

Major Revisions to IBEW-AEP International Provision

The following is a brief description of the major changes that have been made to the IBEW-AEP international provision, as set forth in title VI of the Lieberman-Warner bill. The overall purpose of these changes is to ensure that the international allowance requirements on imported goods mirror, to the maximum extent feasible, the regulatory burdens imposed on U.S. manufacturers under the domestic cap-and-trade program.

SEC. 6001. DEFINITIONS

Baseline emission level

The historical period for setting the baseline for covered goods is changed from 2012-2014 to calendar year 2005, in order to ensure consistency with the greenhouse gas emissions cap levels established under the Lieberman-Warner. A similar definition of baseline emission levels is established for countries since the current version only had a definition of baseline emission for covered goods. Section 6001(1).

Comparable action

The current definition in Lieberman-Warner provides little guidance on the details for assessing whether a foreign country is taking comparable action under the international program. The new definition seeks to eliminate this uncertainty by establishing a more rigorous and objective standard for measuring comparable action. Notably the new definition requires the Commission to determine (1) whether the other country is making reductions that are equal to, or better than the U.S. reductions, and (2) if not, whether state-of-the-art technologies in key industrial sectors have been deployed and used to limit greenhouse gas emissions in the foreign country. Section 6001(3).

Manufactured item for consumption

The definition of covered good is revised to include any “manufactured item for consumption,” which is a newly defined term in title VI. The effect of this change is to expand coverage of the current program from primary products (*e.g.*, iron, steel, cement, chemicals, and other such products that are sold in bulk) to certain finished goods if certain conditions are met. Specifically, selected categories of finished goods are subject to the international reserve allowance requirement if the Administrator determines that such regulation is administratively feasible and necessary in order achieve the purposes of the international program. Section 6001(7) and (14).

Other new or revised definitions

New definitions are added for the following terms: “best available information” under Section 6001(2); “Commission” under Section 6001(3); “Customs” under Section 6001(8); “enter” or “entry” under Section 6001(9); and “percentage change in greenhouse gas emissions” under Section 6001(15). In additions, revisions have been made to following definitions: “foreign country” under Section 6001(10) and “primary product” under Section 6001(16).

Major Revisions to IBEW-AEP International Provision Overview

The following is a brief description of the major changes that have been made to the IBEW-AEP international provision, as set forth in title VI of the Lieberman-Warner bill. The overall purpose of these changes has been to ensure that the international allowance requirements on imported goods mirror, to the maximum extent feasible, the regulatory burdens imposed on U.S. manufacturers under the domestic cap-and-trade program.

Move up start date. There is no longer an 8-year delay between the start of the domestic cap-and-trade program and the start of international allowance program. U.S. importers must now begin to hold allowances on covered goods at roughly the same time that the domestic cap-and-trade program starts.

Eliminate presidential discretion. An independent commission, instead of the President, will make the threshold determinations on which foreign countries are taking “comparable action” and thus subject to the international allowance requirements. There are strict rules on the creation, organization, and duties of the commission in order to ensure prompt and objective implementation of the international program.

Define comparable action with greater specificity. The current definition of comparable action in Lieberman-Warner fails to specify how to assess whether a foreign country is taking comparable action. The new definition seeks to eliminate this uncertainty by establishing a more rigorous and objective standard for measuring comparable action. Notably the new definition requires the Commission to determine (1) whether the other country is making reductions that are equal to, or better than the U.S. reductions, and (2) if not, whether state-of-the-art technologies in key industrial sectors have been deployed and used to limit greenhouse gas emissions.

Same allowance requirement. The stringency of the international allowance requirement has been increased so that it is the same burden imposed on U.S. manufacturers under the domestic cap-and-trade program. Specifically, U.S. importers must hold allowances equal to all of the direct and indirect greenhouse gas emissions attributable to the production of the imported good, and not just to those emissions above the 2012-2014 baseline levels.

Anti-circumvention provisions to ensure compliance. New provisions are added to prevent a foreign country from circumventing the allowance requirement by shipping the covered goods to another country for further processing before importation into the United States. These provisions establish specific rules to ensure that international allowances will be required for the full amount of greenhouse gas emissions attributable to the imported goods.

TITLE VI—GLOBAL EFFORT TO REDUCE GREENHOUSE GAS EMISSIONS

SEC. 6001. DEFINITIONS.

In this title:

(1) **BASELINE EMISSION LEVEL.**—

(A) **COVERED GOODS.**—With respect to covered goods of a foreign country, the term “baseline emission level” means, as determined by the Commission, the total annual greenhouse gas emissions attributed to a category of covered goods of a foreign country during the calendar year 2005, based on best available information.

(B) **COUNTRIES.**—With respect to the United States or foreign country, the term “baseline emission level” means, as determined by the Commission, the total annual nationwide greenhouse gas emissions attributed to the country during the calendar year 2005, based on best available information.

(2) **BEST AVAILABLE INFORMATION.**—The term “best available information” means—

(A) all relevant data that is available for the particular period; and

(B) to the extent necessary, economic and engineering models, best available information on technology performance levels, and any other useful measure or technique for estimating the emissions from such emissions activities.

(3) **COMMISSION.**—The term “Commission” means the International Climate Change Commission that is established under section 6004.

(4) **COMPARABLE ACTION.**—

(A) **IN GENERAL.**—The term “comparable action” means any greenhouse gas regulatory programs, requirements, and other measures adopted by a foreign country that, in combination, are comparable in effect to actions carried out by the United States through federal, state and local measures to limit greenhouse gas emissions, as determined by the Commission under subparagraph (B).

(B) **REQUIREMENTS.**—The Commission shall make a determination on whether a foreign country has taken comparable action for a particular year under subparagraph (A) based on best available information and in accordance with the following requirements—

(i) A foreign country shall be deemed to have taken comparable action if the Commission determines that—

(I) the percentage change in greenhouse gas emissions in such foreign country during the relevant period is equal to, or better than,

(II) the percentage change in greenhouse emissions in the United States during the relevant period.

(ii) In the case of a foreign country that is not deemed to have taken comparable action under clause (i), the Commission shall take into consideration, in making a determination on comparable action for that foreign country, the extent to which all of

the following actions have been taken during the relevant period, and that these actions have been fully implemented, verified and enforced—

(I) the deployment and use of state-of-the-art technologies in industrial processes, equipment manufacturing facilities, power generation and other energy facilities, consumer goods (such as automobiles and appliances) and implementation of other techniques or actions that have the effect of limiting greenhouse gas emissions in the foreign country during the relevant period; and

(II) any regulatory programs, requirements, and other measures that the foreign country has implemented to limit greenhouse emissions during the relevant period.

(iii) If a foreign country is a party to an international climate change agreement that imposes binding greenhouse gas emissions limitations on such country, the Commission shall give appropriate credit for net transfers to such country of greenhouse gas emissions allowances or other units issued with respect to emissions reductions or sequestrations in other countries pursuant to such international agreement.

(iv) Any determination on comparable action that the Commission makes under this paragraph shall comply applicable international agreements.

(5) COMPLIANCE YEAR.—The term “compliance year” means each calendar year for which the requirements of this title apply to a category of covered goods of a covered foreign country that enters into the United States.

(6) COVERED FOREIGN COUNTRY.—The term “covered foreign country” means a foreign country that is included on the covered list prepared under section 6006(b)(3).

(7) COVERED GOOD.—The term “covered good” means a good that (as identified by the Administrator by rule)—

(A) is a primary product or manufactured item for consumption;

(B) generates, in the course of the manufacture of the good, a substantial quantity of direct greenhouse gas emissions and indirect greenhouse gas emissions; and

(C) is closely related to a good the cost of production of which in the United States is affected by a requirement of this Act.

(8) CUSTOMS.—The term “Customs” means U.S. Customs and Border Protection.

(9) ENTRY; ENTER.—The terms “entry” and “enter” mean the point at which a covered good entered, or was withdrawn from the warehouse for consumption, in the customs territory of the United States.

(10) FOREIGN COUNTRY.—The term “foreign country” means any country or separate customs territory, other than the United States.

(11) INDIRECT GREENHOUSE GAS EMISSIONS.—The term “indirect greenhouse gas emissions” means any emissions of a greenhouse gas resulting from the generation of electricity that is consumed during the manufacture of a good.

(12) INTERNATIONAL AGREEMENT.—The term “international agreement” means any international agreement to which the United States is a party, including the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on April 15,

1994.

(13) INTERNATIONAL RESERVE ALLOWANCE.—The term “international reserve allowance” means an allowance (denominated in units of metric tons of carbon dioxide equivalent) that is—

(A) purchased from a special reserve of allowances pursuant to section 6006(a)(2); and

(B) used for purposes of meeting the requirements of section 6006.

(14) MANUFACTURED ITEM FOR CONSUMPTION.—The term “manufactured item for consumption” means any good or product—

(A) that is not a primary product;

(B) that generates, in the course of the manufacture, a substantial amount of direct greenhouse gas emissions or indirect greenhouse gas emissions, including such emissions that are attributable to the inclusion of a primary product in the manufactured item for consumption; and

(C) for which the Commission, in consultation with the Administrator, determines that the application of an international reserve allowance requirement under section 6006 to the particular category of goods or products is administratively feasible and necessary to achieve the purposes of this title.

(15) PERCENTAGE CHANGE IN GREENHOUSE GAS EMISSIONS.—The term “percentage change in greenhouse gas emissions” means, as determined by the Commission, the percentage by which greenhouse gas emissions on a nationwide basis has decreased or increased (as the case may be) from the baseline emissions level of the country. The percentage change for a country shall equal the quotient obtained by dividing—

(A) the amount of the decrease or increase in the total nationwide emissions for the country, as measured by comparing such total emissions for the relevant calendar year, to the baseline emission level for the country; and

(B) the baseline emissions levels for the country.

(16) PRIMARY PRODUCT.—The term “primary product” means—

(A) iron, steel, steel mill products (including pipe and tube), aluminum, cement, glass (including flat, container, and specialty glass, and fiberglass), pulp, paper, chemicals, or industrial ceramics; or

(B) any other manufactured product that—

(i) is sold in bulk for purposes of further manufacture or inclusion in a finished product; and

(ii) generates, in the course of the manufacture of the product, direct greenhouse gas emissions and indirect greenhouse gas emissions that are comparable (on an emissions-per-output basis) to emissions generated in the manufacture of products by covered facilities in the industrial sector.

SEC. 6002. PURPOSES.

The purposes of this title are—

- (1) to promote a strong global effort to significantly reduce greenhouse gas emissions;
- (2) to ensure, to the maximum extent practicable, that greenhouse gas emissions occurring outside the United States do not undermine the objectives of the United States in addressing global climate change; and
- (3) to encourage effective international action to achieve those objectives through—
 - (A) agreements negotiated between the United States and foreign countries; and
 - (B) measures carried out by the United States that comply with applicable international agreements.

SEC. 6003. INTERNATIONAL NEGOTIATIONS.

(a) FINDING.—Congress finds that the purposes described in section 6002 can be most effectively addressed and achieved through agreements negotiated between the United States and foreign countries.

(b) NEGOTIATING OBJECTIVE.—

(1) 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 forums, to establish binding agreements committing all major greenhouse gas-emitting nations to contribute equitably to the reduction of global greenhouse gas emissions.

(2) INTENT OF CONGRESS REGARDING OBJECTIVE.—To the extent that the agreements described in subsection (a) involve measures that will affect international trade in any good or service, it is the intent of Congress that the negotiating objective of the United States shall be to focus multilateral and bilateral international agreements on the reduction of greenhouse gas emissions to advance achievement of the purposes described in section 6002. Furthermore, it is the intent of Congress that the United States shall strive to achieve this objective through the negotiation of international agreements that—

(A) with respect to foreign countries that are not taking comparable action, promote the adoption of regulatory programs, requirements, and other measures that are comparable in effect to the actions that are carried out by the United States to limit greenhouse gas emissions on a nationwide basis; and

(B) with respect to foreign countries that are taking comparable action, promote the adoption of requirements modeled after the provisions of this title in order to advance further the achievement of the purposes described in section 6002.

(c) NOTIFICATION TO FOREIGN COUNTRIES.—Immediately upon enactment of this Act, the President shall notify each foreign country of the negotiating objective of United States to limit greenhouse gas emissions through binding international agreements, as provided under subsection (b). The notification to each foreign country shall include—

- (1) a request that any foreign country, that would not otherwise be excluded under clause (ii) or (iii) of subparagraph (b)(2)(A), take comparable action to limit the greenhouse gas

emissions of the foreign country; and

(2) an estimation of the percentage change in greenhouse gas emissions that the United States expects to achieve annually through federal, state and local measures during the first 10 years for which allowances must be submitted under section 1202.

(d) REPORT TO CONGRESS.—Not later than 2 years after date of enactment of this Act, and every 3 years thereafter, the President shall submit to Congress a report on the progress that the United States has made in achieving the negotiating objective of subsection (b).

SEC. 6004. INTERNATIONAL CLIMATE CHANGE COMMISSION.

(a) ESTABLISHMENT.—There is established a commission that shall be know as the “International Climate Change Commission.”

(b) ORGANIZATION.—

(1) MEMBERSHIP.—The Commission shall be composed of 6 commissioners who shall be appointed by the President, by and with the advice and consent of the Senate. No person shall be eligible for appointment as a commissioner unless that person –

(A) is a citizen of the United States, and

(B) has, in the judgment of the President, the requisite qualifications for developing the knowledge and expertise on international climate change matters that are necessary for performing the duties and functions of the Commission under this title.

(2) APPOINTMENTS OF FIRST COMMISSIONERS.—Not later than 3 months after date of enactment of this Act, the President shall appoint all 6 of the commissioners first taking office after enactment of this Act (referred to in this section as the “first commissioners”). If the President fails to appoint one or more of the first commissioners under this paragraph by this date, then the International Trade Commission shall have a non-discretionary duty to appoint each first commissioner by no later than 6 months after date of enactment of this Act. The authority of the President to make appointments of first commissioners under this paragraph shall be terminated immediately upon the International Trade Commission making such appointments in accordance with the provisions of this paragraph.

(3) POLITICAL AFFILIATION.—Not more than 3 of the commissioners serving at any time shall be affiliated with the same political party. In making the appointments, members of different parties shall be appointed alternatively as nearly as may be practicable.

(4) TERM OF COMMISSIONERS; REAPPOINTMENT.—

(A) IN GENERAL.—The term of a commissioner shall be 12 years, except that commissioners first taking office under paragraph (2) shall be appointed to the Commission in a manner that ensures that –

(i) the term of not more than 1 member shall expire during any 2-year period; and

(ii) no commissioner serves a term of more than 12 years.

(B) SERVICE UNTIL NEW APPOINTMENT.—A commissioner shall continue to serve after the expiration of that commissioner’s term until the date on which a replacement is

appointed by the President and confirmed by the Senate.

(C) VACANCY.—Any commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which the predecessor was appointed shall be appointed for the remainder of the term.

(D) REAPPOINTMENT.—A person who has served as commissioner for more than 7 years shall not be eligible for reappointment.

(5) CHAIRPERSON AND VICE-CHAIRPERSON.—

(A) IN GENERAL.—The President shall designate a Chairperson and Vice-Chairperson of the Commission from the commissioners that are eligible for designation under subparagraph (B). The Chairperson and Vice-Chairperson shall each serve for a term of 4 years. If the President fails to designate the Chairperson for any term, the commissioner with the longest period of continuous service shall serve as Chairperson for that term.

(B) ELIGIBILITY REQUIREMENTS.—

(i) CHAIRPERSON.—The President may designate as the Chairperson of the Commission for any term any commissioner who is not affiliated with the political party with which the Chairperson of the Commission for the immediately preceding year is affiliated, and who (except in the case of the first commissioners) has at least 1 year of continuous service as a commissioner.

(ii) VICE-CHAIRPERSON.—The President may designate as the Vice-Chairperson of the Commission for any term any commissioner who is not affiliated with the political party with which the Chairperson is affiliated.

(6) VOTING.—

(A) IN GENERAL.—The Commission shall vote on the adoption of each action that is identified in subparagraph (D). Such a vote on a Commission action shall occur at a public meeting of the Commission for which a quorum is present. A majority of commissioners that are in office shall constitute a quorum for a meeting of the Commission.

(B) ADOPTION.—A Commission action identified in subparagraph (D) shall take effect upon adoption by the Commission in accordance with requirements of this paragraph. Subject to subparagraph (C), the adoption of a Commission action shall occur if a majority of the commissioners in attendance at the meeting (as well as any commissioners voting by proxy) vote in favor of such action.

(C) EQUALLY DIVIDED VOTES.—In cases when the commissioners voting are equally divided on whether or not a foreign country has taken comparable action under section 6005, the Commission shall be deemed to have made an affirmative determination that the foreign country has not taken comparable action.

(D) COMMISSION ACTIONS.—A Commission action for purposes of this paragraph shall include the performance of the duties specified under section 6004(c) and the exercise of the enforcement powers authorized under section 6004(d).

(c) DUTIES.—The duties of the Commission shall include those actions relating to—

(1) Determinations on whether a foreign country is taking comparable action under

section 6005;

(2) Establishment of foreign country lists under section 6006(b);

(3) Classification of a category of goods or products as a manufactured item for consumption under section 6001(14)(C).

(4) Adjustment of the international reserve allowance requirements pursuant to subsection 6006(g) and section 6007; and

(5) Performance of other actions that are necessary for the implementation of the provisions of this title.

(d) ENFORCEMENT POWERS.—

(1) PENALTY FOR NONCOMPLIANCE.—The Commission shall have authority to impose an excess emissions penalty on a United States importer of covered goods if that importer fails to submit the required number of international reserve allowances, as specified in section 6006. Such penalty for noncompliance shall be equal to the amount of an excess emissions penalty that an owner or operator of a covered facility is required to submit for noncompliance under section 1203.

(2) PROHIBITION ON IMPORTERS.—The Commission may prohibit a U.S. importer from entering covered goods for a period not to exceed 5 years if that importer—

(i) fails to pay a penalty for noncompliance imposed under paragraph (1); or

(ii) submits a written declaration under section 6006(c) that provides false or misleading information for the purpose of circumventing the international reserve requirements of this title.

(3) DELEGATION.—The Commission, as appropriate, may delegate to Customs the enforcement powers that are authorized under this subsection. Customs shall exercise such enforcement powers in accordance with procedures and requirements that the Commission may establish.

SEC. 6005. DETERMINATIONS ON COMPARABLE ACTION.

(a) IN GENERAL.—Not later than July 1 of the second calendar year for which allowances must be submitted under section 1202, and annually thereafter, the Commission shall determine whether, and the extent to which, each foreign country that is not exempted under subsection (b) has taken comparable action to limit the greenhouse gas emissions of the foreign country,. The Commission shall make a determination under this subsection based upon best available information and a comparison of such actions that—

(1) the foreign country has taken in the calendar year immediately prior to the July 1 date referenced in this subsection; and

(2) the United States has taken in the calendar year immediately prior to the calendar year referenced in paragraph (1).

(b) EXEMPTION.— The Commission shall exempt from a determination under subsection (a) any foreign country that is placed on the excluded list pursuant to clause (ii) or (iii) of

paragraph 6006(b)(2)(A) for that particular year.

(c) REPORTS.—The Commission shall, as expeditiously as practicable,—

(1) submit to the President and Congress an annual report describing the determinations of the Commission under subsection (a) for the most recent calendar year; and

(2) publish the determinations in the Federal Register.

SEC. 6006. INTERNATIONAL RESERVE ALLOWANCE PROGRAM.

(a) ESTABLISHMENT.—

(1) IN GENERAL.—The Administrator shall establish a program under which the Administrator shall offer for sale to United States importers international reserve allowances in accordance with this subsection. Importers shall be able to purchase international reserve allowances by no later than the earliest date that Administrator distributes allowances under title III.

(2) SOURCE.—International reserve allowances under paragraph (1) shall be issued from a special reserve of allowances that is separate from, and established in addition to, the quantity of allowances established under section 1201.

(3) PRICE.—The Administrator shall establish, by rule, a methodology for determining the daily price of international reserve allowances that the Administrator offers for sale under paragraph (a)(1). Such methodology shall require the Administrator to—

(A) not later than the date that importers may first purchase international allowances under paragraph (1), and annually thereafter, identify 3 leading publicly-reported daily price indexes for the sale of allowances established under section 1201; and

(B) for each day that international reserve allowances are offered for sale under paragraph (a)(1), set the price of such an allowance in an amount that shall be equal to the arithmetic mean of the prior day's average market clearing price for an allowance under section 1201 on the three indexes identified under subparagraph (A).

(4) SERIAL NUMBER.—The Administrator shall assign a unique serial number to each international reserve allowance issued under this subsection.

(5) TRADING SYSTEM.—The Administrator may establish, by rule, a system for the sale, exchange, purchase, transfer, and banking of international reserve allowances.

(6) REGULATED ENTITIES.—International reserve allowances may not be submitted by regulated entities to comply with the allowance submission requirements of section 1202.

(7) PROCEEDS.—All proceeds from the sale of international reserve allowances under this subsection shall be allocated to a program that the Administrator, in coordination with the Secretary of State, shall establish to mitigate the negative impacts of global climate change on disadvantaged communities in other countries.

(b) FOREIGN COUNTRY LISTS.—

(1) IN GENERAL.—Not later than January 1 of the third calendar year for which allowances must be submitted under section 1202, and annually thereafter, the Commission

shall develop and publish in the Federal Register 2 lists of foreign countries, in accordance with this subsection.

(2) EXCLUDED LIST.—

(A) IN GENERAL.—The Commission shall identify and publish in a list, to be known as the “excluded list”—

(i) each foreign country determined by the Commission under section 6005(a) to have taken action comparable to that taken by the United States to limit the greenhouse gas emissions of the foreign country;

(ii) each foreign country that the United Nations has identified as among the least-developed developing countries; and

(iii) each foreign country the share of total global greenhouse gas emissions of which is below the de minimis percentage described in subparagraph (B).

(B) DE MINIMIS PERCENTAGE.—The de minimis percentage referred to in clause (iii) of subparagraph (A) is a percentage of total global greenhouse gas emissions of not more than 0.5, as determined by the Commission, for the most recent calendar year for which emissions and other relevant data is available. The Commission shall place a foreign country on the excluded list under subparagraph (A) only if the de minimis percentage is not exceeded in two separate determinations that, in one case includes and, and in the other case excludes the annual average deforestation rate during a representative period for the United States and each foreign country.

(3) COVERED LIST.—

(A) IN GENERAL.—The Commission shall identify and publish in a list, to be known as the “covered list”, each foreign country the covered goods of which are subject to the requirements of this section.

(B) REQUIREMENT.—The covered list shall include each foreign country that is not included on the excluded list under paragraph (2).

(4) PRESIDENTIAL AUTHORITY.—Notwithstanding paragraphs (2) and (3), the President may require the Commission to place a foreign country on the excluded list or covered list if the President determines such action is necessary to protect essential security interests of the United States.

(c) WRITTEN DECLARATIONS.—

(1) IN GENERAL.—Effective beginning January 1 of the third calendar year for which allowances must be submitted under section 1202, a United States importer of any covered good shall, as a condition of entry of the covered good into the United States, submit to the Administrator and Customs a written declaration with respect to the entry of such good. The written declaration shall include a compliance statement, supporting documentation, and deposit, as required under this subsection.(2) COMPLIANCE STATEMENT.—A written declaration under paragraph (1) shall contain a statement certifying that the applicable covered good is—

(A) subject to the international reserve allowance requirements of this section and accompanied by the appropriate supporting documentation and deposit, as required under

paragraph (3);or

(B) exempted from the international reserve allowance requirements of this section and accompanied by a certification that the good was not manufactured or processed in any foreign country that is on the covered list under subsection (b)(3).

(3) DOCUMENTATION AND DEPOSIT.—If an importer cannot certify that the covered good is exempted under subparagraph (2)(B), the written declaration for such good shall include the following supporting documentation and deposit for ensuring compliance with the international reserve allowance requirements:

(A) the name of each foreign country in which the covered good was manufactured or processed;

(B) a brief description of extent to which the covered good was manufactured or processed in each foreign country identified under paragraph (A);

(C) an estimation of the number of international reserve allowances that are required for entry of the covered good into the United States under subsection (d); and

(D) at the election of the importer, the deposit of —

(i) international reserve allowances in an amount equal to the estimated number required for entry under subparagraph (C); or

(ii) a bond, other security, or cash in an amount that shall cover the purchase of the estimated number of international reserve allowances under subparagraph (C).

(4) FINAL ASSESSMENT.—

(A) IN GENERAL.—Not later than 6 months after submission of the written declaration and entry of the covered good under paragraph (1), the Administrator shall make a final assessment of the international reserve allowance requirement for the covered good under this section. The final assessment shall specify the total number of international reserve allowances that are required for entry of the covered good and whether the amount of the deposit under paragraph 3(D) is lower or higher than the final assessment.

(B) RECONCILIATION.—

(i) ALLOWANCE DEPOSIT.—Customs shall promptly reconcile the final assessment with the amount of international reserve allowances deposited under subparagraph (3)(D)(i). If international reserve allowances are deposited in an amount that is more than the final assessment, Customs shall refund the excess amount. If such allowances are deposited in an amount that is less than final assessment, then the importer shall tender within 14 days sufficient allowances to satisfy fully the final assessment.

(ii) BOND, SECURITY, OR CASH DEPOSIT.—If an importer has submitted a bond, security, or cash deposit under clause (3)(D), Customs shall use the deposit to purchase a sufficient number of international reserve allowances, as determined in the final assessment under paragraph (A). To the extent that the deposit fails to cover the purchase of sufficient international reserve allowances, the importer shall submit such additional allowances to cover the shortfall of allowances. To the extent that the amount of the deposit is more than the amount of the final assessment, Customs shall refund the unused portion of the deposit.

(5) INCLUSION.—A written declaration described under this subsection shall include the unique serial number of each emission allowance associated with the entry of the applicable covered good.

(6) FAILURE TO DECLARE.— A covered good that is not accompanied by a written declaration that meets the requirements of this subsection shall not be permitted to enter the United States.

(7) CORRECTED DECLARATION.—

(A) IN GENERAL.—If, after making a declaration required under this subsection, an importer has reason to believe that the declaration contains information that is not correct, the importer shall provide a corrected declaration by not later than 30 days after the date of discovery of the error, in accordance with subparagraph (B).

(B) METHOD.—A corrected declaration under subparagraph (A) shall be in the form of a letter or other written statement to the Administrator and Customs to which the original declaration was submitted.

(d) QUANTITY OF ALLOWANCES REQUIRED.—

(1) METHODOLOGY.—The Administrator shall establish, by rule, a method for calculating the required number of international reserve allowances that a United States importer must submit, together with a written declaration under subsection (c), for each category of covered goods of each covered foreign country. The method shall—

(A) apply to covered goods that are manufactured and processed entirely in one covered foreign country; and

(B) include a general formula for calculating the international reserve allowance requirement on a per unit basis for each category of covered goods that are entered into the United States from that foreign country during each compliance year.

(2) GENERAL FORMULA—The international allowance reserve requirement, as described in paragraph (1), for a compliance year is equal to the product obtained by multiplying—

(A) the national greenhouse gas intensity rate for each category of covered goods of each covered foreign country for the compliance year, as determined by the Administrator under paragraph (3); by

(B) the allowance adjustment factor for the industry sector in the foreign country that manufactured the covered goods entered into the United States, as determined by the Administrator under paragraph (4); by

(C) the economic adjustment ratio for the foreign country, as determined by the Commission under paragraph (5).

(3) NATIONAL GREENHOUSE GAS INTENSITY RATE.—The Administrator shall calculate the national greenhouse gas intensity rate for a particular foreign country under subparagraph (2)(A), on a per unit basis, in an amount equal to the quotient obtained by dividing—

(A) the total amount of direct greenhouse gas emissions and indirect greenhouse gas emissions that are attributable to a category of covered goods of a covered foreign country during the most calendar year (as adjusted to exclude those emissions that would

not be subject to the allowance submission requirements of section 1202 for the category of covered goods if manufactured in the United States); by

(B) total number of units of the particular covered good that are produced in the covered foreign country during the same calendar year.

(4) ALLOWANCE ADJUSTMENT FACTOR.—

(A) GENERAL FORMULA.—The Administrator shall calculate the allowance adjustment factor for a particular foreign country under subparagraph (2)(B) in an amount that is equal to 1 minus the ratio that—

(i) the number of allowances, as determined by the Administrator under subparagraph (4)(B), that an entire industry sector in the foreign country would have received at no cost if such allowances were allocated in the same manner that allowances are allocated at no cost under title III to the same industry sector in the United States; bears to

(ii) the total amount of direct greenhouse gas emissions and indirect greenhouse gas emissions that are attributable to a category of covered goods of a covered foreign country during a particular compliance year.

(B) ALLOWANCES ALLOCATED AT NO COST.—The Administrator shall calculate the allowances allocated at no cost under clause (4)(A)(i) in an amount equal to the product obtained by multiplying—

(i) the baseline emissions level that the Commission has attributed to a category of covered goods of a foreign country; by

(ii) the ratio that—

(I) the quantity of allowances that are allocated at no cost under title III to entities within the industry sector that manufactures the covered goods for the compliance year during which the covered goods were entered into the United States; bears to

(II) the total amount of direct greenhouse gas emissions and indirect greenhouse gas emissions of that sector.

(5) ECONOMIC ADJUSTMENT RATIO.—The Administrator shall apply an economic adjustment ratio of 1 for a particular foreign country under subparagraph (2)(C) unless the Commission makes an affirmative decision to lower the ratio in order to take into account all of the following actions that the foreign country has taken during the relevant period, and that these actions have been fully implemented, verified, and enforced—

(A) the deployment and use of state-of-the-art technologies in industrial processes, equipment manufacturing facilities, power generation and other energy facilities, consumer goods (such as automobiles and appliances) and implementation of other techniques or actions that have the effect of limiting greenhouse gas emissions in the foreign country during the relevant period; and

(B) any regulatory programs, requirements, and other measures that the foreign country has implemented to limit greenhouse emissions during the relevant period.

(6) ANNUAL CALCULATION.—The Administrator shall calculate the international reserve allowance requirements for each compliance year based on the best available information and annually revise the applicable international reserve allowance requirements to reflect changes in the variables of the formula described in this subsection.

(7) PUBLICATION.—Not later than 90 days before the beginning of each compliance year, the Administrator shall publish in the Federal Register a schedule describing the required number of international reserve allowances for each category of imported covered goods of each covered foreign country, as calculated under this subsection.

(8) COVERED GOODS FROM MULTIPLE COUNTRIES.—

(A) IN GENERAL.—The Administrator shall establish, by rule, procedures for determining the number of the international reserve allowances that a United States importer must submit under subsection (c) for a category of covered goods that are primary products and manufactured or processed in more than one foreign country. Subject to paragraph (B), such procedures shall require the importer to—

(i) determine for each covered foreign country listed in the written declaration, as required subparagraph (c)(2)(B), the number of international reserve allowances that apply under paragraph (d)(2) to the category of covered goods that are manufactured and processed entirely in that covered foreign country for the particular compliance year; and

(ii) of the international reserve allowance requirements identified under clause (8)(A)(i) for particular covered foreign countries, apply the requirement that imposes the highest number of international reserve allowances for the category of covered goods.

(B) EXCEPTION.—The procedures for setting the international reserve allowance requirement under paragraph (A) shall not apply if the Administrator grants a request by the importer to apply an alternate method for establishing such requirement. The Administrator shall grant such a request only if the importer demonstrates in an administrative hearing by a preponderance of evidence that the alternate method will establish an international reserve allowance requirement that is more representative than the requirement applicable under paragraph (A).

(C) ADMINISTRATIVE HEARING.—The Administrator shall establish procedures for administrative hearings under paragraph (B) to ensure that—

(i) all evidence submitted by an importer will be subject to verification by the Administrator;

(ii) domestic manufactures of the category of covered goods subject to the administrative hearing under this paragraph will have an opportunity to review and comment on evidence submitted by the importer; and

(iii) appropriate penalties will be assessed in cases where the importer has submitted information that is false or misleading. (e) FOREIGN ALLOWANCES AND CREDITS.—

(e) FOREIGN ALLOWANCES AND CREDITS.—

(1) FOREIGN ALLOWANCES.—

(A) IN GENERAL.—A United States importer may submit, in lieu of an international reserve allowance issued under this section, a foreign allowance or similar compliance instrument distributed by a foreign country pursuant to a cap and trade program that represents a comparable action.

(B) COMMENSURATE CAP AND TRADE PROGRAM.—For purposes of subparagraph (A), a cap and trade program that represents a comparable action shall include any greenhouse gas regulatory program adopted by a covered foreign country to limit the greenhouse gas emissions of the covered foreign country, if the Administrator certifies that the program—

(i)(I) places a quantitative limitation on the total quantity of greenhouse gas emissions of the covered foreign country (expressed in terms of tons emitted per calendar year); and

(II) achieves that limitation through an allowance trading system;

(ii) satisfies such criteria as the Administrator may establish for requirements relating to the enforceability of the cap and trade program, including requirements for monitoring, reporting, verification procedures, and allowance tracking; and

(iii) is a comparable action.

(2) FOREIGN CREDITS.—

(A) IN GENERAL.—A United States importer may submit, in lieu of an international reserve allowance issued under this section, a foreign credit or a credit for an international offset project that the Administrator has authorized for use under subtitle E of title II.

(B) APPLICATION.—The limitation on the use of international reserve allowances by regulated entities under subsection (a)(6) shall not apply to a United States importer for purposes of this paragraph.

(f) RETIREMENT OF ALLOWANCES.—The Administrator shall retire each international reserve allowance, foreign allowance, and foreign credit submitted to achieve compliance with this section.

(g) COMPLIANCE WITH INTERNATIONAL AGREEMENTS.—

(1) IN GENERAL.—The Administrator, may adjust the quantity of international reserve allowances required for each category of covered goods of a covered foreign country, as well as the implementation of any other requirement established under this title, to ensure that the United States complies with all applicable international agreements. Any such adjustments may be adopted by the Administrator only after consultation with the Commission and the Secretary of State, and in accordance with the provisions of paragraph (2).

(2) LIMITATION ON ADJUSTMENTS.—The Administrator, in consultation with the Commission and the Secretary of State, may adopt adjustments described in paragraph (1) only if they are no less stringent than necessary to ensure that the United States complies with such applicable international agreements.

(h) TERMINATION.—The international reserve allowance requirements of this section shall not apply to a covered good of a covered foreign country in any case in which the Commission

makes a determination described in subsection (b)(2) with respect to the covered goods of that covered foreign country.

(i) FINAL REGULATIONS.—Not later than January 1 of the second calendar year for which allowances must be submitted under section 1202,, the Administrator, in consultation with the Commission, shall promulgate such regulations as the Administrator determines to be necessary to carry out this section.

SEC. 6007. ADJUSTMENT OF INTERNATIONAL RESERVE ALLOWANCE REQUIREMENTS.

(a) IN GENERAL.—Not later than January 1 of the sixth calendar year for which allowances must be submitted under section 1202, and annually thereafter, the Commission shall prepare and submit to the President and Congress a report that assesses the effectiveness of the international reserve allowance requirements implemented under section 6006 with respect to—

(1) covered goods that are entered into the United States from each covered foreign country; and

(2) the production of covered goods in covered foreign countries that are incorporated into manufactured goods that are subsequently entered into the United States.

(b) INADEQUATE REQUIREMENTS.—If the Commission determines that an applicable international reserve allowance requirement is not adequate to achieve the purposes of this title, the Commission, simultaneously with the submission of the report under subsection (a), shall make recommendations to —

(1) increase the stringency or otherwise improve the effectiveness of the applicable requirements in a manner that ensures compliance with all applicable international agreements;

(2) take action to address greenhouse gas emissions that are attributable to the production of manufactured items for consumption that are not subject to the international reserve allowance requirements under section 6006; or

(3) take such other action as the Commission determines to be necessary to address greenhouse gas emissions that are attributable to the production of covered goods in covered foreign countries, in compliance with all applicable international agreements.

(c) REVISED REGULATIONS.—The Administrator, in consultation with the Commission, shall promulgate revised regulations to implement the recommended changes to improve the effectiveness of the international reserve allowance requirements under subsection (b).

(d) EFFECTIVE DATE.—Any adjustments adopted by the Administrator under subsection (c) shall take effect beginning on January 1 of the compliance year immediately following the date on which the adjustment is made.

SEC. 6003. INTERNATIONAL NEGOTIATIONS

Negotiating objective

The negotiating objective of the United States is clarified with respect to foreign countries that are not currently taking comparable action and those countries that are taking comparable action. Section 6003(b).

Notification to foreign country

To ensure consistency with WTO rules, the President is directed to provide immediate notification to a foreign country regarding the U.S. negotiating objective. Such notification should include—

- a request that the foreign country not otherwise excluded from the program take comparable action to limit its greenhouse gas emissions; and
- an estimation of greenhouse gas emissions reduction levels that the United States expects to achieve over the first 10 years of the domestic program. Section 6003(c).

Report to Congress

A new requirement for periodic reports to Congress is added with respect to the progress that United States is making on international negotiations. Section 6003(d).

SEC. 6004. INTERNATIONAL CLIMATE CHANGE COMMISSION

Establishment of independent commission

This section establishes a new independent commission, named the “International Climate Change Commission.” Section 6004(a).

Membership, duties and powers

This independent commission, instead of the President, will make the threshold determinations on which foreign countries are taking “comparable action” and thus subject to the international allowance requirements. There are rules on the creation, organization, and duties of the commission in order to ensure prompt and objective implementation of the international program. In particular, specific rules are provided on the following matters—

- membership, appointments of first commissioners, political affiliation of the commissioners, terms of commissioners, reappointment, designation of chairperson, and voting under Section 6004(b);
- duties of the Commission under Section 6004(c); and
- enforcement powers of the Commission under Section 6004(d).

SEC. 6005. DETERMINATIONS ON COMPARABLE ACTION

Role of commission

The procedures for making the determinations on comparable action under the international program have been revised. As already noted, an independent commission will make the determinations to ensure prompt and objective implementation of the international program.

Time frame for determinations

In addition, the time frame for making the determinations has been moved up in time. There is no longer an 8-year delay between the start of the domestic cap-and-trade program and the start of international allowance program. U.S. importers must now hold international reserve allowances on covered goods from covered foreign countries beginning in the third calendar year of the domestic cap-and-trade program. This means that if the domestic program began in January 1, 2014, then the importers must begin to hold allowances on January 1, 2016. Section 6005(a).

SEC 6006. INTERNATIONAL RESERVE ALLOWANCE PROGRAM.

Setting the price of allowances

One change has been made to the general framework for administering the international reserve allowance requirement. In particular, the procedure for setting the purchase price of international reserve allowances has been revised to approximate more closely the market price of domestic allowances. Instead of setting the price at a level that does not exceed the most recent auction clearing price, the bill would set the price in an amount equal to the average market clearing price for domestic allowances on the three leading publicly-reported daily price indexes for the sale of allowances. Section 6006(a)(3).

Foreign country lists

The time frame for the establishment of the “foreign country lists” has been moved up to conform with the earlier start date of the program, as noted above in section 6005. (One list identifies the foreign countries subject to the international program; the other identifies the foreign countries excluded because they are least-developed developing countries, have de minimis emissions, or are taking comparable action.) In addition, the rules have been revised on the de minimis exclusion – clarifying that the foreign countries are excluded only if they are not more than de minimis percentage based on both the inclusion and exclusion of deforestation rates for the United States and each foreign country. Section 6006(b).

Written declarations

Changes have been made to the requirements for the written declaration that must accompany covered imports. Section 6006(c). These changes relate to the content of the written declaration, including—

- a more complete statement on the compliance status of the imported good under section 6006(c)(2);
- supporting documentation that is necessary to prevent circumvention of the allowance requirement (as discussed below) under section 6006(c)(3); and
- payment of bond, security, or cash deposit to facilitate compliance with the applicable international allowance requirement (including rules on final assessment and reconciliation of such payment) under section 6006(c)(3)-(4).

Calculation of allowance requirement

The stringency of the international allowance requirement has been increased so that it is the same burden that is imposed on U.S manufacturers under the domestic cap-and- trade program. Key changes in the methodology for calculating the allowance requirement include the following—

- U.S. importers must now hold allowances equal to all of the direct and indirect greenhouse gas emissions attributable to the production of the imported good, and not just to those emissions above the 2012-2014 baseline levels.
- An adjustment factor must still be applied to reflect the allowances allocated at no cost to U.S. manufacturers; however, this adjustment factor must be set in a new manner that does not reward foreign countries for increasing greenhouse gas emissions by significantly increasing their production of the covered goods (as compared historic baseline levels).

Section 6006(d).

Anti-circumvention provisions to ensure compliance

New provisions are added to prevent a foreign country from circumventing the allowance requirement by shipping the covered goods to another country for further processing before importation into the United States. These provisions establish specific rules to ensure that international allowances will be required for the full amount of greenhouse gas emissions attributable to the imported goods. Section 6006(d)(8).

Compliance with international agreements

Minor changes are made to define with greater clarity the Administrator's authority to adjust the implementation of international reserve allowance requirements to ensure compliance with the WTO or other international agreements. In particular, the clarifying change authorizes the Administrator to adopt changes that are no less stringent than what is necessary to ensure compliance. Section 6006(g).

Final regulations

The time frame for the promulgation of final implementing regulations has been moved up to conform with earlier start date of the program, as noted above in section 6005.

SEC. 6007. ADJUSTMENT OF INTERNATIONAL RESERVE ALLOWANCE REQUIREMENTS

Inadequate requirements.

Clarifying changes are made to specify the types of adjustments that the Administrator may adopt to improve the effectiveness of the international program. Section 6007(a)-(b).s