

111TH CONGRESS
1ST SESSION

S. 1189

To require the Secretary of Energy to conduct a study of the impact of energy and climate policy on the competitiveness of energy-intensive manufacturing and measures to mitigate those effects.

IN THE SENATE OF THE UNITED STATES

JUNE 4, 2009

Mr. BAYH (for himself and Mr. BROWN) introduced the following bill; which was read twice and referred to the Committee on Energy and Natural Resources

A BILL

To require the Secretary of Energy to conduct a study of the impact of energy and climate policy on the competitiveness of energy-intensive manufacturing and measures to mitigate those effects.

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 “Carbon Leakage Miti-
5 gation Study Act of 2009”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

1 (1) CAP-AND-TRADE PROGRAM.—The term
 2 “cap-and-trade program” means an economy-wide
 3 program enacted by Congress under which green-
 4 house gas emission allowances are distributed or
 5 auctioned to control those emissions under the Clean
 6 Air Act (42 U.S.C. 7401 et seq.).

7 (2) CARBON LEAKAGE.—The term “carbon
 8 leakage” means any substantial increase (as deter-
 9 mined by the Secretary) in greenhouse gas emis-
 10 sions—

11 (A) by a manufacturing facility located in
 12 a country without a greenhouse gas emission
 13 regulation commensurate to a cap-and-trade
 14 program; or

15 (B) that is caused by an incremental cost
 16 of production increase in the United States as
 17 a result of a domestic cap-and-trade program.

18 (3) COMPENSATORY MEASURE.—

19 (A) IN GENERAL.—The term “compen-
 20 satory measure” means any provision of a cap-
 21 and-trade program intended to mitigate the risk
 22 of carbon leakage.

23 (B) INCLUSIONS.—The term “compen-
 24 satory measure” includes a provision described
 25 in subparagraph (A) relating to—

- 1 (i) emission allowance allocation; or
2 (ii) a border tax adjustment.

3 (4) GREENHOUSE GAS.—The term “greenhouse
4 gas” means any gas designated as a greenhouse gas
5 under a cap-and-trade program.

6 (5) OUTPUT.—The term “output” means the
7 total tonnage or other standard unit of production
8 (as determined by the Secretary) produced by a
9 manufacturing facility.

10 (6) SECRETARY.—The term “Secretary” means
11 the Secretary of Energy.

12 **SEC. 3. INDUSTRY PRODUCTIVITY AND CARBON LEAKAGE**
13 **STUDY.**

14 (a) IN GENERAL.—Not later than 120 days after the
15 date of enactment of this Act, the Secretary, in consulta-
16 tion with the Secretary of Commerce, the Administrator
17 of the Environmental Protection Agency, and the heads
18 of other appropriate Federal departments and agencies,
19 shall conduct a study—

20 (1) to characterize the relative risk of carbon
21 leakage and changes in output and investment in
22 United States industrial sectors and subsectors
23 caused by a potential cap-and-trade program imple-
24 mented in the United States, in the absence of com-

1 mensurate greenhouse gas emission regulations in
2 other countries; and

3 (2) to estimate the change in output in indus-
4 trial sectors and subsectors of the United States
5 that are determined to be at risk of significant car-
6 bon leakage.

7 (b) INCLUSIONS.—The study under subsection (a)
8 shall include an assessment of—

9 (1) expected United States industrial produc-
10 tion, imports, and exports, absent a cap-and-trade
11 program;

12 (2) the direct and indirect energy intensity and
13 greenhouse gas intensity of United States industries
14 in relation to gross value-added, cost of production,
15 and total shipment values;

16 (3) the price elasticity of United States indus-
17 tries;

18 (4) the trade elasticity of United States indus-
19 tries;

20 (5) the trade intensity (calculated as imports
21 plus exports, relative to domestic consumption) of
22 United States industries;

23 (6) other qualitative indicators of the ability of
24 United States industries to pass on cost increases to
25 consumers, such as—

1 (A) market structure and concentration;

2 (B) level of product differentiation;

3 (C) the availability of close substitutes for
4 customers; and

5 (D) factors that constrain the response of
6 foreign producers to an increase in United
7 States production costs;

8 (7) the overall risk of carbon leakage, expressed
9 in list form by sector and subsector of the United
10 States economy, resulting from a cap-and-trade pro-
11 gram;

12 (8) the impacts on the production, profitability,
13 greenhouse gas emissions, and level of employment
14 of industries at risk of carbon leakage, expressed—

15 (A) by sector and subsector, separately and
16 in aggregate, as a percentage of gross domestic
17 product;

18 (B) in relation to national production,
19 trade, and employment projections under a po-
20 tential cap-and-trade program; and

21 (C) as compared to baseline projections ab-
22 sent a cap-and-trade program;

23 (9) the manner in which the economic impacts
24 of climate change policies compare to changes over

1 time in other factors affecting production and invest-
2 ment by industries, such as—

3 (A) changes in production costs;

4 (B) currency exchange rates;

5 (C) consumer preference; and

6 (D) other relevant factors; and

7 (10) the highest-priority trading partners of the
8 industries at risk of carbon leakage, listed in order
9 of priority.

10 (c) REPORT.—On completion of the study under this
11 section, the Secretary shall submit to Congress a report
12 describing the results of the study, including recommenda-
13 tions regarding data collection activities and subsequent
14 studies by the Secretary, if any.

15 **SEC. 4. STUDY OF MEASURES TO MITIGATE CARBON LEAK-**
16 **AGE.**

17 (a) IN GENERAL.—Not later than 180 days after the
18 date of enactment of this Act, but not earlier than the
19 date of submission to Congress of the report regarding
20 the competitiveness study under section 3(c), the Sec-
21 retary, in consultation with the Secretary of Commerce,
22 the Administrator of the Environmental Protection Agen-
23 cy, and the heads of other appropriate Federal depart-
24 ments and agencies, shall conduct a study to evaluate the

1 impact of potential compensatory measures to prevent car-
2 bon leakage resulting from a cap-and-trade program.

3 (b) INCLUSIONS.—The study under subsection (a)
4 shall include an assessment of—

5 (1) compensatory measures used by other juris-
6 dictions to prevent carbon leakage under regional,
7 national, or multinational climate policies;

8 (2) the projected risk of carbon leakage from
9 United States industries under potential prices on
10 greenhouse gas emissions and realistic scenarios for
11 international climate policy, with compensatory
12 measures, including—

13 (A) the production, profitability, and level
14 of employment of the industries at risk of car-
15 bon leakage, expressed separately and in aggre-
16 gate;

17 (B) expected changes in the domestic mar-
18 ket shares of products produced in the United
19 States, as compared to products imported into
20 the United States; and

21 (C) expected changes in the foreign market
22 shares of products produced in the United
23 States, as compared to products produced by
24 other countries; and

1 (3) the consistency of compensatory measures
2 with international trade commitments (including
3 principles of the World Trade Organization).

4 (c) REPORT.—On completion of the study under this
5 section, the Secretary shall submit to Congress a report
6 describing the results of the study, including recommenda-
7 tions of the Secretary, if any.

○