “(ii) the Secretary (in coordination  
22           with the Secretary of State, the United  
23           States Trade Representative, the Secretary  
24           of Commerce, the Secretary of Energy, the  
25           Administrator, the Secretary of Agri-

1 culture, the Secretary of Transportation,  
2 and the Secretary of the Interior) deter-  
3 mines enforces laws and regulations de-  
4 signed to limit or reduce greenhouse gas  
5 emissions that are at least as ambitious as  
6 Federal laws and regulations designed to  
7 limit or reduce greenhouse gas emissions.

8 **“SEC. 9905. ADMINISTRATION OF BORDER CARBON ADJUST-**  
9 **MENT.**

10 “(a) IN GENERAL.—The Secretary (in consultation  
11 with the Administrator, the United States Trade Rep-  
12 resentative, and the Secretary of Homeland Security) shall  
13 prescribe regulations and guidance to implement the bor-  
14 der carbon adjustment.

15 “(b) METHODOLOGY.—In determining the production  
16 greenhouse gas emissions of a covered good, the Secretary  
17 shall use reliable methodologies which—

18 “(1) as may be necessary or convenient—

19 “(A) distinguish between different types of  
20 covered fuels,

21 “(B) distinguish between a covered fuel’s  
22 greenhouse gas content and that covered fuel’s  
23 upstream greenhouse gas emissions,

24 “(C) distinguish between the different  
25 types of greenhouse gas emissions which com-

1           pose a covered fuel’s upstream greenhouse gas  
2           emissions, as well as the various processes  
3           which produced those emissions, and

4           “(D) distinguish between the different  
5           types of greenhouse gas emissions which com-  
6           pose a covered good’s production greenhouse  
7           gas emissions, as well as the various processes  
8           which produced those emissions,

9           “(2) ensure that no covered good has the bor-  
10          der carbon adjustment imposed upon it more than  
11          once, and

12          “(3) are consistent with international treaties  
13          and agreements, including free trade agreements.

14          “(c) PETITION PROCEDURE.—The Secretary shall es-  
15          tablish fair, timely, impartial, and, to the extent necessary,  
16          confidential procedures by which the importer of any cov-  
17          ered good may petition the Secretary to revise the Sec-  
18          retary’s determination of the production greenhouse gas  
19          emissions of that importer’s covered good.

20          “(d) INTERNATIONAL NEGOTIATIONS.—The Sec-  
21          retary of State and the United States Trade Representa-  
22          tive shall engage with other countries regarding reducing  
23          global greenhouse gas emissions through trade and ensur-  
24          ing fairness in the application of emissions-based tariffs.

1       “(e) **ADDITIONAL SECTORS.**—The Secretary (in con-  
2 sultation with the Director of the Office of Management  
3 and Budget, the Secretary of Commerce, the Secretary of  
4 Energy, the Administrator, the Secretary of Agriculture,  
5 the Secretary of Transportation, the Secretary of the Inte-  
6 rior, and the United States Trade Representative) shall,  
7 for purposes of section 9901(15)(C), annually identify any  
8 product for which the Secretary determines—

9               “(1) there is reliable data for determining the  
10       production greenhouse gas emissions of such prod-  
11       uct, and

12               “(2) that it is in the interest of the United  
13       States to include such product under section  
14       9901(15) for purposes of application of the border  
15       carbon adjustment with respect to such product.

16       **“SEC. 9906. ALLOCATION OF CARBON BORDER FEE ADJUST-**  
17               **MENT REVENUES.**

18       “With respect to the revenues collected under section  
19       9904—

20               “(1) such revenues shall be used to supplement  
21       appropriations made available in fiscal year 2024  
22       and each fiscal year thereafter to U.S. Customs and  
23       Border Protection, in such amounts as are necessary  
24       to administer the border carbon adjustment, and

1           “(2) from any amounts remaining following any  
2 supplemental appropriation made with respect to  
3 amounts described in paragraph (1)—

4           “(A) 50 percent of such amounts remain-  
5 ing shall be used to provide grants to States as  
6 prescribed in section 3 of the FAIR Transition  
7 and Competition Act, and

8           “(B) 50 percent of such amounts remain-  
9 ing shall be available, as provided by appropria-  
10 tion Acts, for making expenditures to support  
11 the high-impact research, development, dem-  
12 onstration, technology transfer, commercializa-  
13 tion, and export of technologies that reduce or  
14 eliminate greenhouse gas emissions.”.

15 **SEC. 3. RESILIENT COMMUNITIES GRANT PROGRAM.**

16       (a) **IN GENERAL.**—The Secretary shall provide to  
17 each State a Resilient Communities Grant no later than  
18 April 1, 2025, and each calendar year thereafter, in an  
19 amount determined under subsection (c).

20       (b) **ELIGIBLE PURPOSES.**—A State receiving a Resil-  
21 ient Communities Grant under this section shall use the  
22 amount of each such grant as follows:

23           (1) To provide job training and worker transi-  
24 tion assistance, with priority given to workers and  
25 former workers in fossil fuel-related industries.

1           (2) To assist municipalities, counties, or other  
2 political subdivisions of the State in—

3           (A) developing climate vulnerability assess-  
4 ments and adaptation plans to help build resil-  
5 ience to rapid-onset and slow-onset climate haz-  
6 ards; and

7           (B) implementing such plans, which may  
8 include but are not limited to such projects as  
9 climate-smart infrastructure, agricultural cli-  
10 mate solutions, and natural climate solutions to  
11 build climate resilience and support carbon se-  
12 questration.

13          (3) To directly assist frontline communities who  
14 are experiencing the earliest, most severe threats  
15 from climate change with technical assistance and  
16 resources to undertake efforts to build climate resil-  
17 ience.

18          (4) Alleviate historical burdens imposed upon  
19 communities of color, low-income communities, Trib-  
20 al and Indigenous communities, fossil fuel-dependent  
21 communities, and other vulnerable populations that  
22 have been historically under-resourced due to inequi-  
23 ties in resource allocation or disproportionately bur-  
24 dened by environmental hazards, including exposure

1 to climate risks and polluted air, waterways, and  
2 landscapes.

3 (5) To provide relocation assistance to individ-  
4 uals and populations when climate change or the en-  
5 ergy transition threatens their health, well-being, or  
6 livelihood.

7 (6) To assist small businesses that are dis-  
8 proportionately impacted by the border carbon ad-  
9 justment imposed under subtitle L of the Internal  
10 Revenue Code of 1986 (as added by section 2 of this  
11 Act).

12 (c) AMOUNT OF GRANT.—

13 (1) IN GENERAL.—The amount of the Resilient  
14 Communities Grant made to any State for any cal-  
15 endar year shall be equal to the product of—

16 (A) the total amount made available under  
17 section 9906(2)(A) of the Internal Revenue  
18 Code of 1986 (as added by this Act) based on  
19 revenue collected in the prior calendar year; and

20 (B) the State allocation percentage for the  
21 State (as determined under paragraph (2)).

22 (2) STATE ALLOCATION PERCENTAGE.—Not  
23 later than December 1, 2024, and each calendar  
24 year thereafter, the Secretary (in coordination with  
25 the Administrator of the Environmental Protection

1 Agency, the Secretary of Commerce, the Secretary of  
2 Labor, the Secretary of Homeland Security, the Sec-  
3 retary of Transportation, the Secretary of Agri-  
4 culture, and the Secretary of Energy) shall establish  
5 the formula for determining the State allocation per-  
6 centage for the following calendar year, which, for  
7 each State, shall take into account—

8 (A) the percentage of the population of the  
9 United States residing in such State;

10 (B) the vulnerability of such state to cli-  
11 mate change; and

12 (C) the percentage of the total United  
13 States workforce employed in fossil fuel related  
14 industries who are employed in such industries  
15 in such State.

16 (3) CLIMATE VULNERABILITY.—In accounting  
17 for the vulnerability of each State to climate change  
18 under paragraph (2)(B) for the purposes of deter-  
19 mining the State allocation percentage, the parties  
20 identified in paragraph (2) shall—

21 (A) at a minimum, consider the potential  
22 risks from rapid-onset and slow-onset climate  
23 hazards to—

24 (i) human health and safety;



1 (ii) infrastructure and other physical  
2 assets; and

3 (iii) natural and agricultural systems;  
4 (B) account for the disproportionate im-  
5 pact of climate change on socially vulnerable  
6 communities;

7 (C) ensure the methods for determining  
8 climate vulnerability do not result in a formula  
9 for State allocation that inequitably allocates  
10 resources to specific communities based on race,  
11 socioeconomic status, or other such characteris-  
12 tics; and

13 (D) utilize relevant components of existing  
14 metrics and indicators of climate vulnerability  
15 in the United States wherever possible, includ-  
16 ing but not limited to—

17 (i) the FEMA National Risk Index;

18 and

19 (ii) over the past 5 years, the State's  
20 proportion of—

21 (I) National Flood Insurance  
22 Program claims;

23 (II) Fire Mitigation Assistance  
24 Grants; and

1 (III) USDA fast track drought  
2 designations.

3 (4) MINIMUM STATE ALLOCATION.—For pur-  
4 poses of subparagraph (B), the State allocation per-  
5 centage for any State shall not be less than 1 per-  
6 cent.

7 (5) VERIFICATION.—The Secretary shall verify  
8 the State use of grants under this subsection to en-  
9 sure such uses comply with the requirements of this  
10 section. The Secretary may withhold a grant under  
11 this subsection if the Secretary determines that a  
12 State has not complied with such requirements.

13 (d) DEFINITIONS.—In this section:

14 (1) SECRETARY.—The term “Secretary” means  
15 the Secretary of the Treasury or the Secretary’s del-  
16 egate.

17 (2) SLOW-ONSET CLIMATE HAZARD.—The term  
18 “slow-onset climate hazard” means a threat from  
19 climate change that evolves gradually due to incre-  
20 mental change or because of an increasing frequency  
21 or intensity of recurring climate impacts, includ-  
22 ing—

23 (A) sea level rise;

24 (B) desertification;

25 (C) biodiversity loss;

- 1 (D) increasing temperatures;  
2 (E) ocean acidification;  
3 (F) soil salinization;  
4 (G) drought;  
5 (H) land and natural resource degradation;  
6 (I) glacial retreat or reduced snow pack,  
7 and related impacts; and  
8 (J) permafrost thaw.
- 9 (3) STATE.—The term “State” means any of  
10 the 50 States, the District of Columbia, or the Com-  
11 monwealth of Puerto Rico.

