

AMENDMENT NO. _____ Calendar No. _____

Purpose: In the nature of a substitute.

IN THE SENATE OF THE UNITED STATES—118th Cong., 2d Sess.

S. 1863

To require the Secretary of Energy to conduct a study and submit a report on the greenhouse gas emissions intensity of certain products produced in the United States and in certain foreign countries, and for other purposes.

Referred to the Committee on _____ and
ordered to be printed

Ordered to lie on the table and to be printed

AMENDMENT IN THE NATURE OF A SUBSTITUTE intended
to be proposed by Mr. CRAMER

Viz:

1 Strike all after the enacting clause and insert the fol-
2 lowing:

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Providing Reliable, Ob-
5 jective, Verifiable Emissions Intensity and Transparency
6 Act of 2024” or the “PROVE IT Act of 2024”.

7 **SEC. 2. STUDY ON GREENHOUSE GAS EMISSIONS INTEN-**
8 **SITY OF CERTAIN PRODUCTS PRODUCED IN**
9 **THE UNITED STATES AND IN CERTAIN FOR-**
10 **EIGN COUNTRIES.**

11 (a) DEFINITIONS.—In this section:

1 (1) APPROPRIATE COMMITTEES OF CON-
2 GRESS.—The term “appropriate committees of Con-
3 gress” means—

4 (A) the Committee on Environment and
5 Public Works of the Senate;

6 (B) the Committee on Energy and Natural
7 Resources of the Senate; and

8 (C) the Committee on Energy and Com-
9 merce of the House of Representatives.

10 (2) AVERAGE PRODUCT EMISSIONS INTEN-
11 SITY.—The term “average product emissions inten-
12 sity” means the national average of the product
13 emissions intensity of a category of covered products
14 produced in, as applicable—

15 (A) the United States; or

16 (B) a covered country.

17 (3) CARBON DIOXIDE-EQUIVALENT; CO₂-E.—
18 The term “carbon dioxide-equivalent” or “CO₂-e”
19 means the number of metric tons of carbon dioxide
20 emissions with the same global warming potential as
21 one metric ton of another greenhouse gas.

22 (4) CATEGORY OF COVERED PRODUCTS.—

23 (A) IN GENERAL.—The term “category of
24 covered products” means—

1 (i) a category described in any of
2 clauses (i) through (xxii) of subparagraph
3 (B), each of which consists of products
4 covered by the headings or subheadings of
5 the Harmonized Tariff Schedule of the
6 United States described parenthetically in
7 that clause; and

8 (ii) any other category of covered
9 products, as determined by the Secretary,
10 consisting of products covered by 1 or
11 more headings or subheadings of the Har-
12 monized Tariff Schedule of the United
13 States.

14 (B) CATEGORIES DESCRIBED.—The cat-
15 egories referred to in subparagraph (A)(i), con-
16 sisting of products covered by the headings or
17 subheadings of the Harmonized Tariff Schedule
18 of the United States described parenthetically
19 for each category, are the following:

20 (i) Aluminum (any of 7601 through
21 7608).

22 (ii) Articles of aluminum (any of 7609
23 through 7616).

24 (iii) Articles of cement (6810 or
25 6811).

4

1 (iv) Articles of iron and steel (any of
2 7307 through 7326).

3 (v) Articles of plastic (any of 3916
4 through 3926).

5 (vi) Biofuels (2207.10, 2207.20, or
6 3826).

7 (vii) Cement (2523 or 3824.5).

8 (viii) Crude oil (2709).

9 (ix) Fertilizer (2808, 2814, 2834.21,
10 or any of 3101 through 3105).

11 (x) Glass (any of 7001 through 7020).

12 (xi) Hydrogen (2804.10).

13 (xii) Iron and steel (any of 7201
14 through 7306).

15 (xiii) Lithium-ion batteries (8507.60).

16 (xiv) Natural gas (2711.11 or
17 2711.21).

18 (xv) Petrochemicals (2901 or
19 2711.14).

20 (xvi) Plastics (any of 3901 through
21 3915).

22 (xvii) Pulp and paper (any of 4701
23 through 4707 or 4801 through 4813).

24 (xviii) Refined strategic and critical
25 minerals, including copper, cobalt, graph-

1 ite, lithium, manganese, and nickel
2 (2825.50, 2827.41, any of 7401 through
3 7404, 7406, 2822.00, 8105.20, 8105.30,
4 2504, 3801.10, 2836.91, 2825.20,
5 2820.10, 8111, 2825.40, any of 7501
6 through 7504, or 2833.24).

7 (xix) Refined petroleum products
8 (2710, 2712, 2713, 2714, 2715, 2902.20,
9 2902.30, or 2902.44).

10 (xx) Solar cells and panels (any of
11 8541.42 through 8541.43).

12 (xxi) Uranium (2612.10, 2844.10,
13 2844.20, or 2844.30).

14 (xxii) Wind turbines (8502.31).

15 (C) CLARIFICATION.—If, after the Sec-
16 retary begins the first study under subsection
17 (b), the headings or subheadings of the Har-
18 monized Tariff Schedule of the United States
19 are changed, or any products are added to or
20 removed from a heading or subheading, the
21 Secretary may continue, in that or any subse-
22 quent study, to study the applicable products as
23 if the applicable change had not occurred.

24 (5) COVERED COUNTRY.—The term “covered
25 country” means each of the following:

1 (A) A country that is a member of the
2 Group of Seven.

3 (B) A country that is a signatory to a free
4 trade agreement with the United States that is
5 in effect as of the date on which the Secretary
6 begins a study under subsection (b)(1).

7 (C) A foreign country of concern (as de-
8 fined in section 9901 of the William M. (Mac)
9 Thornberry National Defense Authorization Act
10 for Fiscal Year 2021 (15 U.S.C. 4651)).

11 (D) A country that, in the determination
12 of the Secretary, holds more than a de minimis
13 share of the global market share, as measured
14 by official trade statistics, of—

15 (i) 1 or more categories of covered
16 products; or

17 (ii) upstream inputs for 1 or more
18 categories of covered products.

19 (E) Any other country that the Secretary
20 determines to be appropriate, including any
21 country that the Secretary determines is a sig-
22 nificant producer or exporter of at least 1 cat-
23 egory of covered products.

24 (6) COVERED PRODUCT.—

1 (A) IN GENERAL.—The term “covered
2 product” means a product covered by—

3 (i) any of the headings or subheadings
4 of the Harmonized Tariff Schedule of the
5 United States described parenthetically in
6 subparagraph (B) of paragraph (4), sub-
7 ject to subparagraph (C) of that para-
8 graph; or

9 (ii) any other heading or subheading
10 of the Harmonized Tariff Schedule of the
11 United States included within a category
12 of covered products determined by the Sec-
13 retary in accordance with paragraph
14 (4)(A)(ii).

15 (B) LIST OF COVERED PRODUCTS.—The
16 Secretary shall maintain a list of covered prod-
17 ucts that identifies the category of covered
18 products associated with each covered product
19 on the list.

20 (7) GREENHOUSE GAS.—The term “greenhouse
21 gas” has the meaning given the term in section 901
22 of the Energy Independence and Security Act of
23 2007 (42 U.S.C. 17321).

24 (8) PRODUCT EMISSIONS INTENSITY.—

1 (A) IN GENERAL.—The term “product
2 emissions intensity” means the quantity of
3 greenhouse gases emitted to the atmosphere as
4 a result of the extraction, production, proc-
5 essing, manufacture, assembly, and transport,
6 as applicable, of 1 unit of a covered product, in-
7 cluding the greenhouse gas emissions of an up-
8 stream input that is incorporated into a down-
9 stream covered product.

10 (B) UNITS OF MEASUREMENT.—The Sec-
11 retary, in coordination with the Administrator
12 of the Environmental Protection Agency, shall
13 designate the units of measurement in which
14 the product emissions intensity of a covered
15 product shall be expressed, which may in-
16 clude—

17 (i) metric tons of CO₂-e per metric
18 ton of a covered product;

19 (ii) metric tons of CO₂-e per dollar
20 value of a covered product; or

21 (iii) any other unit of measurement
22 that the Secretary determines to be appro-
23 priate.

24 (9) SECRETARY.—The term “Secretary” means
25 the Secretary of Energy.

1 (b) STUDY.—

2 (1) IN GENERAL.—Not later than 2 years after
3 the date of enactment of this Act, and not less fre-
4 quently than once every 5 years thereafter, the Sec-
5 retary, in coordination with the Secretary of Com-
6 merce (including appropriate officials of the Bureau
7 of the Census and the International Trade Adminis-
8 tration), the Administrator of the Environmental
9 Protection Agency, the United States Trade Rep-
10 resentative, the Secretary of Homeland Security, the
11 Secretary of State, the Secretary of Agriculture, and
12 such other Federal officials as the Secretary deter-
13 mines to be appropriate, shall conduct, and submit
14 to the appropriate committees of Congress a report
15 describing the results of, a study—

16 (A) to determine the average product emis-
17 sions intensity of each category of covered prod-
18 ucts produced in the United States;

19 (B) to identify gaps in product emissions
20 intensity data for categories of covered products
21 produced in the United States;

22 (C) subject to paragraph (3)(B), to deter-
23 mine the average product emissions intensity of
24 each category of covered products produced in
25 each covered country, which may incorporate,

1 as the Secretary determines to be appropriate,
2 findings from—

3 (i) the implementation of the meas-
4 ures described in section 40416(a) of the
5 Infrastructure Investment and Jobs Act
6 (42 U.S.C. 18776(a));

7 (ii) the international energy data re-
8 sources described in that section; and

9 (iii) other existing data sources, in-
10 cluding—

11 (I) the Greenhouse Gas Report-
12 ing Program of the Environmental
13 Protection Agency;

14 (II) the Annual Integrated Eco-
15 nomic Survey and the Economic Cen-
16 sus of the Bureau of the Census;

17 (III) official trade statistics of
18 the United States International Trade
19 Commission; and

20 (IV) other relevant data sources,
21 including those described in para-
22 graphs (5) through (7);

23 (D) to identify any issues with verifying
24 the average product emissions intensity data for

1 covered products produced in each covered
2 country; and

3 (E) to determine the relative average prod-
4 uct emissions intensity of each category of cov-
5 ered products produced in the United States
6 compared to the average product emissions in-
7 tensity of each category of covered products
8 produced in each covered country.

9 (2) PRIORITIZATION.—

10 (A) IN GENERAL.—Subject to subpara-
11 graph (B), in conducting the study under para-
12 graph (1), the Secretary shall complete all ele-
13 ments of the study described in subparagraphs
14 (A) through (E) of that paragraph within the
15 applicable 2- or 5-year timeframe.

16 (B) PRIORITIZATION DUE TO DATA OR
17 TIME CONSTRAINTS.—If completion of all ele-
18 ments described in subparagraphs (A) through
19 (E) of paragraph (1) with respect to a study
20 under that paragraph is precluded by data or
21 time constraints, the Secretary shall adhere to
22 the applicable 2- or 5-year timeframe by
23 prioritizing the study of—

1 (i) higher priority categories of cov-
2 ered products, as described in subpara-
3 graph (C); and

4 (ii) higher priority covered countries,
5 starting with those that are among the 5
6 largest global exporters or the 5 largest
7 sources of imports into the United States.

8 (C) ORDER OF PRIORITY DESCRIBED.—

9 The order of priority described in subparagraph
10 (B)(i) is as follows:

11 (i) First, categories of covered prod-
12 ucts subject to international border carbon
13 adjustment mechanisms, such as the Car-
14 bon Border Adjustment Mechanism of the
15 European Union, including the categories
16 of covered products described in each of—

17 (I) clause (i) of subsection
18 (a)(4)(B) (aluminum);

19 (II) clause (ii) of that subsection
20 (articles of aluminum);

21 (III) clause (iii) of that sub-
22 section (articles of cement);

23 (IV) clause (iv) of that subsection
24 (articles of iron and steel);

1 (V) clause (vii) of that subsection
2 (cement);

3 (VI) clause (ix) of that sub-
4 section (fertilizer);

5 (VII) clause (xi) of that sub-
6 section (hydrogen); and

7 (VIII) clause (xii) of that sub-
8 section (iron and steel).

9 (ii) Second, categories of covered
10 products relating to other emissions-inten-
11 sive, trade-exposed industries, including
12 the categories of covered products de-
13 scribed in each of—

14 (I) clause (v) of subsection
15 (a)(4)(B) (articles of plastic);

16 (II) clause (x) of that subsection
17 (glass);

18 (III) clause (xvi) of that sub-
19 section (plastics); and

20 (IV) clause (xvii) of that sub-
21 section (pulp and paper).

22 (iii) Third, categories of covered prod-
23 ucts relating to fuels, including biofuels
24 and uranium, or other energy materials,

1 including the categories of covered prod-
2 ucts described in each of—

3 (I) clause (vi) of subsection
4 (a)(4)(B) (biofuels);

5 (II) clause (viii) of that sub-
6 section (crude oil);

7 (III) clause (xiii) of that sub-
8 section (lithium-ion batteries);

9 (IV) clause (xiv) of that sub-
10 section (natural gas);

11 (V) clause (xv) of that subsection
12 (petrochemicals);

13 (VI) clause (xviii) of that sub-
14 section (refined strategic and critical
15 minerals);

16 (VII) clause (xix) of that sub-
17 section (refined petroleum products);

18 (VIII) clause (xx) of that sub-
19 section (solar cells and panels);

20 (IX) clause (xxi) of that sub-
21 section (uranium); and

22 (X) clause (xxii) of that sub-
23 section (wind turbines).

24 (D) FLEXIBILITY.—The Secretary may ac-
25 celerate the timeline for the collection and anal-

1 ysis of data relating to any category of covered
2 products or any covered country if there is a
3 reasonable justification for the utility of accel-
4 erating the collection and analysis of that data,
5 such as a new trade negotiation, a new market
6 opportunity for the export of covered products
7 from the United States, or another justification.

8 (3) REQUIREMENTS.—

9 (A) IN GENERAL.—In the report submitted
10 under paragraph (1), the Secretary shall in-
11 clude—

12 (i) a detailed, specific, and trans-
13 parent description of the methodology, de-
14 veloped in coordination with the Adminis-
15 trator of the Environmental Protection
16 Agency, used to determine the average
17 product emissions intensity of a category
18 of covered products under subparagraphs
19 (A) and (C) of that paragraph;

20 (ii) a record of all sources of data
21 used to determine the average product
22 emissions intensity of a category of covered
23 products under subparagraphs (A) and (C)
24 of that paragraph; and

1 (iii) the heading or subheading of the
2 Harmonized Tariff Schedule of the United
3 States associated with each covered prod-
4 uct for which the average product emis-
5 sions intensity of a category of covered
6 products is determined under subpara-
7 graphs (A) and (C) of that paragraph.

8 (B) CERTAIN COVERED COUNTRIES.—In
9 carrying out subparagraph (C) of paragraph
10 (1), the Secretary may limit the study under
11 that paragraph to categories of covered prod-
12 ucts with respect to which the applicable cov-
13 ered country holds more than a de minimis
14 share of the global market share of that cat-
15 egory of covered products.

16 (C) REUSE OF END-OF-LIFE MATERIALS.—
17 In determining the average product emissions
18 intensity of a category of covered products
19 under subparagraphs (A) and (C) of paragraph
20 (1), the Secretary shall favorably consider the
21 reuse of end-of-life materials in place of virgin
22 raw materials.

23 (4) COORDINATION AMONG PRIMARY STUDY
24 PARTICIPANTS.—In carrying out paragraph (1), the
25 Secretary, the Secretary of Commerce, the Adminis-

1 trator of the Environmental Protection Agency, the
2 United States Trade Representative, the Secretary
3 of Homeland Security, the Secretary of State, and
4 such other Federal officials as the Secretary deter-
5 mines to be appropriate shall establish procedures to
6 facilitate timely and efficient sharing of methodolo-
7 gies, data, or other information and expertise for
8 purposes of carrying out that paragraph, including,
9 if appropriate, by designating appropriate individ-
10 uals with appropriate qualifications to review any
11 data shared.

12 (5) CONSULTATION AND COORDINATION WITH
13 OTHERS.—In carrying out paragraph (1), the Sec-
14 retary may consult and enter into agreements with
15 institutions having relevant data or data collection
16 or analysis capabilities, such as the National Lab-
17 oratories, the National Institute of Standards and
18 Technology, the National Academy of Sciences, the
19 International Energy Agency, the Organisation for
20 Economic Co-operation and Development, and rel-
21 evant academic and non-governmental partners.

22 (6) CONSULTATION AND COORDINATION WITH
23 INDUSTRY PARTNERS.—

1 (A) IN GENERAL.—In carrying out para-
2 graph (1), the Secretary, in coordination with
3 the Secretary of Commerce, shall—

4 (i) establish a process to receive data
5 from industry partners on a voluntary
6 basis, which the Secretary may incorporate
7 at the discretion of the Secretary;

8 (ii) coordinate with existing industry
9 emissions reporting mechanisms, to the ex-
10 tent that the Secretary determines appro-
11 priate; and

12 (iii) establish a process pursuant to
13 which industry partners may request
14 that—

15 (I) a product be included on the
16 list of covered products maintained
17 under subsection (a)(6)(B);

18 (II) a product be analyzed as a
19 covered product in subsequent studies
20 and reports under that paragraph;
21 and

22 (III) certain data be treated as
23 confidential business information, the
24 disclosure of which may be limited
25 with respect to—

1 (aa) the public database de-
2 scribed in subsection (c); and

3 (bb) the report submitted
4 under paragraph (1).

5 (B) LIMITATION.—Nothing in this para-
6 graph affects how data may be treated pursu-
7 ant to any other law or authority with respect
8 to—

9 (i) the proprietary status of the data;
10 or

11 (ii) any other protection from public
12 disclosure.

13 (7) INTERNATIONAL COORDINATION.—

14 (A) IN GENERAL.—In carrying out para-
15 graph (1), the Secretary, the Secretary of Com-
16 merce, the Administrator of the Environmental
17 Protection Agency, the United States Trade
18 Representative, and the Secretary of State shall
19 make every effort to coordinate with the govern-
20 ments of covered countries—

21 (i) to inform the determination of av-
22 erage emissions intensity values;

23 (ii) to advance common emissions ac-
24 counting methodologies and data formats;

25 and

1 (iii) to improve overall data avail-
2 ability and quality.

3 (B) CONSULTATION.—In any case in which
4 a covered country is credibly collaborating with
5 the Secretary by supporting the collection, anal-
6 ysis, or verification of data, the Secretary may
7 give that covered country—

8 (i) a right to consultation with respect
9 to the determination of the average prod-
10 uct emissions intensity of 1 or more cat-
11 egories of covered products produced in
12 that covered country;

13 (ii) an opportunity to discuss chosen
14 data; and

15 (iii) an opportunity to fill data gaps.

16 (8) DATA AVAILABILITY.—

17 (A) IN GENERAL.—In carrying out para-
18 graph (1), the Secretary shall—

19 (i) take note of any instances in which
20 there is not sufficient data to estimate with
21 reasonable accuracy the average product
22 emissions intensity of a category of covered
23 products under subparagraph (A) or (C) of
24 that paragraph;

1 (ii) include in the report submitted
2 under that paragraph—

3 (I) a notation with respect to
4 each instance noted under clause (i);
5 and

6 (II) an explanation for that nota-
7 tion;

8 (iii) identify any gaps in product
9 emissions intensity data for covered prod-
10 ucts or categories of covered products pro-
11 duced in the United States; and

12 (iv) coordinate with the United States
13 Trade Representative to assess the feasi-
14 bility of implementing, within existing au-
15 thority, a requirement for importers to
16 provide data to fill any gaps in product
17 emissions intensity data for covered prod-
18 ucts or categories of covered products im-
19 ported into the United States.

20 (B) REQUIREMENT.—For each instance
21 noted under subparagraph (A)(i), the Secretary
22 shall estimate with reasonable accuracy the av-
23 erage product emissions intensity of the next
24 highest aggregation of categories of covered
25 products for which data are available.

1 (C) CONSIDERATIONS.—In determining
2 whether there are sufficient data to estimate
3 with reasonable accuracy the average product
4 emissions intensity of a covered product or cat-
5 egory of covered products under subparagraph
6 (A)(i), the Secretary shall consider the following
7 factors:

8 (i) The public availability of statistics
9 on greenhouse gas emissions for particular
10 industries from government sources and
11 international organizations.

12 (ii) The public availability of data on
13 the quantity and source of inputs, such as
14 electricity, consumed by particular indus-
15 tries.

16 (iii) The extent to which the data de-
17 scribed in clauses (i) and (ii) cover a rep-
18 resentative group of producers within an
19 industry.

20 (iv) The transparency in the method
21 used to collect, analyze, summarize, and
22 publish the data described in clauses (i)
23 and (ii).

1 (v) Whether there are other factors
2 that may impact the accuracy of the data
3 used.

4 (vi) The recency of the data used.

5 (c) PUBLIC DATABASE.—The Secretary shall estab-
6 lish a public online database, or leverage an existing public
7 online database, for—

8 (1) the average product emissions intensity data
9 collected under subparagraphs (A) and (C) of sub-
10 section (b)(1); and

11 (2) the relative average product emissions in-
12 tensity of covered products determined under sub-
13 paragraph (E) of that subsection.

14 (d) UPDATES.—Not less frequently than once every
15 5 years, the Secretary shall update—

16 (1) the database established under subsection
17 (c); and

18 (2) the list of covered products maintained
19 under subsection (a)(6)(B).

20 (e) PRIORITIZATION OF UPDATES.—The Secretary
21 shall prioritize updating data for categories of covered
22 products for which data already exists in the database es-
23 tablished under subsection (c), with the goal of adding
24 data for additional categories of covered products and ad-
25 ditional covered countries as available.

1 (f) CLARIFICATION.—Nothing in this Act provides
2 any new authority to any Federal agency—

3 (1) to impose, collect, or enforce a greenhouse
4 gas emissions tax, fee, duty, price, or charge; or

5 (2) to establish a new mandatory reporting re-
6 quirement (including by regulation) with respect to
7 the domestic production of any category of covered
8 products.