

AMERICAN CLEAN ENERGY AND SECURITY ACT OF 2009 (ACESA)

H.R. 2454

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Provisions Pertaining to International Trade -- Title IV, Part F, Secs. 761-769

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TITLE IV

PART F--ENSURING REAL REDUCTIONS IN INDUSTRIAL EMISSIONS

SEC. 761. PURPOSES.

- ^(a) Purposes of Part- The purposes of this part are--
 - ^(1) to promote a strong global effort to significantly reduce greenhouse gas emissions, and, through this global effort, stabilize greenhouse gas concentrations in the atmosphere at a level that will prevent dangerous anthropogenic interference with the climate system; and
 - ^(2) to prevent an increase in greenhouse gas emissions in countries other than the United States as a result of direct and indirect compliance costs incurred under this title.
- ^(b) Purposes of Subpart 1- The purposes of subpart 1 are additionally--
 - ^(1) to provide a rebate to the owners and operators of entities in domestic eligible industrial sectors for their greenhouse gas emission costs incurred under this title, but not for costs associated with other related or unrelated market dynamics;
 - ^(2) to design such rebates in a way that will prevent carbon leakage while also rewarding innovation and facility-level investments in energy efficiency performance improvements; and
 - ^(3) to eliminate or reduce distribution of emission allowances under subpart 1 when such distribution is no longer necessary to prevent carbon leakage from eligible industrial sectors.
- ^(c) Purposes of Subpart 2- The purposes of subpart 2 are additionally--
 - ^(1) to induce foreign countries, and, in particular, fast-growing developing countries, to take substantial action with respect to their greenhouse gas emissions consistent with the Bali Action Plan developed under the United Nations Framework Convention on Climate Change; and
 - ^(2) to ensure that the measures described in subpart 2 are designed and implemented in a manner consistent with applicable international agreements to which the United States is a party.

SEC. 762. DEFINITIONS.

- ^In this part:
 - ^(1) **CARBON LEAKAGE-** The term 'carbon leakage' means any substantial increase (as determined by the Administrator) in greenhouse gas emissions by industrial entities located in other countries if such increase is caused by an incremental cost of production increase in the United States resulting from the implementation of this title.

`(2) COVERED GOOD- The term `covered good' means a good that, as identified by the Administrator by regulation, is either--

`(A) entered under a heading or subheading of the Harmonized Tariff Schedule of the United States that corresponds to the NAICS code for an eligible industrial sector, as established in the concordance between NAICS codes and the Harmonized Tariff Schedule of the United States prepared by the United States Census Bureau; or

`(B) a manufactured item for consumption.

`(3) ELIGIBLE INDUSTRIAL SECTOR- The term `eligible industrial sector' means an industrial sector determined by the Administrator under section 763(b) to be eligible to receive emission allowance rebates under subpart 1.

`(4) INDUSTRIAL SECTOR- The term `industrial sector' means any sector that is in the manufacturing sector (as defined in NAICS codes 31, 32, and 33) or that beneficiates or otherwise processes (including agglomeration) metal ores, including iron and copper ores, soda ash, or phosphate. The extraction of metal ores, soda ash, or phosphate shall not be considered to be an industrial sector.

`(5) MANUFACTURED ITEM FOR CONSUMPTION-

`(A) IN GENERAL- The term `manufactured item for consumption' means any good--

`(i) that includes in substantial amounts one or more goods like the goods produced by an eligible industrial sector;

`(ii) with respect to which an international reserve allowance program pursuant to subpart 2 is in effect with regard to the eligible industrial sector and the quantity of international reserve allowances is not zero pursuant to section 768(b);

`(iii) with respect to which the trade intensity of the industrial sector that produces the good, as measured consistent with section 763(b)(2)(A)(iii), is at least 15 percent; and

`(iv) for which the domestic producers of the good have demonstrated, and the Administrator has determined, that the application of the international reserve allowance program pursuant to subpart 2 is technically and administratively feasible and appropriate to achieve the purposes of this part, taking into account the energy and greenhouse gas intensity of the industrial sector that produces the good, as measured consistent with section 763(b)(2)(A)(ii), and the ability of such producers to pass on cost increases and other appropriate factors.

`(B) RULE OF CONSTRUCTION- A determination of the Administrator under subparagraph (A)(iv) shall not be considered to be a determination of the President under section 767(b).

`(6) NAICS- The term `NAICS' means the North American Industrial Classification System of 2002.

`(7) OUTPUT- The term `output' means the total tonnage or other standard unit of production (as determined by the Administrator) produced by an entity in an industrial sector. The output of the cement sector is hydraulic cement, and not clinker.

Subpart 1--Emission Allowance Rebate Program

SEC. 763. ELIGIBLE INDUSTRIAL SECTORS.

(a) List-

(1) INITIAL LIST- Not later than June 30, 2011, the Administrator shall publish in the Federal Register a list of eligible industrial sectors pursuant to subsection (b). Such list shall include the amount of the emission allowance rebate per unit of production that shall be provided to entities in each eligible industrial sector in the following two calendar years pursuant to section 764.

(2) SUBSEQUENT LISTS- Not later than February 1, 2013, and every 4 years thereafter, the Administrator shall publish in the Federal Register an updated version of the list published under paragraph (1).

(b) Eligible Industrial Sectors-

(1) IN GENERAL- Not later than June 30, 2011, the Administrator shall promulgate a rule designating, based on the criteria under paragraph (2), the industrial sectors eligible for emission allowance rebates under this subpart.

(2) PRESUMPTIVELY ELIGIBLE INDUSTRIAL SECTORS-

(A) ELIGIBILITY CRITERIA-

(i) IN GENERAL- An owner or operator of an entity shall be eligible to receive emission allowance rebates under this subpart if such entity is in an industrial sector that is included in a six-digit classification of the NAICS that meets the criteria in both clauses (ii) and (iii), or the criteria in clause (iv).

(ii) ENERGY OR GREENHOUSE GAS INTENSITY- As determined by the Administrator, the industrial sector had--

(I) an energy intensity of at least 5 percent, calculated by dividing the cost of purchased electricity and fuel costs of the sector by the value of the shipments of the sector, based on data described in subparagraph (D); or

(II) a greenhouse gas intensity of at least 5 percent, calculated by dividing--

(aa) the number 20 multiplied by the number of tons of carbon dioxide equivalent greenhouse gas emissions (including direct emissions from fuel combustion, process emissions, and indirect emissions from the generation of electricity used to produce the output of the sector) of the sector based on data described in subparagraph (D); by

(bb) the value of the shipments of the sector, based on data described in subparagraph (D).

(iii) TRADE INTENSITY- As determined by the Administrator, the industrial sector had a trade intensity of at least 15 percent, calculated by dividing the value of the total imports and exports of

such sector by the value of the shipments plus the value of imports of such sector, based on data described in subparagraph (D).

`(iv) VERY HIGH ENERGY OR GREENHOUSE GAS INTENSITY- As determined by the Administrator, the industrial sector had an energy or greenhouse gas intensity, as calculated under clause (ii)(I) or (II), of at least 20 percent.

`(B) METAL AND PHOSPHATE PRODUCTION CLASSIFIED UNDER MORE THAN ONE NAICS CODE- For purposes of this section, the Administrator shall--

`(i) aggregate data for the beneficiation or other processing (including agglomeration) of metal ores, including iron and copper ores, soda ash, or phosphate with subsequent steps in the process of metal and phosphate manufacturing, regardless of the NAICS code under which such activity is classified; and

`(ii) aggregate data for the manufacturing of steel with the manufacturing of steel pipe and tube made from purchased steel in a nonintegrated process.

`(C) EXCLUSION- The petroleum refining sector shall not be an eligible industrial sector.

`(D) DATA SOURCES-

`(i) ELECTRICITY AND FUEL COSTS, VALUE OF SHIPMENTS- The Administrator shall determine electricity and fuel costs and the value of shipments under this subsection from data from the United States Census Annual Survey of Manufacturers. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available. If such data are unavailable, the Administrator shall make a determination based upon 2002 or 2006 data from the most detailed industrial classification level of Energy Information Agency's Manufacturing Energy Consumption Survey (using 2006 data if it is available) and the 2002 or 2007 Economic Census of the United States (using 2007 data if it is available). If data from the Manufacturing Energy Consumption Survey or Economic Census are unavailable for any sector at the six-digit classification level in the NAICS, then the Administrator may extrapolate the information necessary to determine the eligibility of a sector under this paragraph from available Manufacturing Energy Consumption Survey or Economic Census data pertaining to a broader industrial category classified in the NAICS. If data relating to the beneficiation or other processing (including agglomeration) of metal ores, including iron and copper ores, soda ash, or phosphate are not available from the specified data sources, the Administrator shall use the best available Federal or State government data and may use, to the extent necessary, representative data submitted by entities that perform such beneficiation or other processing (including agglomeration), in making a determination. Fuel cost

data shall not include the cost of fuel used as feedstock by an industrial sector.

`(ii) IMPORTS AND EXPORTS- The Administrator shall base the value of imports and exports under this subsection on United States International Trade Commission data. The Administrator shall take the average of data from as many of the years of 2004, 2005, and 2006 for which such data are available. If data from the United States International Trade Commission are unavailable for any sector at the six-digit classification level in the NAICS, then the Administrator may extrapolate the information necessary to determine the eligibility of a sector under this paragraph from available United States International Trade Commission data pertaining to a broader industrial category classified in the NAICS.

`(iii) PERCENTAGES- The Administrator shall round the energy intensity, greenhouse gas intensity, and trade intensity percentages under subparagraph (A) to the nearest whole number.

`(iv) GREENHOUSE GAS EMISSION CALCULATIONS- When calculating the tons of carbon dioxide equivalent greenhouse gas emissions for each sector under subparagraph (A)(ii)(II)(aa), the Administrator--

`(I) shall use the best available data from as many of the years 2004, 2005, and 2006 for which such data is available; and

`(II) may, to the extent necessary with respect to a sector, use economic and engineering models and the best available information on technology performance levels for such sector.

`(3) ADMINISTRATIVE DETERMINATION OF ADDITIONAL ELIGIBLE INDUSTRIAL SECTORS-

`(A) UPDATED TRADE INTENSITY DATA- The Administrator shall designate as eligible to receive emission allowance rebates under this subpart an industrial sector that--

`(i) met the energy or greenhouse gas intensity criteria in paragraph (2)(A)(ii) as of the date of promulgation of the rule under paragraph (1); and

`(ii) meets the trade intensity criteria in paragraph (2)(A)(iii), using data from any year after 2006.

`(B) INDIVIDUAL SHOWING PETITION-

`(i) PETITION- In addition to designation under paragraph (2) or subparagraph (A) of this paragraph, the owner or operator of an entity in an industrial sector may petition the Administrator to designate as eligible industrial sectors under this subpart an entity or a group of entities that--

`(I) represent a subsector of a six-digit section of the NAICS code; and

`(II) meet the eligibility criteria in both clauses (ii) and (iii) of paragraph (2)(A), or the eligibility criteria in clause (iv) of paragraph (2)(A).

`(ii) DATA- In making a determination under this subparagraph, the Administrator shall consider data submitted by the petitioner that is specific to the entity, data solicited by the Administrator from other entities in the subsector, if such other entities exist, and data specified in paragraph (2)(D).

`(iii) BASIS OF SUBSECTOR DETERMINATION- The Administrator shall determine an entity or group of entities to be a subsector of a six-digit section of the NAICS code based only upon the products manufactured and not the industrial process by which the products are manufactured, except that the Administrator may determine an entity or group of entities that manufacture a product from primarily virgin material to be a separate subsector from another entity or group of entities that manufacture the same product primarily from recycled material.

`(iv) USE OF MOST RECENT DATA- In determining whether to designate a sector or subsector as an eligible industrial sector under this subparagraph, the Administrator shall use the most recent data available from the sources described in paragraph (2)(D), rather than the data from the years specified in paragraph (2)(D), to determine the trade intensity of such sector or subsector, but only for determining such trade intensity.

`(v) FINAL ACTION- The Administrator shall take final action on such petition no later than 6 months after the petition is received by the Administrator.

`SEC. 764. DISTRIBUTION OF EMISSION ALLOWANCE REBATES.

`(a) Distribution Schedule-

`(1) IN GENERAL- For each vintage year, the Administrator shall distribute pursuant to this section emission allowances made available under section 782(e), no later than October 31 of the preceding calendar year. The Administrator shall make such annual distributions to the owners and operators of each entity in an eligible industrial sector in the amount of emission allowances calculated under subsection (b), except that--

`(A) for vintage years 2012 and 2013, the distribution for a covered entity shall be pursuant to the entity's indirect carbon factor as calculated under subsection (b)(3);

`(B) for vintage year 2026 and thereafter, the distribution shall be pursuant to the amount calculated under subsection (b) multiplied by, except as modified by the President pursuant to section 767(d)(1)(C) for a sector--

`(i) 90 percent for vintage year 2026;

`(ii) 80 percent for vintage year 2027;

`(iii) 70 percent for vintage year 2028;

- `(iv) 60 percent for vintage year 2029;
- `(v) 50 percent for vintage year 2030;
- `(vi) 40 percent for vintage year 2031;
- `(vii) 30 percent for vintage year 2032;
- `(viii) 20 percent for vintage year 2033;
- `(ix) 10 percent for vintage year 2034; and
- `(x) 0 percent for vintage year 2035 and thereafter.

`(2) RESUMPTION OF REDUCTION- If the President has modified the percentage stated in paragraph (1)(B) under section 767(d)(1)(C), and the President subsequently makes a determination under section 767(c) for an eligible industrial sector that more than 85 percent of United States imports for that sector are produced or manufactured in countries that have met at least one of the criteria in that section, then the 10-year reduction schedule set forth in paragraph (1)(B) of this subsection shall begin in the next vintage year, with the percentage reduction based on the amount of the distribution of emission allowances under this section in the previous year.

`(3) NEWLY ELIGIBLE SECTORS- In addition to receiving a distribution of emission allowances under this section in the first distribution occurring after an industrial sector is designated as eligible under section 763(b)(3), the owner or operator of an entity in that eligible industrial sector may receive a prorated share of any emission allowances made available for distribution under this section that were not distributed for the year in which the petition for eligibility was granted under section 763(b)(3)(A).

`(4) CESSATION OF QUALIFYING ACTIVITIES- If, as determined by the Administrator, a facility is no longer in an eligible industrial sector designated under section 763--

`(A) the Administrator shall not distribute emission allowances to the owner or operator of such facility under this section; and

`(B) the owner or operator of such facility shall return to the Administrator all allowances that have been distributed to it for future vintage years and a pro-rated amount of allowances distributed to the facility under this section for the vintage year in which the facility ceases to be in an eligible industrial sector designated under section 763.

`(b) Calculation of Direct and Indirect Carbon Factors-

`(1) IN GENERAL-

`(A) COVERED ENTITIES- Except as provided in subsection (a), for covered entities that are in eligible industrial sectors, the amount of emission allowance rebates shall be based on the sum of the covered entity's direct and indirect carbon factors.

`(B) OTHER ELIGIBLE ENTITIES- For entities that are in eligible industrial sectors but are not covered entities, the amount of emission allowance rebates shall be based on the entity's indirect carbon factor.

`(C) NEW ENTITIES- Not later than 2 years after the date of enactment of this title, the Administrator shall issue regulations governing the distribution of emission allowance rebates for the first and second years of

operation of a new entity in an eligible industrial sector. These regulations shall provide for--

`(i) the distribution of emission allowance rebates to such entities based on comparable entities in the same sector; and

`(ii) an adjustment in the third and fourth years of operation to reconcile the total amount of emission allowance rebates received during the first and second years of operation to the amount the entity would have received during the first and second years of operation had the appropriate data been available.

`(2) DIRECT CARBON FACTOR- The direct carbon factor for a covered entity for a vintage year is the product of--

`(A) the average annual output of the covered entity for the 2 years preceding the year of the distribution; and

`(B) the most recent calculation of the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output for all covered entities in the sector, as determined by the Administrator under paragraph (4).

`(3) INDIRECT CARBON FACTOR-

`(A) IN GENERAL- The indirect carbon factor for an entity for a vintage year is the product obtained by multiplying the average annual output of the entity for the 2 years preceding the year of the distribution by both the electricity emissions intensity factor determined pursuant to subparagraph (B) and the electricity efficiency factor determined pursuant to subparagraph (C) for the year concerned.

`(B) ELECTRICITY EMISSIONS INTENSITY FACTOR-

`(i) IN GENERAL- Each person selling electricity to the owner or operator of an entity in any sector designated as an eligible industrial sector under section 763(b) shall provide the owner or operator of the entity and the Administrator, on an annual basis, the electricity emissions intensity factor for the entity. The electricity emissions intensity factor for the entity, expressed in tons of carbon dioxide equivalents per kilowatt hour, is determined by dividing--

`(I) the annual sum of the hourly product of--

`(aa) the electricity purchased by the entity from that person in each hour (expressed in kilowatt hours); multiplied by

`(bb) the marginal or weighted average tons of carbon dioxide equivalent per kilowatt hour that are reflected in the electricity charges to the entity, as determined by the entity's retail rate arrangements; by

`(II) the total kilowatt hours of electricity purchased by the entity from that person during that year.

`(ii) USE OF OTHER DATA TO DETERMINE FACTOR- Where it is not possible to determine the precise electricity emissions

intensity factor for an entity using the methodology in clause (i), the person selling electricity shall use the monthly average data reported by the Energy Information Administration or collected and reported by the Administrator for the utility serving the entity to determine the electricity emissions intensity factor.

`(C) ELECTRICITY EFFICIENCY FACTOR- The electricity efficiency factor is the average amount of electricity (in kilowatt hours) used per unit of output for all entities in the relevant sector, as determined by the Administrator based on the best available data, including data provided under paragraph (6).

`(D) INDIRECT CARBON FACTOR REDUCTION- If an electricity provider received a free allocation of emission allowances pursuant to section 782(a), the Administrator shall adjust the indirect carbon factor to avoid rebates to the eligible entity for costs that the Administrator determines were not incurred by the eligible entity because the allowances were freely allocated to the eligible entity's electricity provider and used for the benefit of industrial consumers.

`(4) GREENHOUSE GAS INTENSITY CALCULATIONS- The Administrator shall calculate the average direct greenhouse gas emissions (expressed in tons of carbon dioxide equivalent) per unit of output and the electricity efficiency factor for all covered entities in each eligible industrial sector every 4 years, using an average of the four most recent years of the best available data. For purposes of the lists required to be published no later than February 1, 2013, the Administrator shall use the best available data for the maximum number of years, up to 4 years, for which data are available.

`(5) ENSURING EFFICIENCY IMPROVEMENTS- When making greenhouse gas calculations, the Administrator shall--

`(A) limit the average direct greenhouse gas emissions per unit of output, calculated under paragraph (4), for any eligible industrial sector to an amount that is not greater than it was in any previous calculation under this subsection;

`(B) limit the electricity emissions intensity factor, calculated under paragraph (3)(B) and resulting from a change in electricity supply, for any entity to an amount that is not greater than it was during any previous year; and

`(C) limit the electricity efficiency factor, calculated under paragraph (3)(C), for any eligible industrial sector to an amount that is not greater than it was in any previous calculation under this subsection.

`(6) DATA SOURCES- For the purposes of this subsection--

`(A) the Administrator shall use data from the greenhouse gas registry established under section 713, where it is available; and

`(B) each owner or operator of an entity in an eligible industrial sector and each department, agency, and instrumentality of the United States shall provide the Administrator with such information as the Administrator finds necessary to determine the direct carbon factor and the indirect carbon factor for each entity subject to this section.

`(c) Total Maximum Distribution- Notwithstanding subsections (a) and (b), the Administrator shall not distribute more allowances for any vintage year pursuant to this section than are allocated for use under this subpart pursuant to section 782(e) for that vintage year.

Subpart 2--Promoting International Reductions in Industrial Emissions

`SEC. 765. INTERNATIONAL NEGOTIATIONS.

`(a) Finding- Congress finds that the purposes of this subpart, as set forth in section 761(c), can be most effectively addressed and achieved through agreements negotiated between the United States and foreign countries.

`(b) Statement of Policy- It is the policy of the United States to work proactively under the United Nations Framework Convention on Climate Change, and in other appropriate fora, to establish binding agreements, including sectoral agreements, committing all major greenhouse gas-emitting nations to contribute equitably to the reduction of global greenhouse gas emissions.

`(c) Notification of Foreign Countries-

`(1) IN GENERAL- As soon as practicable after the date of the enactment of this title, the President shall provide a notification on climate change described in paragraph (2) to each foreign country the products of which are not exempted under section 768(a)(1)(E).

`(2) NOTIFICATION DESCRIBED- A notification described in this paragraph is a notification that consists of--

`(A) a statement of the policy of the United States described in subsection (b); and

`(B) a declaration--

`(i) requesting the foreign country to take appropriate measures to limit the greenhouse gas emissions of the foreign country; and

`(ii) indicating that, beginning on January 1, 2020, the international reserve requirements of this subpart may apply to a covered good.

`SEC. 766. UNITED STATES NEGOTIATING OBJECTIVES WITH RESPECT TO MULTILATERAL ENVIRONMENTAL NEGOTIATIONS.

`(a) In General- The negotiating objectives of the United States with respect to multilateral environmental negotiations described in this subpart are--

`(1) to reach an internationally binding agreement in which all major greenhouse gas-emitting countries contribute equitably to the reduction of global greenhouse gas emissions;

`(2)(A) to include in such international agreement provisions that recognize and address the competitive imbalances that lead to carbon leakage and may be created between parties and non-parties to the agreement in domestic and export markets; and

- (B) not to prevent parties to such agreement from addressing the competitive imbalances that lead to carbon leakage and may be created by the agreement among parties to the agreement in domestic and export markets ; and
- (3) to include in such international agreement agreed remedies for any party to the agreement that fails to meet its greenhouse gas reduction obligations in the agreement.

(b) Rule of Construction- Nothing in subsection (a)(2) shall be construed to require the United States to alter the provisions of section 764 .

SEC. 767. PRESIDENTIAL REPORTS AND DETERMINATIONS.

(a) Report- Not later than January 1, 2017, and every 2 years thereafter, the President shall submit a report to Congress on the effectiveness of the distribution of emission allowance rebates under subpart 1 in mitigating carbon leakage in eligible industrial sectors. Such report shall also include--

- (1) an assessment, for each eligible industrial sector receiving emission allowance rebates, as to whether, and by how much, the per unit cost of production has increased for that sector as a result of compliance with section 722 (as determined in a manner consistent with section 764(b)), taking into account the provision of the emission allowance rebates to that industrial sector and the benefit received by that industrial sector from the provision of free allowances to electricity providers pursuant to section 782(a);
- (2) recommendations on how to better achieve the purposes of this subpart, including an assessment of the feasibility and usefulness of an international reserve allowance program for the eligible industrial sector under section 768;
- (3) to the extent the President determines that an international reserve allowance program would not be useful for the eligible industrial sector because its exposure to carbon leakage is the result of competition in export markets with goods produced in countries not implementing similar greenhouse gas emission reduction policies, an identification of, and to the extent appropriate a description of how the President will implement, alternative actions or programs consistent with the purposes of this subpart (and, in such case, the President may determine not to apply an international reserve allowance program to the eligible industrial sector under subsection (b)); and
- (4) an assessment of the amount and duration of assistance, including distribution of free allowances, being provided to industrial sectors in other developed countries to mitigate costs of compliance with domestic greenhouse gas reduction programs in such countries.

(b) Presidential Determination-

(1) IN GENERAL- If, by January 1, 2018, a multilateral agreement consistent with the negotiating objectives set forth in section 766 has not entered into force with respect to the United States, the President shall establish an international reserve allowance program for each eligible industrial sector to the extent provided under section 768 unless--

- (A) the President determines and certifies to the Congress with respect to such eligible industrial sector that such program would not be in the

national economic interest or environmental interest of the United States;
and

`(B) not later than 90 days after the President transmits the certification described in subparagraph (A), a joint resolution is enacted into law that approves the determination of the President described in subparagraph (A).

`(2) CONTENTS OF JOINT RESOLUTION- For purposes of this subsection, the term `joint resolution' means only a joint resolution of the two Houses of Congress, the matter after the resolving clause of which is as follows: `That the Congress approves the determination of the President under section 768(b)(1)(A) of the Clean Air Act transmitted to the Congress on **XXXXXX**.', the blank space being filled with the appropriate date.

`(3) CONGRESSIONAL PROCEDURES- Subsections (c), (d), (e), and (f) of section 152 of the Trade Act of 1974 (19 U.S.C. 2192 (c), (d), (e), and (f)) shall apply to a joint resolution under this subsection to the same extent as such subsections apply to a joint resolution under section 152 of such Act.

`(4) RULE OF CONSTRUCTION- For purposes of this section and section 768, if the President transmits a multilateral agreement to Congress (regardless of whether it is transmitted as a treaty for ratification by the Senate or another international agreement for implementation by law enacted by the Congress) indicating that the agreement is consistent with the negotiating objectives set forth in section 766, such agreement will be considered to be consistent with such negotiating objectives as of the date on which the Senate ratifies the treaty, or legislation is enacted implementing such other agreement, unless the Senate (in the case of ratification) or the implementing legislation expressly provides that the multilateral agreement shall not be treated as consistent with such negotiating objectives for purposes of this section and section 768.

`(c) Determinations With Respect to Eligible Industrial Sectors- If the President establishes an international reserve allowance program pursuant to subsection (b), then not later than June 30, 2018, and every 4 years thereafter, the President, in consultation with the Administrator and other appropriate agencies, shall determine, for each eligible industrial sector, whether or not more than 85 percent of United States imports of covered goods with respect to that sector are produced or manufactured in countries that have met at least one of the following criteria:

`(1) The country is a party to an international agreement to which the United States is a party that includes a nationally enforceable and economy-wide greenhouse gas emissions reduction commitment for that country that is at least as stringent as that of the United States.

`(2) The country is a party to a multilateral or bilateral emission reduction agreement for that sector to which the United States is a party.

`(3) The country has an annual energy or greenhouse gas intensity, as described in section 763(b)(2)(A)(ii), for the sector that is equal to or less than the energy or greenhouse gas intensity for such industrial sector in the United States in the most recent calendar year for which data are available.

`(d) Effect of Presidential Determination-

`(1) REQUIRED ACTIONS- If the President makes a determination under subsection (c) with respect to an eligible industrial sector that 85 percent or less of United States imports of covered goods with respect to the sector are produced or manufactured in countries that have met one or more of the criteria in subsection (c), then the President shall, not later than June 30, 2018, and every 4 years thereafter--

`(A) assess the extent to which the emission allowance rebates provided pursuant to subpart 1 and the benefit received by that industrial sector from the provision of free allowances to electricity providers pursuant to section 782(a) have mitigated or addressed, or could mitigate or address, carbon leakage in that sector;

`(B) assess the extent to which an international reserve allowance program has mitigated or addressed, or could mitigate or address, carbon leakage in that sector; and

`(C) with respect to that sector--

`(i) modify the percentage by which direct and indirect carbon factors will be multiplied under section 764(a)(1)(B); and

`(ii) apply or continue to apply an international reserve allowance program under section 768 with respect to imports of covered goods with respect to that sector.

`(2) PROHIBITED ACTIONS- If the President makes a determination under subsection (c) with respect to an eligible industrial sector that more than 85 percent of United States imports of covered goods with respect to the sector are produced or manufactured in countries that have met one or more of the criteria in subsection (c), then the President may not apply or continue to apply an international reserve allowance program under section 768 with respect to imports of covered goods with respect to that sector.

`(e) Report to Congress- Not later than June 30, 2018, and every 4 years thereafter, the President shall transmit to the Congress a report providing notice of any determination made under subsection (c), explaining the reasons for such determination, and identifying the actions taken by the President under subsection (d).

`SEC. 768. INTERNATIONAL RESERVE ALLOWANCE PROGRAM.

`(a) Establishment-

`(1) IN GENERAL- The Administrator, with the concurrence of Commissioner responsible for U.S. Customs and Border Protection, shall issue regulations--

`(A) establishing an international reserve allowance program for the sale, exchange, purchase, transfer, and banking of international reserve allowances for covered goods with respect to the eligible industrial sector;

`(B) ensuring that the price for purchasing the international reserve allowances from the United States on a particular day is equivalent to the auction clearing price for emission allowances under section 722 for the most recent emission allowance auction;

`(C) establishing a general methodology for calculating the quantity of international reserve allowances that a United States importer of any covered good must submit;

`(D) requiring the submission of appropriate amounts of such allowances for covered goods with respect to the eligible industrial sector that enter the customs territory of the United States;

`(E) exempting from the requirements of subparagraph (D) such products that are the origin of--

`(i) any country determined to meet any of the standards provided in section 767(c);

`(ii) any foreign country that the United Nations has identified as among the least developed of developing countries; or

`(iii) any foreign country that the President has determined to be responsible for less than 0.5 percent of total global greenhouse gas emissions and less than 5 percent of United States imports of covered goods with respect to the eligible industrial sector;

`(F) specifying the procedures that U.S. Customs and Border Protection will apply for the declaration and entry of covered goods with respect to the eligible industrial sector into the customs territory of the United States; and

`(G) establishing procedures that prevent circumvention of the international reserve allowance requirement for covered goods with respect to the eligible industrial sector that are manufactured or processed in more than one foreign country.

`(2) PURPOSE OF PROGRAM- The Administrator shall establish the program under paragraph (1) consistent with international agreements to which the United States is a party, in a manner that minimizes the likelihood of carbon leakage as a result of differences between--

`(A) the direct and indirect costs of complying with section 722; and

`(B) the direct and indirect costs, if any, of complying in other countries with greenhouse gas regulatory programs, requirements, export tariffs, or other measures adopted or imposed to reduce greenhouse gas emissions.

`(b) Emission Allowance Rebates- In establishing a general methodology for purposes of subsection (a)(1)(C), the Administrator shall include an adjustment to the quantity of international reserve allowances based on the value of emission allowance rebates distributed under subpart 1 and the benefit received by the eligible industrial sector concerned from the provision of free allowances to electricity providers pursuant to section 782(a) and may, if appropriate, determine that the quantity of international reserve allowances should be reduced as low as to zero.

`(c) Effective Date- The international reserve allowance program may not apply to imports of covered goods entering the customs territory of the United States before January 1, 2020.

`(d) Covered Entities- International reserve allowances may not be used by covered entities to comply with section 722.

`SEC. 769. IRON AND STEEL SECTOR.

`For purposes of this subpart, the Administrator shall consider to be in the same eligible industrial sector--

- `(1) entities using integrated iron and steelmaking technologies (including coke ovens, blast furnaces, and other iron-making technologies); and
- `(2) entities using electric arc furnace technologies.'