To amend the Internal Revenue Code of 1986 to create a carbon border adjustment based on carbon intensity, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 7, 2022

Mr. WHITEHOUSE (for himself, Mr. COONS, Mr. SCHATZ, and Mr. HEINRICH) 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 create a carbon border adjustment based on carbon intensity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Clean Competition Act”.

SEC. 2. CARBON INTENSITY CHARGE.

(a) In General.—Chapter 38 of the Internal Revenue Code of 1986 is amended by adding at the end the following new subchapter:
“Subchapter E—Carbon Intensity Charge

(See. 4691. Calculation of carbon intensity.
(See. 4692. Imposition of carbon intensity charge.
(See. 4693. Rebate.
(See. 4694. Definitions.

“SEC. 4691. CALCULATION OF CARBON INTENSITY.

“(a) Reporting Requirements.—Not later than June 30, 2025, and annually thereafter, any covered entity shall, for each eligible facility operated by such entity, report to the Secretary with respect to the following:

“(1) Any information required to be reported to the Administrator under the Greenhouse Gas Reporting Program (or which would be required to be reported notwithstanding any other provision of law prohibiting the implementation of or use of funds for such requirements) for the preceding calendar year.

“(2) The total amount of electricity used at such facility during the preceding calendar year, including—

“(A) whether such electricity was provided through the electric grid or a dedicated generation source,

“(B) the terms of any power purchase agreements with respect to such facility, and

“(C) with respect to any electricity which was not provided through the electric grid, the greenhouse gas emissions associated with the
production of such electricity, provided that such emissions are not reported pursuant to paragraph (1).

“(3) The total weight (expressed in tons) of each covered primary good produced at such facility during the preceding calendar year.

“(b) CALCULATION.—

“(1) CARBON INTENSITY.—

“(A) ELIGIBLE FACILITY.—For purposes of this subchapter, for each calendar year, the carbon intensity with respect to any eligible facility shall be an amount equal to the quotient of—

“(i) the covered emissions (as determined under paragraph (2)) with respect to such facility, divided by

“(ii) the total weight (expressed in tons) of covered primary goods produced at such facility during the preceding calendar year.

“(B) COVERED NATIONAL INDUSTRY.—

For purposes of this subchapter, the carbon intensity with respect to any covered national industry shall be an amount equal to the quotient of—
“(i) an amount equal to the sum of the covered emissions (as determined under paragraph (2)) with respect to all eligible facilities which produce covered primary goods which are included within such industry for calendar year 2024, divided by “(ii) the total weight (expressed in tons) of covered primary goods produced at all such eligible facilities during such year. “(C) PETITION FOR SPECIFIC GOODS.— “(i) IN GENERAL.—In the case of any covered national industry which produces more than 1 covered primary good, a covered entity may file a petition with the Secretary to determine the carbon intensity with respect to a specific covered primary good. “(ii) REVIEW.—With respect to any covered primary good which is included in a petition described in clause (i), the Secretary (in coordination with the Administrator and the Secretary of Energy) shall approve such petition if— “(I) the chemical, physical, or mechanical production processes for
such good are substantially different as compared to other covered primary goods produced within the same covered national industry, and

“(II) the carbon intensity determined with respect to such good is at least 25 percent greater than the carbon intensity determined for other covered primary goods produced within the same covered national industry.

“(iii) RECALCULATION.—In the case of any petition described in clause (i) which is approved by the Secretary pursuant to clause (ii), the Secretary (in coordination with the Administrator) shall redetermine the carbon intensity with respect to the covered national industry which includes production of the covered primary good which is the subject of such petition by excluding any covered emissions associated with the production of such good for purposes of the determination made under subparagraph (B) for such industry.

“(D) DETERMINATION.—Any determination of carbon intensity under this paragraph
shall be made by the Secretary in coordination with the Administrator and the Secretary of Energy.

“(2) COVERED EMISSIONS.—

“(A) IN GENERAL.—For purposes of this subsection, for each calendar year, the amount of covered emissions with respect to any eligible facility shall be an amount (as determined by the Secretary, in coordination with the Administrator) equal to—

“(i) the amount equal to the sum of—

“(I) the total greenhouse gas emissions associated with the production of covered primary goods at such facility during the preceding calendar year (as reported pursuant to subsection (a)), plus

“(II) the total greenhouse gas emissions associated with any electricity used at such facility for the production of such goods during the preceding calendar year, minus

“(ii) the total greenhouse gas emissions which are captured and disposed of in secure geological storage (in compliance
with the regulations established under section 45Q(f)(2)) during the preceding calendar year.

“(B) DIRECT AIR CAPTURE.—For purposes of subparagraph (A)(ii), in the case of any greenhouse gas emissions which are captured directly from the ambient air, the operator of the facility which captured such emissions may apportion such emissions amongst any eligible facilities which are under common control of such operator.

“(C) EMISSIONS FOR ELECTRICITY USED.—

“(i) IN GENERAL.—For purposes of subparagraph (A)(i)(II), the amount of greenhouse gas emissions associated with electricity provided through the electric grid shall be determined based on the average carbon intensity for the regional grid in which the eligible facility is located for the preceding calendar year.

“(ii) EXCEPTION.—In the case of an eligible facility which is subject to a power purchase agreement which guarantees that any electricity provided under such agree-
ment is generated not less than 15 minutes
prior to use by such facility and within the
same regional transmission zone as such
facility—

“(I) clause (i) shall not apply,
and

“(II) the amount of greenhouse
gas emissions associated with such
electricity shall be determined based
on the average carbon intensity of the
electricity provided under such agree-
ment.

“(3) IMPORTED GOODS.—

“(A) IN GENERAL.—In the case of any
covered primary good which is imported into
the United States, the carbon intensity with re-
spect to such good shall be determined by the
Secretary (in coordination with the relevant
parties) based on—

“(i) the carbon intensity of the gen-
eral economy of the country of origin of
such good, or

“(ii) if the Secretary (in coordination
with the relevant parties) determines that
transparent, verifiable, and reliable infor-
mation is available with respect to any covered national industry in the country of origin of such good and that such country of origin is a transparent market economy in which inter-firm resource shuffling is unlikely to occur, the carbon intensity of the covered national industry in such country which includes production of such good.

“(B) PETITION.—

“(i) IN GENERAL.—In the case of any entity which imports a covered primary good for which the carbon intensity can be determined under subparagraph (A)(ii), such entity may file a petition with the Secretary to determine the charge under section 4692, if any, based on the average carbon intensity with respect to the production of such good by the manufacturer within the country of origin.

“(ii) AGGREGATION RULE.—For purposes of this subparagraph, the average carbon intensity with respect to the production of a covered primary good shall be determined based upon greenhouse gas emission and production data from all fa-
ilities which produce such good which are
under common control of the manufacturer
of such good, including any subsidiary,
parent company, or joint venture of such
manufacturer within the country of origin.

“(iii) INPUTS.—With respect to any
covered primary good which is imported
into the United States and for which other
covered primary goods (other than petro-
leum, natural gas, or coal) were used as in-
puts by the manufacturer in the produc-
tion of the imported covered primary good,
any greenhouse gas emissions associated
with the production of the covered primary
goods used as inputs shall be included in
the determination of the greenhouse gas
emissions associated with production of the
imported covered primary good.

“(iv) DATA PROVISION.—In the case
of an entity which files a petition described
in clause (i), such entity shall provide the
Secretary with an environmental product
declaration containing any information
which would otherwise be required to be
reported under subsection (a) if the facili-
ties which produced the covered primary
good to which the petition applies were
subject to the reporting requirements
under the Greenhouse Gas Reporting Pro-
gram.

“(C) Carbon intensity of the gen-
eral economy.—For purposes of this para-
graph, with respect to any country, the carbon
intensity of the general economy of such coun-
try shall be an amount equal to the quotient
of—

“(i) the gross domestic product of
such country for the year described in
clause (ii), divided by

“(ii) the production-based greenhouse
gas emissions of such country for the most
recent year for which the Secretary deter-
mines there is reliable information.

“(D) Exclusion.—In the case of any cov-
ered primary good which is imported into the
United States and was produced in a relatively
least developed country (as described in section
124 of the Foreign Assistance Act of 1961 (22
U.S.C. 2151v)), this paragraph shall not apply.
“(E) INTER-FIRM RESOURCE SHUFFLING.—For purposes of this paragraph, the term ‘inter-firm resource shuffling’ means any buying, selling, trading, exchanging, or other transfer of control of production facilities between entities based on the carbon intensity of such facilities for the purpose of creating entities with relatively lower carbon intensity and entities with relatively higher carbon intensity.

“(c) PUBLICATION.—The Secretary (in coordination with the relevant parties) shall annually publish any carbon intensity which has been determined under subsection (b) with respect to any eligible facility, covered national industry, covered primary good, foreign manufacturer, or country of origin.

“(d) RELEVANT PARTIES.—For purposes of this section, the term ‘relevant parties’ means—

“(1) the Administrator,

“(2) the Secretary of Energy,

“(3) the Secretary of Commerce,

“(4) the United States Trade Representative,

and

“(5) the Chair and Vice Chair of the United States International Trade Commission.
SEC. 4692. IMPOSITION OF CARBON INTENSITY CHARGE.

“(a) In General.—

“(1) Importation of goods.—

“(A) In general.—

“(i) Covered primary goods.—In the case of any covered primary good imported into the United States during any calendar year beginning after December 31, 2023, there is hereby imposed a charge in an amount equal to the product of—

“(I)(aa) in the case of a good for which the carbon intensity is determined under section 4691(b)(3)(A)(i), the amount (if any) by which the amount determined under clause (iii) with respect to such good exceeds an amount equal to the applicable percentage of the carbon intensity (as determined under section 4691(b)(1)(B)) for the covered national industry which includes such good, or

“(bb) in the case of a good for which the carbon intensity is determined under subparagraph (A)(ii) or (B) of section 4691(b)(3), the amount
(if any) by which the carbon intensity determined under such subparagraph with respect to such good exceeds an amount equal to the applicable percentage of the carbon intensity (as determined under section 4691(b)(1)(B)) for the covered national industry which includes such good, multiplied by

“(II) the total weight (expressed in tons) of the good imported into the United States, multiplied by

“(III) the carbon price.

“(ii) FINISHED GOODS.—

“(I) IN GENERAL.—In the case of any imported finished good which is imported into the United States during any calendar year beginning after December 31, 2025, there is hereby imposed a charge in an amount equal to the sum of the amounts determined under subclause (II) with respect to each covered primary good which is a component part of such imported finished good.
“(II) COMPONENTS.—The amount determined under this sub-clause with respect to any covered primary good which is a component part of an imported finished good is an amount equal to the product of—

“(aa) the amount (if any) determined under clause (i)(I) if such clause were applied with respect to such good, multiplied by

“(bb) the total weight (expressed in tons) of the covered primary good, multiplied by

“(cc) the carbon price.

“(iii) CALCULATION FOR CERTAIN FOREIGN GOODS.—For purposes of clause (i)(I)(aa), the amount determined under this clause with respect to any covered primary good shall be equal to the product of—

“(I) an amount equal to the quotient of—

“(aa) the carbon intensity of the general economy (as determined under section
4691(b)(3)(C)) of the country of origin of such good, divided by

“(bb) the carbon intensity of the general economy (as so determined) of the United States, multiplied by

“(II) an amount equal to the applicable percentage of the carbon intensity (as determined under section 4691(b)(1)(B)) for the covered national industry which includes such good.

“(B) CHARGE DUE.—The charge imposed under this paragraph with respect to any goods imported during any calendar year shall be paid by the entity which imported such goods not later than September 30 of the calendar year subsequent to such year.

“(C) EXCLUSION.—In the case of any covered primary good (including any covered primary good which is a component part of an imported finished good) which is imported into the United States and was produced in a relatively least developed country (as described in section
124 of the Foreign Assistance Act of 1961 (22
U.S.C. 2151v)), this paragraph shall not apply.

“(2) DOMESTIC PRODUCTION OF COVERED PRI-
MARY GOODS.—

“(A) IN GENERAL.—In the case of any eli-
gible facility, for each calendar year beginning
after December 31, 2023, there is hereby im-
posed a charge in an amount equal to the prod-
uct of—

“(i) the amount (if any) by which the
carbon intensity of such facility (as deter-
dined under subparagraph (A) of section
4691(b)(1)) exceeds—

“(I) an amount equal to the ap-
licable percentage of the carbon in-
tensity for the covered national indus-
try (as determined under subpara-
graph (B) of section 4691(b)(1))
which includes any covered primary
good produced by such facility, or

“(II) in the case of a covered pri-
mary good produced by such facility
which is subject to an approved peti-
tion under subparagraph (C) of such
section, an amount equal to the appli-
cable percentage of the carbon intensity determined with respect to such good, multiplied by

“(ii) the total weight (expressed in tons) of any covered primary goods produced by such facility during such calendar year, multiplied by

“(iii) the carbon price.

“(B) Charge due.—The charge imposed under this paragraph with respect to any calendar year shall be paid by the covered entity not later than September 30 of the calendar year subsequent to such year.

“(b) Applicable Percentage.—For purposes of paragraphs (1)(A) and (2)(A) of subsection (a), the applicable percentage shall be—

“(1) for calendar year 2024, 100 percent,

“(2) for calendar years 2025 through 2028, the applicable percentage for the preceding calendar year, reduced by 2.5 percentage points, and

“(3) for any calendar year subsequent to calendar year 2028, the applicable percentage for the preceding calendar year, reduced by 5 percentage points (but not less than zero).

“(c) Carbon Price.—
“(1) IN GENERAL.—For purposes of paragraphs (1)(A) and (2)(A) of subsection (a), the carbon price shall be—

“(A) for 2024, $55, and

“(B) for each calendar year subsequent to the calendar year described in subparagraph (A), an amount equal to the sum of—

“(i) the carbon price for the preceding year, plus

“(ii) an amount equal to—

“(I) the amount described in clause (i), multiplied by

“(II) the percentage by which the CPI for the preceding calendar year exceeds the CPI for the second preceding calendar year, increased by 5 percentage points.

“(2) CPI.—Rules similar to the rules of paragraphs (4) and (5) of section 1(f) shall apply for purposes of this subsection.

“(3) ROUNDING.—Any applicable amount determined under subsection (a) which is not a multiple of $1 shall be rounded to the nearest dollar.

“SEC. 4693. REBATE.

“(a) EXPORTS.—
“(1) IN GENERAL.—In the case of a person who exports any covered primary good from the United States which was produced in an eligible facility for which a charge has been imposed under section 4692, a refund shall be allowed to such person in the same manner as if it were an overpayment of the charge imposed by such section in an amount equal to the amount determined under paragraph (2).

“(2) RECALCULATION.—In the case of a covered primary good described in paragraph (1), the amount determined under this paragraph is an amount equal to the charge that would be imposed under section 4692 with respect to such good if subsection (a)(1)(A) of such section were applied by substituting ‘the carbon intensity of all eligible facilities (as determined under subparagraph (A) of section 4691(b)(1)) operated by the covered entity which produced the covered primary good described in section 4693(a)(1)’ for ‘the carbon intensity of such facility (as determined under subparagraph (A) of section 4691(b)(1))’.

“SEC. 4694. DEFINITIONS.

“For purposes of this subchapter—
“(1) ADMINISTRATOR.—The term ‘Administrator’ means the Administrator of the Environmental Protection Agency.

“(2) CO2-e.—

“(A) IN GENERAL.—Subject to subparagraph (B), the term ‘CO2-e’ means, with respect to a greenhouse gas, the quantity of such gas that has a global warming potential equivalent to 1 metric ton of carbon dioxide, as determined pursuant to table A–1 of subpart A of part 98 of title 40, Code of Federal Regulations, as in effect on the date of the enactment of this subchapter.

“(B) METHANE.—In the case of methane, the term ‘CO2-e’ means the quantity of methane that has the same global warming potential over a 20-year period as 1 metric ton of carbon dioxide, as determined by the Administrator.

“(3) COVERED ENTITY.—The term ‘covered entity’ means any entity which—

“(A) produces any covered primary good, and

“(B) is required to report emissions of greenhouse gases under the Greenhouse Gas Reporting Program (or would be required to re-
port such emissions notwithstanding any other provision of law prohibiting the implementation of or use of funds for such requirements).

“(4) COVERED NATIONAL INDUSTRY.—

“(A) IN GENERAL.—The term ‘covered national industry’ means any industry which is assigned a 6-digit NAICS code which is included in any of the following clauses:

“(i) 211120 (petroleum extraction).
“(ii) 211130 (natural gas extraction).
“(iii) 212112 (underground coal mining).
“(iv) 322110 (pulp mills).
“(v) 322121 (paper mills).
“(vi) 322122 (newsprint mills).
“(vii) 322130 (paperboard mills).
“(viii) 324110 (petroleum refineries).
“(ix) 324121 (asphalt paving mixture and block manufacturing).
“(x) 324122 (asphalt shingle and coating materials manufacturing).
“(xi) 324199 (all other petroleum and coal products manufacturing).
“(xii) 325110 (petrochemical manufacturing).
“(xiii) 325120 (industrial gas manufacturing).

“(xiv) 325193 (ethyl alcohol manufacturing).

“(xv) 325199 (other basic organic chemical manufacturing).

“(xvi) 325311 (nitrogenous fertilizer manufacturing).

“(xvii) 327211, 327212, 327213, or 327215 (glass).

“(xviii) 327310 (cement).

“(xix) 327410 or 327420 (lime and gypsum product manufacturing).

“(xx) 331110 (iron and steel).

“(xxi) 331313 (aluminum).

“(B) EXCEPTIONS.—

“(i) INDUSTRIAL GAS MANUFACTURING.—Subparagraph (A)(xiii) shall apply only with respect to the production of hydrogen.

“(ii) OTHER BASIC ORGANIC CHEMICAL MANUFACTURING.—Subparagraph (A)(xv) shall apply only with respect to the production of adipic acid.
“(5) COVERED PRIMARY GOOD.—The term ‘covered primary good’ means any good which is produced as part of a trade or business operating within a covered national industry.

“(6) ELIGIBLE FACILITY.—The term ‘eligible facility’ means any facility (as such term is defined for purposes of the Greenhouse Gas Reporting Program) which is—

“(A) operated by a covered entity for the production of any covered primary good, and

“(B) located within the United States.

“(7) GREENHOUSE GAS.—The term ‘greenhouse gas’ has the meaning given such term under section 211(o)(1)(G) of the Clean Air Act, as in effect on the date of the enactment of this subchapter.

“(8) GREENHOUSE GAS EMISSIONS.—The term ‘greenhouse gas emissions’ means the amount of greenhouse gases, expressed in metric tons of CO2-e, which were emitted to the atmosphere.


“(10) IMPORTED FINISHED GOOD.—
“(A) IN GENERAL.—The term ‘imported finished good’ means any good which—

“(i) is imported into the United States, and

“(ii)(I) for calendar year 2026 and 2027, contains greater than 500 pounds of any combination of any covered primary goods, and

“(II) for any calendar year after calendar year 2027, contains greater than 100 pounds of any combination of any covered primary goods.

“(11) NAICS.—The term ‘NAICS’ means the North American Industrial Classification System.”.

(b) CLERICAL AMENDMENT.—The table of subchapters for chapter 38 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following new item:

“SUBCHAPTER E—CARBON INTENSITY CHARGE”.

(c) GRANT PROGRAM.—

(1) IN GENERAL.—For fiscal year 2025 and each subsequent fiscal year, there are appropriated, out of any funds in the Treasury not otherwise appropriated, to the Department of the Treasury amounts equal to applicable amount for the preceding fiscal year, with such amounts to be used by
the Secretary, in conjunction with the Secretary of Energy and the Administrator of the Environmental Protection Agency, to establish a competitive grant program to award grants to eligible entities for investments in new technology—

(A) in the case of an existing eligible facility, to reduce their carbon intensity, and

(B) in the case of a proposed eligible facility, to ensure best-in-class carbon intensity.

(2) Modeled on Diesel Emissions Reduction Act.—For purposes of the program described in paragraph (1), such program shall be administered in a manner similar to the national grant program of the Environmental Protection Agency under subtitle G of title VII of the Energy Policy Act of 2005 (42 U.S.C. 16131 et seq.).

(3) Awarding of Grant Amounts.—For purposes of awarding grants under the program described in paragraph (1), the Secretary (in conjunction with the Administrator and the Secretary of Energy) shall—

(A) give preference to proposed investments—

(i) that would result in the greatest decrease in carbon intensity,
(ii) for facilities located in economically distressed communities that have experienced a loss of manufacturing jobs,

(iii) that would maximize improvement in local air quality, or

(iv) for facilities located in communities with high cumulative pollution burdens (as determined by the Administrator), and

(B) allocate grant funds to eligible facilities and proposed eligible facilities which produce covered primary goods that are included within a covered national industry in approximate proportion to the share of total greenhouse gas emissions for which such industry is responsible for emitting.

(4) RECAPTURE.—In the case of any eligible entity which has been awarded a grant under the program described in paragraph (1) with respect to any eligible facility or proposed eligible facility, if such entity fails to—

(A) within 3 years of the awarding of such grant, complete the proposed investments in new technology at such facility, or
(B) during the 10-year period after such investments are placed in service—

(i) in the case of an existing eligible facility, achieve and maintain the reduction in carbon intensity proposed in the application for such grant, or

(ii) in the case of a proposed eligible facility, achieve and maintain the best-in-class carbon intensity proposed in the application for such grant,

the Secretary shall recapture, pursuant to such regulations or other guidance issued by the Secretary, the amount of the grant awarded with respect to such facility.

(5) APPLICABLE AMOUNT.—For purposes of this subsection, the term “applicable amount” means, with respect to any fiscal year, an amount equal to 75 percent of the increase in revenues to the Treasury during such fiscal year by reason of the application of subchapter E of chapter 38 of the Internal Revenue Code of 1986 (as added by subsection (a)).

(6) DEFINITIONS.—For purposes of this subsection—
(A) In General.—The terms “covered national industry”, “eligible facility”, and “covered primary good” shall have the same meaning given such terms under section 4694 of the Internal Revenue Code of 1986 (as added by subsection (a)).

(B) Best-in-Class Carbon Intensity.—The term “best-in-class carbon intensity” means, with respect to any proposed eligible facility, that the carbon intensity of such facility would be not greater than the carbon intensity of the existing facility with the lowest carbon intensity within the relevant covered national industry (as determined of the date of the application for a grant under the program described in paragraph (1)).

(C) Eligible Entity.—The term “eligible entity” means any person which operates an eligible facility or will operate a proposed eligible facility.

(D) Secretary.—The term “Secretary” means the Secretary of the Treasury (or the Secretary’s delegate).

(d) Economic Support Fund of Department of State.—
(1) IN GENERAL.—For fiscal year 2025 and each subsequent fiscal year, in addition to amounts otherwise available, there are appropriated, out of any funds in the Treasury not otherwise appropriated, to the Department of State an amount equal to applicable amount for the preceding fiscal year, with such amount to be made available for multilateral assistance to support climate and clean energy programs.

(2) APPLICABLE AMOUNT.—For purposes of this subsection, the term “applicable amount” means, with respect to any fiscal year, an amount equal to 25 percent of the increase in revenues to the Treasury during such fiscal year by reason of the application of subchapter E of chapter 38 of the Internal Revenue Code of 1986 (as added by subsection (a)).