

117TH CONGRESS
1ST SESSION

S. 2378

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

IN THE SENATE OF THE UNITED STATES

JULY 19, 2021

Mr. COONS 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 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”.

7 **SEC. 2. BORDER CARBON ADJUSTMENT.**

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

1 **“Subtitle L—Border Carbon**
 2 **Adjustment**

“CHAPTER 101—BORDER CARBON ADJUSTMENT

3 **“CHAPTER 101—BORDER CARBON**
 4 **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.

5 **“SEC. 9901. DEFINITIONS.**

6 “For purposes of this subtitle:

7 “(1) ADMINISTRATOR.—The term ‘Adminis-
 8 trator’ means the Administrator of the Environ-
 9 mental Protection Agency.

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

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

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

1 “(5) CO₂-e.—The term ‘CO₂-e’ means the num-
2 ber of metric tons of carbon dioxide emissions with
3 the same global warming potential as one metric ton
4 of another greenhouse gas.

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

10 “(7) COVERED GOOD.—The term ‘covered good’
11 means a covered fuel or a product produced within
12 a sector.

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

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

22 “(10) GREENHOUSE GAS CONTENT.—The term
23 ‘greenhouse gas content’ means the amount of
24 greenhouse gases, expressed in metric tons of CO₂-

1 e, which would be emitted to the atmosphere by the
2 use of a covered fuel.

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

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

13 “(13) PRODUCTION GREENHOUSE GAS EMIS-
14 SIONS.—The term ‘production greenhouse gas emis-
15 sions’ means the quantity of greenhouse gases, ex-
16 pressed in metric tons of CO₂-e, emitted to the at-
17 mosphere resulting from the production, manufac-
18 ture, or assembly of a product, as determined under
19 section 9905.

20 “(14) SECRETARY.—The term ‘Secretary’
21 means the Secretary of the Treasury, or the Sec-
22 retary’s delegate.

23 “(15) SECTOR.—The term ‘sector’ means in-
24 dustrial facilities which produce one of the following
25 products:

1 “(A) Steel.

2 “(B) Aluminum.

3 “(C) Cement.

4 “(D) Iron.

5 “(E) Any product identified pursuant to
6 section 9905(e).

7 “(F) Any product for which greater than
8 50 percent of the composition of such product
9 consists of a product described in subpara-
10 graphs (A) through (E).

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

14 “(17) UPSTREAM GREENHOUSE GAS EMIS-
15 SIONS.—The term ‘upstream greenhouse gas emis-
16 sions’ means the quantity of greenhouse gases, ex-
17 pressed in metric tons of CO₂-e, emitted to the at-
18 mosphere resulting from the extraction, processing,
19 transportation, financing, or other preparation of a
20 covered fuel for use, as determined under section
21 9905.

22 **“SEC. 9902. DETERMINATION OF DOMESTIC ENVIRON-
23 MENTAL COST INCURRED.**

24 “Not later than July 1, 2023, and annually there-
25 after, the Secretary (in coordination with the Director of

1 the Office of Management and Budget, the Secretary of
2 Commerce, the Secretary of Energy, the Administrator,
3 the Secretary of Agriculture, the Secretary of Transpor-
4 tation, the United States Trade Representative, and the
5 Secretary of the Interior) shall determine the domestic en-
6 vironmental cost incurred for each sector, and for the pro-
7 duction of each covered fuel, based on the average cost
8 incurred by companies within such sector (or, in the case
9 of a covered fuel, the average cost incurred to produce
10 such fuel) to comply with any Federal, State, regional, or
11 local law, regulation, policy or program which is—

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

17 “(2) designed to limit or reduce greenhouse gas
18 emissions, including—

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

20 “(B) greenhouse gas emissions standards
21 for passenger cars and light trucks, and

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

1 **“SEC. 9903. DETERMINATION OF EMISSIONS FOR EACH SEC-**
2 **TOR.**

3 “(a) BASELINE EMISSIONS.—Not later than July 1,
4 2023, and annually thereafter, the Administrator shall de-
5 termine and publish the average greenhouse gas emissions
6 of each sector during the prior calendar year in order to
7 demonstrate the amount of progress made in reducing
8 greenhouse gas emissions in the United States.

9 “(b) BENCHMARK EMISSIONS.—Not later than July
10 1, 2023, and annually thereafter, the Administrator shall
11 determine and publish the production greenhouse gas
12 emissions for the top 1 percent of the emitting production
13 sites within each sector in the United States during the
14 prior calendar year.

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

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

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

22 “(A) the domestic environmental cost in-
23 curred in the production of such fuel, multiplied
24 by

25 “(B) the upstream greenhouse gas emis-
26 sions of such fuel,

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

4 “(A) the domestic environmental cost in-
5 curred for the sector in which such product was
6 produced, multiplied by

7 “(B) the production greenhouse gas emis-
8 sions of the product, or

9 “(3) in the case of a product produced within
10 a sector for which reliable data with respect to the
11 production greenhouse gas emissions of such product
12 is not available, in an amount equal to the product
13 of—

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

16 “(B) the domestic environmental cost in-
17 curred for the sector in which such product was
18 produced.

19 “(b) EXEMPTIONS.—

20 “(1) IN GENERAL.—Not later than July 1,
21 2023, and annually thereafter, the Secretary shall
22 publish an annual report which identifies all applica-
23 ble countries, with any covered good imported from
24 an applicable country during the calendar year be-

1 ginning after the date of publication of such report
2 to be exempt from the border carbon adjustment.

3 “(2) APPLICABLE COUNTRIES.—For purposes
4 of this subsection, the term ‘applicable country’
5 means—

6 “(A) any country included on the list of
7 Least Developed Countries on the most recent
8 Development Assistance Committee List of Of-
9 ficial Development Assistance Recipients pub-
10 lished by the Organisation for Economic Co-op-
11 eration and Development, and

12 “(B) any country which—

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

16 “(ii) the Secretary (in coordination
17 with the Secretary of State, the United
18 States Trade Representative, the Secretary
19 of Commerce, the Secretary of Energy, the
20 Administrator, the Secretary of Agri-
21 culture, the Secretary of Transportation,
22 and the Secretary of the Interior) deter-
23 mines enforces laws and regulations de-
24 signed to limit or reduce greenhouse gas
25 emissions that are at least as ambitious as

1 Federal laws and regulations designed to
2 limit or reduce greenhouse gas emissions.

3 **“SEC. 9905. ADMINISTRATION OF BORDER CARBON ADJUST-**
4 **MENT.**

5 “(a) IN GENERAL.—The Secretary (in consultation
6 with the Administrator, the United States Trade Rep-
7 resentative, and the Secretary of Homeland Security) shall
8 prescribe regulations and guidance to implement the bor-
9 der carbon adjustment.

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

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

14 “(A) distinguish between different types of
15 covered fuels,

16 “(B) distinguish between a covered fuel’s
17 greenhouse gas content and that covered fuel’s
18 upstream greenhouse gas emissions,

19 “(C) distinguish between the different
20 types of greenhouse gas emissions which com-
21 pose a covered fuel’s upstream greenhouse gas
22 emissions, as well as the various processes
23 which produced those emissions, and

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

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

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

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

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

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

20 “(e) ADDITIONAL SECTORS.—The Secretary (in con-
21 sultation with the Director of the Office of Management
22 and Budget, the Secretary of Commerce, the Secretary of
23 Energy, the Administrator, the Secretary of Agriculture,
24 the Secretary of Transportation, the Secretary of the Inte-
25 rior, and the United States Trade Representative) shall,

1 for purposes of section 9901(15)(C), annually identify any
2 product for which the Secretary determines—

3 “(1) there is reliable data for determining the
4 production greenhouse gas emissions of such prod-
5 uct, and

6 “(2) that it is in the interest of the United
7 States to include such product under section
8 9901(15) for purposes of application of the border
9 carbon adjustment with respect to such product.

10 **“SEC. 9906. ALLOCATION OF CARBON BORDER FEE ADJUST-**
11 **MENT REVENUES.**

12 “With respect to the revenues collected under section
13 9904—

14 “(1) such revenues shall be used to supplement
15 appropriations made available in fiscal year 2024
16 and each fiscal year thereafter to U.S. Customs and
17 Border Protection, in such amounts as are necessary
18 to administer the border carbon adjustment, and

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

22 “(A) 50 percent of such amounts remain-
23 ing shall be used to provide grants to States as
24 prescribed in section 3 of the FAIR Transition
25 and Competition Act, and

1 “(B) 50 percent of such amounts remain-
2 ing shall be available, as provided by appropria-
3 tion Acts, for making expenditures to support
4 the high-impact research, development, dem-
5 onstration, technology transfer, commercializa-
6 tion, and export of technologies that reduce or
7 eliminate greenhouse gas emissions.”.

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

9 (a) IN GENERAL.—The Secretary shall provide to
10 each State a Resilient Communities Grant no later than
11 April 1, 2025, and each calendar year thereafter, in an
12 amount determined under subsection (c).

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

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

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

21 (A) developing climate vulnerability assess-
22 ments and adaptation plans to help build resil-
23 ience to rapid-onset and slow-onset climate haz-
24 ards; and

1 (B) implementing such plans, which may
2 include but are not limited to such projects as
3 climate-smart infrastructure, agricultural cli-
4 mate solutions, and natural climate solutions to
5 build climate resilience and support carbon se-
6 questration.

7 (3) To directly assist frontline communities who
8 are experiencing the earliest, most severe threats
9 from climate change with technical assistance and
10 resources to undertake efforts to build climate resil-
11 ience.

12 (4) Alleviate historical burdens imposed upon
13 communities of color, low-income communities, Trib-
14 al and Indigenous communities, fossil fuel-dependent
15 communities, and other vulnerable populations that
16 have been historically under-resourced due to inequi-
17 ties in resource allocation or disproportionately bur-
18 dened by environmental hazards, including exposure
19 to climate risks and polluted air, waterways, and
20 landscapes.

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

1 (6) To assist small businesses that are dis-
2 proportionately impacted by the border carbon ad-
3 justment imposed under subtitle L of the Internal
4 Revenue Code of 1986 (as added by section 2 of this
5 Act).

6 (c) AMOUNT OF GRANT.—

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

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

14 (B) the State allocation percentage for the
15 State (as determined under paragraph (2)).

16 (2) STATE ALLOCATION PERCENTAGE.—Not
17 later than December 1, 2024, and each calendar
18 year thereafter, the Secretary (in coordination with
19 the Administrator of the Environmental Protection
20 Agency, the Secretary of Commerce, the Secretary of
21 Labor, the Secretary of Homeland Security, the Sec-
22 retary of Transportation, the Secretary of Agri-
23 culture, and the Secretary of Energy) shall establish
24 the formula for determining the State allocation per-

1 centage for the following calendar year, which, for
2 each State, shall take into account—

3 (A) the percentage of the population of the
4 United States residing in such State;

5 (B) the vulnerability of such State to cli-
6 mate change; and

7 (C) the percentage of the total United
8 States workforce employed in fossil fuel-related
9 industries who are employed in such industries
10 in such State.

11 (3) CLIMATE VULNERABILITY.—In accounting
12 for the vulnerability of each State to climate change
13 under paragraph (2)(B) for the purposes of deter-
14 mining the State allocation percentage, the parties
15 identified in paragraph (2) shall—

16 (A) at a minimum, consider the potential
17 risks from rapid-onset and slow-onset climate
18 hazards to—

19 (i) human health and safety;

20 (ii) infrastructure and other physical
21 assets; and

22 (iii) natural and agricultural systems;

23 (B) account for the disproportionate im-
24 pact of climate change on socially vulnerable
25 communities;

1 (C) ensure the methods for determining
2 climate vulnerability do not result in a formula
3 for State allocation that inequitably allocates
4 resources to specific communities based on race,
5 socioeconomic status, or other such characteris-
6 tics; and

7 (D) utilize relevant components of existing
8 metrics and indicators of climate vulnerability
9 in the United States wherever possible, includ-
10 ing but not limited to—

11 (i) the FEMA National Risk Index;

12 and

13 (ii) over the past 5 years, the State's
14 proportion of—

15 (I) National Flood Insurance
16 Program claims;

17 (II) Fire Mitigation Assistance
18 Grants; and

19 (III) USDA fast track drought
20 designations.

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

1 (5) VERIFICATION.—The Secretary shall verify
2 the State use of grants under this subsection to en-
3 sure such uses comply with the requirements of this
4 section. The Secretary may withhold a grant under
5 this subsection if the Secretary determines that a
6 State has not complied with such requirements.

7 (d) DEFINITIONS.—In this section:

8 (1) SECRETARY.—The term “Secretary” means
9 the Secretary of the Treasury or the Secretary’s del-
10 egate.

11 (2) SLOW-ONSET CLIMATE HAZARD.—The term
12 “slow-onset climate hazard” means a threat from
13 climate change that evolves gradually due to incre-
14 mental change or because of an increasing frequency
15 or intensity of recurring climate impacts, includ-
16 ing—

17 (A) sea level rise;

18 (B) desertification;

19 (C) biodiversity loss;

20 (D) increasing temperatures;

21 (E) ocean acidification;

22 (F) soil salinization;

23 (G) drought;

24 (H) land and natural resource degradation;

1 (I) glacial retreat or reduced snow pack,
2 and related impacts; and

3 (J) permafrost thaw.

4 (3) STATE.—The term “State” means any of
5 the 50 States, the District of Columbia, or the Com-
6 monwealth of Puerto Rico.

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