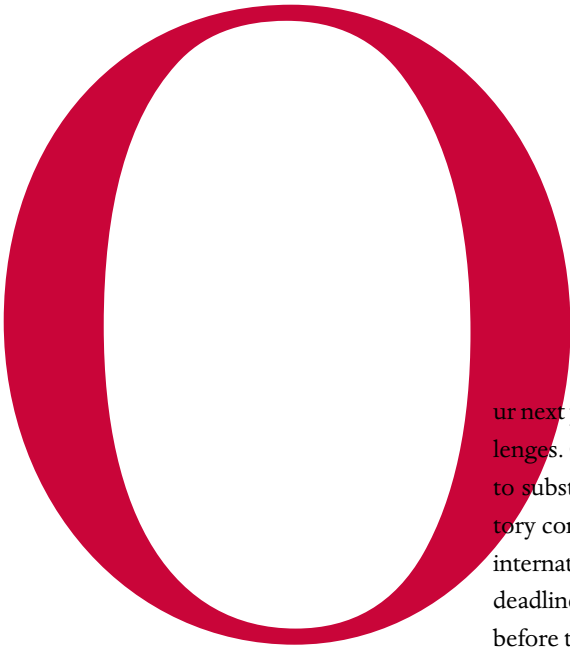




Trading Approaches on Climate
The Case for
“Climate Protection Authority”

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Our next president will face two major climate policy challenges. Congress is likely to take up legislative proposals to substantially reduce U.S. emissions through mandatory controls. Also, the United States and the rest of the international community have set December 2009 as the deadline for concluding a new global climate agreement before the controversial Kyoto Protocol expires in 2012.

This new round of climate negotiations provides a real chance to ensure strong, equitable action by all major economies, including the United States, China, and India.

The stakes are high. The Nobel Peace Prize-winning Intergovernmental Panel on Climate Change tells us we probably have one last clear chance to deal with the climate problem in time to avoid unacceptable environmental, economic, humanitarian, and security risks, but only if we act now.

The key to success will be integrating these domestic and international approaches. New domestic laws must help spur international cooperation. New international agreements must mesh with domestic strategies and political realities. Unfortunately, several major obstacles stand in the way.

First, America lacks a compelling bipartisan vision for how the United States should engage the world on climate change. Without further guidance, U.S. climate diplomats seem unlikely to thread the needle—crafting a politically acceptable, economically feasible, and environmentally effective climate agreement. Congress's hostility to the Kyoto Protocol showed that it will not accept an international consensus that it does not help design and shape.

Unless the United States starts speaking to the world with one consistent and credible voice on climate change, other nations will prove reluctant to make the politically difficult concessions that the United States will require before participating. Why should other nations negotiate with the president if they believe Congress is likely to reject the agreement anyway? In the absence of a bipartisan climate change foreign policy, furthermore, Congress may fail to design new domestic climate legislation with the international community firmly in mind. A go-it-alone approach would forgo the important opportunities domestic climate laws provide to entice and cajole other nations to do more to mitigate their emissions as well.

The climate bills in Congress today do not tie U.S. domestic and international climate policy together in a coherent manner, nor do they mobilize resources for international cooperation on the scale needed. Failure to make progress internationally, in addition, may make it harder to move climate legislation through Congress, since many legislators view equitable action by China, India, and other major emitters as essential.

Second, securing the two-thirds support of the Senate needed for U.S. participation in a new climate treaty would be a truly daunting task. The supermajority for treaties is among the highest bars imposed by the Constitution, equal to the standard for removing a president from office. The framers expected treaties to be relatively rare, maybe a few agreements with England, France, and Spain. Today, the United States enters into several hundred new international agreements each year that are essential for advancing U.S. national interests in a complex, rapidly globalizing world. As a general rule,

however, the Senate will not act on a treaty if a single member of the Committee on Foreign Relations asks for more time. These informal committee “holds,” as they are called, can last for years and even decades.

The Senate’s recent experience with the U.N. Convention on the Law of the Sea illustrates the challenge of moving a major treaty through that body. When these negotiations concluded in 1982, the Reagan administration expressed dissatisfaction with the result. At the request of the United States, the international community modified the treaty in 1994. The revised agreement has been supported by the past three presidents (including the incumbent), the U.S. military and national security community, major corporations, and leading environmental groups. Nevertheless, a very small but vocal minority in the Senate has blocked consideration of the agreement by the full Senate for more than a decade, although some progress has occurred recently. In light of U.S. treaty practice, many experienced foreign policy hands are skeptical about whether any economically costly climate change agreement could make it through the Senate, given both the inherent difficulty of that task and the controversial nature of the topic.

Why do these obstacles to U.S. global leadership on climate change matter? It’s hard to see how the United States could stabilize the planet’s climate without new international climate agreements. Until the United States commits itself internationally, other nations will hide behind U.S. unilateralism and inaction.

The truth is this. The United States has neither a sound climate foreign policy nor the right mechanism for creating one. Absent a fundamental change in the way the United States makes and carries forward its climate diplomacy, the next president and Congress may fail to do what is necessary to stabilize the Earth’s climate system in time to avoid disastrous consequences for the United States and the world. Now is the time to consider innovative alternative approaches. For inspiration, we should look to other more successful areas of international cooperation, specifically international trade.

The Trade Model

In the United States, trade policy is as contentious as climate policy. While progress on trade is episodic, the president and Congress eventually come together. Why? Partly because the United States employs a powerful tool that forces the president and Congress to cooperate. Specifically, Congress periodically grants the president Trade Promotion Authority (TPA), a comprehensive framework for negotiating, reviewing, and implementing trade agreements. TPA does the following:

- Authorizes the president to negotiate new trade agreements
- Enacts into law concrete and usually bipartisan negotiating objectives
- Requires the president to submit concluded agreements to Congress for final approval as congressional-executive agreements, which must be approved by a simple majority of both houses of Congress rather than by two-thirds of the Senate
- Creates mechanisms for improving coordination between the executive branch and Congress, sometimes through the creation of official congressional observer groups
- Guarantees that trade agreements receive a straight up-or-down vote without amendments, holds, or filibusters within 90 legislative days

Under TPA, U.S. negotiating positions carry more weight internationally because America speaks with one voice and other nations understand clearly what is required to secure U.S. participation. With TPA, other nations are more likely to make politically difficult concessions because they believe U.S. domestic approval is both probable and will occur without unwarranted delay.

Reasonable people differ on whether trade deals give sufficient attention to environment and labor challenges. Regardless of one's view on this, procedurally TPA works. Congress and the president almost always find common ground over time and the United States usually joins the trade agreements it negotiates. Almost all major trade deals negotiated by the United States over the past several decades have been done under some form of TPA, including the North American Free Trade Agreement (NAFTA) and the World Trade Organization (WTO) agreement.

Climate Protection Authority

The United States should apply the trade model to climate change by creating "Climate Protection Authority" (CPA). Importantly, there are no legal impediments. Over the past 70 years, U.S. courts and the weight of scholarly opinion have confirmed that virtually any international agreement the United States could enter into as a treaty, it may rightfully approve as a TPA-style congressional-executive agreement. The Supreme Court has said the decision to classify an international agreement as a treaty or a congressional-executive agreement is a political question for the president and Congress to decide alone.

Until now, the United States has tended to treat climate agreements as treaties, a product of historical accident and anachronistic tradition, rather than law and principle. The president and Congress remain free to take a different approach now. The rationale for TPA applies equally well to climate change. CPA would empower U.S. negotiators to bring home better agreements by making the United States a more credible and reliable negotiating partner. Other nations would know where the United States stands and what concessions are needed to secure U.S. participation. And they would have confidence that Congress would approve climate agreements in a timely manner without seeking to renegotiate key terms.

Global climate agreements are every bit as complex, lengthy to negotiate, difficult to conclude, and near impossible to renegotiate as trade agreements. The geopolitics of climate change are as challenging as the politics of international trade, perhaps more so because the benefits of freer trade are more immediate than the benefits of mitigating emissions. Global climate cooperation serves vital U.S. interests that should not be frustrated by a minority of the Senate.

CPA could work just like TPA. Congress would authorize the president to negotiate new congressional-executive agreements, define U.S. negotiating objectives and principles, create mechanisms for improving coordination between the two branches of government, and provide for a straight up-or-down vote in both houses of Congress on climate agreements within 90 legislative days, without conditions, holds, filibusters, or amendments.

The president and Congress now have before them an important opportunity to pass legislation that creates CPA. Most climate advocates and Capitol Hill watchers predict the United States will enact major domestic climate legislation in the next year or two. By enacting CPA at the same time it regulates U.S. domestic emissions, the United States could provide greater certainty about how domestic and international systems will evolve harmoniously. To establish credibility, the United States would agree to reduce its emissions to an economically manageable level without precondition. Simultaneously, the United States would offer to make initial U.S. emissions goals more stringent if other nations make equitable and verifiable commitments in international climate agreements. The legislation would make clear that such agreements would be treated as congressional-executive agreements that would be reviewed under the CPA process.

This conditional offer and promise of streamlined review would create powerful incentives for other nations to act, while reserving for Congress the final decision on whether international climate agreements advance U.S. national interests. Europe has already adopted this type of conditional stance. It plans to reduce its emissions 20 percent below 1990 levels by 2020, but it has offered to reduce emissions by 30 percent if all major emitters participate in an equitable global climate agreement.

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Political Reactions

How might the next president, Congress, and key stakeholders react to this proposal? There is reason for guarded optimism.

Two key players are likely to favor CPA from the outset. Every modern president has considered TPA indispensable for trade negotiations. A new administration might understand immediately that CPA would empower it to conclude good agreements by enhancing U.S. credibility and creating incentives for other nations to accept U.S. terms. The House, in addition, should prefer congressional-executive climate agreements to climate treaties because it would play no formal role in the latter but would have a role equal to the Senate in the former. Assuming continued Democratic control, the House's willingness to add CPA to new domestic climate legislation would depend on the attitudes of traditional Democratic Party stakeholders, including environment and labor groups.

The reactions of these groups, the business community, and the Senate are harder to predict. Contrary to what one might expect, the Senate has been pragmatic about congressional-executive agreements. Today, the Senate treats only six percent of U.S. international agreements as treaties; the vast majority of agreements take the form of congressional-executive agreements. In addition, Senate leaders appreciate the importance of U.S. participation in a new global climate pact.

The United States's refusal to join the Kyoto Protocol has become an unfortunate symbol of American unilateralism and "exceptionalism." Almost no change in U.S. foreign policy would better demonstrate a renewed American commitment to multilateral cooperation. Admittedly, the Senate has always had a vocal minority of staunch defenders of its treaty prerogatives, such as Senator Robert Byrd. The next president or the House would have to convince the Senate that the time has come to apply to climate change what has become the normal method of review for most international agreements in other areas.

The Senate will also listen carefully to the views of major U.S. companies; most now recognize that greenhouse gas regulation is inevitable. Once the outline of a major domestic climate law is clear, U.S. companies might come to the conclusion that CPA would provide greater regulatory certainty regarding how domestic and international climate systems will evolve than the traditional treaty process, under which the president has almost a free hand to conclude new agreements without congressional involvement.

Congress will also want to hear from labor unions and companies in energy-intensive sectors regarding competitiveness issues. Labor groups, of course, are firmly opposed to TPA, so the idea of extending that set of practices to climate change could seem highly unappealing. Yet, these players are sophisticated and they might take a second look at CPA if the mechanism were designed to help create a level international playing field. If well designed, CPA could increase the prospects of an agreement that obligated other nations to take comparable action and help insulate domestic competitiveness safeguards (such as border taxes) from WTO challenge.

The environmental community might embrace CPA so long as the approach does not slow momentum toward enactment of domestic emissions limits or allow Congress to set unrealistic international negotiating objectives. Environmentalists should support the general proposition that climate agreements should be held to the same Senate voting standards and receive the same preferential procedural treatment that trade agreements have enjoyed for decades.

Reducing U.S. domestic emissions and promoting international climate cooperation are vital national security interests. CPA would create an integrated strategy for tackling climate change at home and abroad. And that is exactly the kind of creative leadership that the American people hope for from the next president and Congress. ■

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