



THE JOINT INDUSTRY GROUP

BORDER ENFORCEMENT PROVISIONS WITHIN CLIMATE CHANGE LEGISLATION

Climate change stands as one of the most important issues currently being addressed by Congress, and the Joint Industry Group commends the House and Senate for these efforts. The long-term protection of the environment is critical to securing a prosperous future, and effective control over carbon-producing industries represents a pivotal element of that process. As Congress develops solutions to this problem, however, it is important to create legislation capable of addressing the problem without causing unintended consequences and unfairly burdening businesses beyond their cap-and-trade compliance obligations.

BACKGROUND

The Joint Industry Group (JIG) is a broad coalition of Fortune 500 importers and exporters, shippers and carriers, customs brokers and forwarders, trade associations, service providers, and law firms with an active involvement in global commerce. JIG frequently engages Congress and the Administration on a variety of international trade-related issues, primarily those involving port and border security and customs. We work closely with the Bureau of Customs and Border Protection (CBP), the Department of Homeland Security (DHS), and Congress to promote international trade policy that reflects the needs of both the government and private sector, while also effectively supporting CBP's stated dual mission of border protection and trade facilitation.

JIG supports the development of legislation that limits the risks and negative impacts forecasted to occur as the result of anthropogenic climate change. Given our membership's focus on customs issues, we are pleased to offer several views about the creation of international competitiveness measures that comply with international agreements and refrain from imposing unreasonable constraints on the businesses that drive the country's economic success. Specifically, JIG recommends the following elements be included or addressed in any legislation that includes border enforcement provisions as part of climate change legislation:

COMPLIANCE WITH THE WORLD TRADE ORGANIZATION AND OTHER AGREEMENTS

Regardless of the mechanism(s) employed, international competitiveness provisions contained in any cap-and-trade legislation must: (1) conform to and comply with U.S. obligations under the World Trade Organization (WTO) Agreements; and (2) adhere to all other bilateral and multilateral trade agreements currently involving the U.S. WTO Compliance does not necessarily or automatically provide for the unilateral imposition of carbon taxes and fees, requirements for carbon-intensity product standards, or discriminatory treatment based on comparability of domestic greenhouse gas regulations.

CUSTOMS AND BORDER PROTECTION INVOLVEMENT FROM THE OUTSET

CBP is the country's preeminent border agency, and it will ultimately be tasked with the implementation and enforcement of any borders measures that are created. It is critical that CBP



be intimately involved from the beginning of any legislative discussions so its capacity and authority for monitoring and enforcement is wedded to the legislative intent. CBP possesses the on-the-ground expertise and key competencies necessary to ensure that any border program contains options or features to make the regime function. CBP also understands how to implement a program in a manner that complements existing requirements and achieves the goal of protecting international competitiveness. Finally, CBP is the only agency truly qualified to develop the least burdensome program(s) possible. It is well-positioned to both consider the real-world needs of U.S. companies as well as develop procedures that are administrable, verifiable, and auditable.

PROPER DEVELOPMENT AND UTILIZATION OF REBATES AND BORDER ADJUSTMENTS

To ensure that certain sectors of U.S. manufacturing are not adversely affected by a cap-and-trade system vis-à-vis overseas competitors, Congress is currently considering establishment of a system of designated sector “rebates” and/or “international reserve allowances” (*i.e.* border measures). Companies in qualifying sectors (or ones that can demonstrate presumptive harm) would ostensibly be eligible to receive direct rebate compensation to cover the costs they incur to comply with carbon cap obligations. The intention of a rebate scheme would be to offset the competitive disadvantage effects that a cap-and-trade system may have on international market and product pricing that could lead to carbon leakage (*i.e.* carbon-intensive product manufacturing moves to countries without binding carbon emissions regulation).

Without specific parameters, any rebate and border adjustment provisions will be fraught with possibilities for administrative problems, discontinuities, and unintended consequences. From a practicability standpoint, the refinement and implementation of such provisions will take years and engender widespread lobbying for exceptions and carve-outs. For example, what criteria and thresholds should be used to define adverse competitive effects? How will the U.S. evaluate the comparability of foreign carbon regulations? How will rebates or border adjustments be priced to properly offset costs? How would product carbon intensity standards be developed and administered? How do we tax imported carbon-intensive inputs used by U.S. value-added manufacturers of down-stream products without providing an advantage to the same down-stream products manufactured abroad without any compensating carbon tax being assessed thereon? These and myriad other critical questions need to be answered from the outset of the policy development process to gauge not only its efficacy but its practicality.

ENFORCEMENT THAT INCLUDES FACILITATION COMPONENTS

Disruptions to the trade community as a result of border measures can best be minimized through the use of appropriate trade facilitation practices. Such practices include:

- Utilization of risk management principles rather than individual inspection of each and every import unit to assess its life-cycle carbon intensity. This includes programmatic development and use of harmonized product or sector-based carbon management standards.



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- Implementation of post-entry payment of applicable taxes or allowance purchase obligation in lieu of stopping shipments upon arrival at the physical border to levy carbon market fees.

JIG remains committed to working with Congress as it creates policy that impacts our membership. We would be pleased to meet with your committee in person to further explain these concepts and provide perspective from the trade community. This is an extremely complex issue, and our membership remains uniquely positioned to assist in the development of policy that reflects the operational realities for U.S. businesses as they seek to comply with climate change legislation.

Best Regards,

A handwritten signature in black ink that reads 'Megan Giblin'. The signature is written in a cursive, flowing style.

Megan Giblin, Chair
Joint Industry Group