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Mind the Gap

THE CASE FOR CLIMATE AND COMPETITIVENESS PROTECTION AUTHORITY

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The Climate Policy Program at Resources for the Future (RFF) provides a framework for policymakers and stakeholders to better understand and address one of the most complex environmental issues of our time: climate change.

The program has two core objectives: to develop domestic policies that are politically and economically viable and to articulate a new architecture for a global climate policy regime. Program scholars work to both support current policy efforts as well as fostering the evolution of these policies over time by making economic analysis more usable and facilitating decisionmaker involvement in developing new tools.

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Mind the Gap

THE CASE FOR CLIMATE AND COMPETITIVENESS PROTECTION AUTHORITY

Nigel Purvis[1]

Here I will explain why the legal form the United States chooses for new international climate change agreements will affect America's ability to safeguard its international competitiveness. I make the case for "Climate and Competitiveness Protection Authority," a new statutory means of promoting equitable global action on climate change while ensuring a level playing field for U.S. companies and workers.

The paper comprises four sections. In the first, I explain why enacting climate-related competitiveness provisions under domestic law (such as border taxes or emissions allowance requirements on imports) will not suffice and why new international climate change agreements are essential. In the second section, I analyze how the current U.S. approach to negotiating international climate change agreements creates serious competitiveness risks for energy-intensive U.S. industries. In the third section, I describe the legal options available to the United States for entering into international agreements that require other nations to mitigate their greenhouse gas emissions. In the final section, I introduce the concept of Climate Protection and Competitiveness Authority, explain how it would work in practice, and highlight its many advantages from the standpoint of minimizing the adverse competitiveness impacts of U.S. climate policy.

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Climate and Competitiveness Policy

U.S. policymakers now have two major opportunities to tackle the climate challenge and address the competitiveness consequences of climate policies. In December 2007, the United States and the rest of the international community agreed to negotiate a new U.N. climate treaty by December 2009. The goal of the new agreement is to produce deep cuts in global emissions beginning no later than 2012, when the Kyoto Protocol expires. These global climate talks provide a real chance for all nations to ensure strong, equitable action by major climate-polluting countries, including the United States, China, and India, which in the past have resisted obligations to mitigate their emissions. The U.S. Congress, moreover, is actively considering an ever-growing number of bipartisan legislative proposals that would substantially reduce U.S. emissions over the next few decades. Regardless of who wins the presidential election in 2008, the United States seems likely to enact ambitious new climate legislation in the coming years.

Alignment of these domestic and international efforts will, of course, be the key to success in managing climate change and the competitiveness impacts of climate policy. New domestic climate laws must help spur international cooperation, and new international agreements must mesh with domestic emissions reduction strategies.

Aligning domestic and international competitiveness safeguards will be particularly challenging. Economic studies demonstrate that certain sectors of the U.S. economy—particularly energy-intensive industries, such as aluminum, cement, and steel—could be hit hard if the United States were to impose climate costs on domestic manufacturers and other major economies fail to do the same (see, e.g., Morgenstern et al. 2006.) This is why several of the climate bills in Congress include provisions designed to ensure that U.S. companies and workers can compete fairly. Indeed, many in Congress believe that any new climate legislation must include strong competitiveness safeguards, although the structure and scope of such measures remain uncertain.

One approach would require importers of carbon-intensive goods from countries without emissions mitigation policies comparable to the United States to purchase U.S. emissions allowances thus raising the price of imports and domestic goods equitably. Another possible approach would involve domestic subsidies to energy-intensive sectors through free emissions permit allowances, for example. And another approach would

prohibit the import of certain products made in nations that do not meet specific technology or efficiency standards. Any trade restrictions and duties imposed for these reasons, of course, might be supplemented by positive incentives designed to encourage exporting nations to mitigate their emissions, such as new technology cooperation programs, enhanced access to U.S. markets, and more foreign aid.

However, the United States will not be able to minimize the adverse competitiveness impacts of climate change policy unilaterally. Any subsidies for energy-intensive domestic sectors, such as free emissions allowances, would presumably be temporary, phasing out after some brief transition period. Unilaterally imposed trade actions, for example, would not create parity for U.S. exports: if other countries decline to impose similar border taxes, then U.S. exports would be disadvantaged compared to exports from nations that are not imposing climate costs on their manufacturers. Even at home, any system of negative and positive incentives would only partly counteract the competitiveness effects of climate policy.

It is extremely difficult to calculate the climate emissions attributable to specific products. To be easily administered, U.S. policies would need to create simple, bright-line distinctions. In addition, verifying how and where imports are produced would be difficult and subject to gaming. Therefore, border taxes and similar measures would only approximate—sometimes quite poorly—the competitiveness consequences of U.S. climate policy. Domestic competitiveness safeguards make sense but they will not be sufficient.

The only true protection for American companies and workers is to ensure that all major emitting countries do their part to protect the Earth's climate system. Environmentally and economically, an international solution is essential. This is why U.S. climate change foreign policy must secure appropriate action by all major emitters, including America's largest trading partners. U.S. climate foreign policy must seek to minimize the time gaps between domestic and international climate action, as well as any substantive gaps, or differences, between U.S. climate policy and the policies of these other key countries, including rapidly emerging economies such as China and India.

Of course, other nations will insist—with some justification—that global climate cooperation must reflect differences in national circumstances, including respective economic capabilities and contributions to the climate problem. They will demand that international cooperation should be guided by the principle of "common but differentiated

responsibilities," which the United States accepted when it ratified the 1992 U.N. Framework Convention on Climate Change (the "Convention"). Nevertheless, in honoring these principles, a central objective of U.S. climate foreign policy should be to "mind the gap" between U.S. action and the actions taken by other major emitters.

To establish parity for vulnerable sectors of the U.S. economy, the United States must accomplish three goals internationally. First, it must negotiate sound international agreements that commit the world's major economies to quantifiable and verifiable emissions goals. Other nations are more likely to meet their climate burdens if they commit in writing to specific objective benchmarks. Assuming that U.S. emissions limits are mandatory under domestic law, international climate agreements also should be legally binding and enforceable. The United States has a strong record of implementing its domestic laws and complying with its international obligations; legally binding agreements would help ensure that other nations keep their word as well.

Second, the United States must join these agreements to ensure the participation of other nations. Under the best of circumstances, convincing China, India, and other rapidly industrializing nations, to mitigate their emissions would not be easy for they fear that climate commitments will unreasonably constrain economic growth. But there is no hope of convincing these nations to make international emissions mitigation commitments unless the United States commits internationally to take strong action as well. Even Japan, which ratified the 1997 Kyoto Protocol despite U.S. rejection of the treaty, has implied that it might not impose new costs on its economy unless the United States does so at the same time. In fact, some nations take the position that the next global climate agreement should expressly state that its provisions shall not enter into force until all of the world's major emitters ratify the agreement.

Third, the next president must ensure that new international agreements (either under the United Nations or among a smaller group of like-minded nations) explicitly authorize nations that have adopted ambitious domestic climate programs to take reasonable measures needed to maintain a level playing field for their companies and workers. Absent such assurances, the United States runs a far higher risk that the World Trade Organization (WTO) would invalidate competitiveness-oriented provisions of new domestic climate change laws, including the trade-related provisions mentioned above.

WTO rules allow nations limited flexibility to both pursue sound environmental policies and protect their economies from unfair competition, and its environmental provisions are rather general and subjective. They were designed to deal with the direct environmental threats posed by goods in international trade (such as lead in toys), rather than to manage the environmental impacts of production and process methods like greenhouse gas emissions. WTO disputes, including those relating to the environment, are resolved by the organization's dispute resolution bodies, which have yet to build up a large body of case law that could offer clear guidance about the climate-related trade actions that are permissible under WTO rules. Over the past decade, several national environmental standards have been challenged, and the United States has been the defendant in a disproportionate number of these cases, usually prevailing only partially.

In light of the large economic stakes, legal uncertainty, and record of litigation, any competitiveness provisions of U.S. climate law would surely be challenged in the WTO. The outcome of such a case would be unclear in the best of circumstances. It would be influenced, for example, by the composition and ideological perspectives of the presiding WTO judges. The United States would stand a good chance of success, but the risk of an adverse ruling would be unacceptably large. Even if U.S. lawmakers were to take great care in designing competitiveness provisions, the United States could not bank on a favorable ruling. Were the United States to prevail, moreover, a WTO challenge might still harm the U.S. economy. WTO disputes can take years to resolve and during this time disputants often engage in economically damaging retaliation, imposing countermeasures across a variety of unrelated sectors. Although the full legal, political, and economic implications of a WTO climate change case are hard to predict, they would be significant.

One thing is clear about WTO trade and environment law, however. Environment-related trade measures and domestic subsidies are more likely to withstand WTO scrutiny if they are adopted pursuant to a multilateral agreement rather than unilaterally. Two cases involving the United States reaffirm this point. In those cases, WTO dispute bodies attached great significance to the existence or absence of multilateral environmental agreements authorizing U.S. efforts to regulate trade for the purpose of protecting dolphins and sea turtles (*Tuna-Dolphin*, WTO Env. Dispute No. 4, and *Shrimp-Turtle*, WTO Env. Dispute No. 8). Environmental goals and trade practices that have been approved by a large number of countries, the WTO reasoned, are more legitimate and worthy of deference than

unilateral environmental goals and trade practices. Trade- and competitiveness-related measures in U.S. climate laws, therefore, would prove less vulnerable to international challenge if a large number of nations negotiated a framework for applying these measures. Securing such an agreement, either globally or among a smaller but still sizeable number of like-minded nations, must be an objective of U.S. climate change foreign policy (assuming that new domestic U.S. climate laws include trade-related competitiveness provisions as expected.)

In sum, simply enacting competitiveness provisions in a new federal climate law may be necessary but it will not suffice. Protecting vulnerable U.S. economic sectors must become a foreign policy priority of the United States as well. U.S. climate foreign policy must be designed to produce workable climate agreements that ensure equitable action from all major economies, are politically acceptable to the United States, and make domestic competitiveness provisions of U.S. climate law less subject to international challenge.

On the Wrong Track

Unfortunately, the way in which the United States is negotiating new climate change agreements provides little reason for optimism. Current U.S. climate foreign policy creates major risks for American workers and companies in energy-intensive sectors in a number of ways.

First, the United States has yet to create a negotiating dynamic that encourages other nations to make the politically difficult concessions necessary to satisfy legitimate U.S. concerns. After almost two decades of international climate diplomacy, the United States still lacks a clear, bipartisan vision of what international climate cooperation ought to look like. The United States even lacks bipartisan objectives for the negotiations that are already underway. Unless the president and Congress come together soon, U.S. climate diplomats won't have the tools to craft a politically acceptable, economically feasible, internationally fair, and environmentally effective climate agreement.

As hostility to the 1997 Kyoto Protocol demonstrated, Congress is unlikely to accept an international consensus that it did not help design and shape. The United States will find it difficult to negotiate an agreement worth joining until it starts speaking to the world

in a single, credible voice that reflects a broadly shared domestic understanding of U.S. national interests on climate change. Furthermore, in the absence of a bipartisan climate change foreign policy, Congress may fail to design new federal climate legislation with the international community firmly in mind. Domestic climate laws that take a go-it-alone approach would forgo important opportunities to entice and cajole other nations to do more to mitigate their emissions and to accept U.S. proposals regarding international climate agreements. Alone, U.S. domestic legislation, such as a cap-and-trade program that allowed regulated entities to trade emission permits, may not create the carrots and sticks needed to move China and India toward more climate-friendly growth.

Second, our negotiating partners now wonder whether the United States would even join a climate agreement that is highly favorable to U.S. interests. Any new climate treaty would require the consent of two-thirds of the Senate, as the Constitution requires. Securing a two-thirds supermajority for what will inevitably be a controversial agreement would be a truly daunting task. The supermajority required for treaties is among the highest bars imposed by the Constitution, equal to the standard for removing a president from office. The framers of the Constitution expected treaties to be relatively rare—perhaps a few agreements with England, France, and Spain. The world today looks quite different: the United States has thousands of agreements with hundreds of countries on hundreds of issues. The Senate's treaty practice, in addition, has evolved in ways that the framers could not have imagined.

As a general rule, 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" can last for years and even decades. Although the Senate has only rejected 7 treaties in the past century, today 45 treaties languish in the Senate, some dating back to the 1940s. Several of these agreements have been joined by practically every major democracy in the world except the United States, including treaties designed to raise international labor standards. Even more importantly, presidents routinely forgo the opportunity to create valuable treaties because they lack confidence that a supermajority of the Senate would consent.

The Senate's recent experience with the U.N. Convention on the Law of the Sea illustrates the challenge of moving a 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 George W. Bush), 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, despite some recent progress. In light of U.S. treaty practice, many experienced foreign policy hands are skeptical about whether any major climate change agreement could make it through the Senate given both the inherent difficulty of that task and the controversial nature of the topic.

Third, the next president may not attach sufficient importance to achieving U.S. competitiveness objectives in international climate negotiations. Although only the executive branch is responsible for implementing U.S. climate foreign policy, the president and Congress share responsibility for formulating that policy. Of course, to influence U.S. climate policy, Congress must act by passing a statute or resolution or through committee oversight. So far, Congress has played a limited role in designing a proactive climate foreign policy. In 1997, the Senate passed the Byrd–Hagel resolution, which expressed its sense that the United States should not sign what would become the Kyoto Protocol. In 1998, the Clinton administration signed the agreement anyway, although the United States never ratified the treaty. Since that time, the Senate has passed resolutions calling on the United States to engage more actively in global climate negotiations, but it has not defined concrete negotiating objectives. The Senate, let alone the full Congress, has never adopted a clear and compelling blueprint for U.S. climate diplomacy.

Until Congress acts, the current administration and the next president will take U.S. climate foreign policy in whatever direction they please, regardless of whether the Congress enacts or fails to enact domestic climate legislation. Under either scenario, Congress may be able to stop a bad international agreement by refusing to approve the agreement or any needed implementing legislation. However, absent congressional action, the next president will define the goals of U.S. climate foreign policy. This creates risks for interest groups concerned about how international climate policies might harm U.S. competitiveness. For example, the president may decline to press other nations to agree that United States may take measures to protect the competitiveness of U.S. firms and workers, leaving such measures more vulnerable to WTO scrutiny than necessary. The president may also disregard congressional views about what international climate agreements should

require of the United States or other major emitting nations. The president might negotiate an international climate agreement that would in effect ask the Congress to reopen federal climate legislation, creating uncertainty for U.S. industry about what actions are truly required.

Imagine a situation in which U.S. emissions targets are set at different levels in a domestic climate law and an international climate agreement. Although the president might not have the authority or political clout to bind the United States to a more stringent international target without congressional consent, the president's climate diplomacy would exert pressure on Congress to revisit domestic climate targets in ways that Congress and stakeholders did not anticipate.

Absent a change in course, the United States may fail to achieve its international climate goals (including securing action from China and India) or be unable once again to join a global climate agreement because either the agreement is not worth joining or it does not satisfy a supermajority of the Senate. Either way that could create unacceptable risks for workers and companies in energy-intensive sectors: they would face unfair competition as well as domestic and international regulatory uncertainty. Before considering ways to manage these unacceptable risks, a little legal background is necessary about how the United States enters into treaties and other types of international agreements.

Treaties and Other International Agreements

Under both international and U.S. law, an international agreement is an arrangement between two or more states or international organizations that is intended to be legally binding and governed by international law. Sometimes the international community describes such an arrangement simply as an international agreement, but the words treaty, charter, covenant, protocol, convention, accords, and a number of other synonyms are also common. As a matter of international law, the name makes no difference—all can create international law obligations for state parties. Sometimes nations use similarly arcane words to describe international arrangements that are not intended to be legally binding under international law. In general, declarations, final acts of conferences, communiqués, and joint statements are not considered international agreements but they can be; it is the intention of the parties that counts.

International agreements may contain a mix of commitments; some of which may not create legally binding obligations for state parties. For example, the Convention is a legally binding instrument to which the United States is a party. In that treaty, the United States made a nonbinding pledge that it would aim to return its emissions to 1990 levels by the year 2000. Similarly, a legally binding international agreement may create specific legally binding obligations without making those commitments enforceable. In the late 1990s, several major industrialized nations took the view that the Kyoto Protocol's national emissions targets should be legally binding but not enforceable. (In the end they were both legally binding and enforceable for parties to the agreement.)

U.S. domestic law provides two distinct ways for the United States to become a party to an international agreement and thereby bind itself with respect to other parties: treaties and executive agreements. Under international law, these two types of instruments are indistinguishable: both can create binding international obligations. Even under U.S. law, once approved and in force, both treaties and executive agreements have the same legal status and are equivalent to federal statutes. They both become the "supreme law of the land" until changed by a later conflicting federal statute or a Constitutional amendment.

However, it is important to note that the domestic processes that the United States uses to negotiate, review, and finally approve treaties and executive agreements are quite different. Herein lies a common source of confusion. The United States may deem an international agreement an executive agreement for purposes of its domestic review even though the international community may decide to call the pact a treaty. Similarly, the United States may determine that an international agreement is a treaty, whereas the rest of the world might call it an agreement, protocol, convention, or something else entirely.

In contrast to treaties, executive agreements lack explicit constitutional formality and authority. In fact, the Constitution does not mention them as such, and Congress has never passed a general statute that authorizes the president to negotiate executive agreements. Nevertheless, the constitutionality of executive agreements is well established, including by the Supreme Court. Congress authorized the first executive agreements in 1792, but they grew far more popular in the 1930s and 1940s. Since World War II, the United States has approved over 90 percent of its international agreements as executive agreements rather than as treaties. The number of executive agreements, moreover, is growing more rapidly than the number of treaties. Over its history, the United States has become a party to roughly 15,000 executive agreements. Currently, the United States approves roughly 300–400 each year.

Executive agreements come in three varieties. Sole executive agreements, which are relatively infrequent, are entered into by the president without congressional approval. For example, the Algiers Accords that ended the Iran hostage crisis in 1981 was a sole executive agreement. Treaty–executive agreements are authorized by a prior treaty approved by the Senate. The president sometimes concludes treaty–executive agreements regarding the status of U.S. forces in other nations pursuant to international security agreements, like the NATO treaty but such agreements are somewhat rare. Neither sole executive nor treaty–executive agreements are central to the analysis below, however.

Congressional–executive agreements, in contrast, are those concluded by the president that Congress explicitly authorizes by enacting a statute either before, during, or after the negotiations are concluded.They are by far the most common form of U.S. international agreement, representing 85–90 percent of all U.S. international agreements today. Since 1980, the United States has concluded over 300 congressional–executive agreements each year in over 100 different subject areas, ranging from nuclear cooperation and arms control to space exploration, trade, and international fisheries. The WTO agreement and the North American Free Trade Agreement are two well-known examples of congressional–executive agreements.

Over the past century, Congress and the president have developed an approach for addressing some of the most important and potentially controversial executive agreements, particularly in the area of international trade. Specifically, Congress has chosen to enact at the state of international negotiations a framework statute (commonly known as Trade Promotion Authority or TPA) that explicitly i) grants the president the authority to negotiate one or more agreements, ii) establishes specific negotiating objectives for the United States, iii) requires regular consultation between the executive and legislative branches, iv) gives life to this requirement by demanding periodic reports from U.S. negotiators and by creating a formal congressional observer group to the negotiations, and v) creates a streamlined review and approval process for Congress to consider both the new agreement and any domestic implementing legislation needed to give the agreement effect under domestic law.

This hybrid approval process—authorization, instruction, participation, and simplified approval—has become the primary means for congressional review of economically significant international agreements. The most controversial aspect of the approach, of

course, is the last element—streamlined congressional review—which increases the odds of congressional approval. But this "fast track" treatment is not inherent in the hybrid "framework statute" approach to congressional–executive agreements. In fact, the president and Congress have tended to create special procedures for congressional review only in the trade context. Nearly every major international trade agreement the United States has joined in the past several decades was negotiated, reviewed, and approved in the manner described in this paragraph. Yet the majority of non-trade congressional–executive agreements are approved by Congress just like any ordinary law—without statutory procedures for expedited review.

Through framework statutes, Congress not only defines the terms for future international agreements, it also creates a place for itself at the negotiating table. In exchange for this augmented role, at least regarding trade, Congress gives both the president and our allies a simplified approval process for securing U.S. participation. It strengthens the hand of U.S. negotiators to extract concessions from other nations and to ensure that the final agreements meet U.S. negotiating objectives as outlined by Congress in the framework statute. Other nations clearly understand what the agreement must look like to secure Congress's blessing and they have confidence that if they meet U.S. demands, the United States will become a party to the agreement.

Federal courts have held that the decision to classify an international agreement as a treaty or an executive agreement is a political question and should be made solely by the president and Congress. They also have deemed constitutional the framework statute approach for crafting congressional–executive agreements. As a matter of law, the United States can enter into virtually any international agreement as a congressional–executive agreement that it could join as a treaty. Any congressional–executive agreement functions as the supreme law of the land, overriding inconsistent state laws and prior federal laws as well as prior international agreements, including treaties. There is nothing about climate change that leads to a different conclusion—virtually any climate agreement that the United States could join as a treaty it could approve as a congressional–executive agreement instead (Purvis 2008).

Climate and Competitiveness Protection Authority

Taking up new international agreements on climate change as congressional–executive agreements negotiated pursuant to a framework statute, instead of as treaties, would help manage each of the risks identified earlier—that the president may not ask for the right concessions from our negotiating partners and that other nations will not meet U.S. demands or, if they do, that the United States will prove unable to muster a supermajority in the Senate to join the agreements.

Imagine that Congress enacted by statute new "Climate and Competitiveness Protection Authority" (CCPA) to structure U.S. participation in international climate negotiations. This new legislation would authorize the president to negotiate new climate agreements and codify in law concrete U.S. negotiating objectives. These statutory negotiating objectives would help ensure that the next president will pursue a reasonable, bipartisan approach to U.S. climate foreign policy, one that protects our environment, economy, and competitiveness. U.S. negotiating objectives could include requirements that the United States work to secure emissions mitigation commitments from all major economies, including rapidly industrializing nations. The statute could also instruct the president to secure provisions—either in a U.N. agreement or elsewhere—that help insulate the competitiveness-oriented provisions of U.S. domestic climate laws from WTO scrutiny. For example, Congress could direct the president to bring back a climate agreement in which all participating nations explicitly consented to a system of border tax adjustments. This new authority also would create mechanisms to improve coordination between U.S. negotiators and Congress, such as regular reporting requirements and the formation of a formal congressional observer group to the international negotiations. The process of enacting climate negotiating objectives would force the president and Congress to find common ground before, not after, the United States negotiates internationally.

CCPA would empower U.S. negotiators to bring home better agreements by making the United States a more credible and reliable negotiating partner. The United States would speak with one voice, something it has not done on climate change to date. Other nations would know where the United States stands and the concessions they must make to secure U.S. participation. Enactment of CCPA would increase the prospects for the United States to join international climate deals and thereby bring those agreements into force as a means of binding other nations.

To the extent that CCPA included simplified congressional review procedures for approving any concluded agreements, those procedures would give our allies confidence that, if they meet U.S. demands, new climate agreements will receive a fair and timely hearing in Congress. Such procedures would ensure that new climate agreements receive a straight up-or-down vote in Congress within 90 days without conditions, holds, filibusters, or amendments and without demands to renegotiate key terms. If stakeholders disapprove of simplified approval procedures for climate agreements, CCPA might merely stipulate that Congress would review climate agreements exactly the same way it makes domestic laws, including the need for a cloture vote in the Senate. Either way, this would represent a positive change from the Senate's treaty process.

The rationale invoked for a framework statute authorizing congressional–executive agreements in the trade context applies equally well to climate change. Global climate agreements are every bit as complex, lengthy to negotiate, and difficult to conclude as trade agreements. Global climate agreements involve even more countries than do global trade deals. 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 cooperation on climate change serves vital U.S. interests that should not be frustrated by a minority of the Senate.

Importantly, labor opposition to renewing TPA should not provide grounds for opposing CCPA. Labor groups oppose TPA because traditional U.S. trade policies promote trade liberalization without doing enough to raise international labor standards. In contrast, a central CCPA objective would be to protect U.S. workers from unfair foreign competition. Treating international climate agreements as congressional–executive agreements rather than treaties makes sense if those agreements help shore up the U.S. economy. The same is true of simplified review by Congress. Once the United States has adopted domestic emissions limits, simplified congressional review and approval procedures would help labor groups by making it easier for the United States to enter into climate agreements that obligate other nations to take comparable measures if, and only if, the United States participates and permit the United States to implement climate-related competitiveness measures, such as border tax adjustments.

The president and Congress now have before them an important opportunity to pass legislation that would create this critically needed new authority. Pending before Congress are a

half dozen bills that would regulate greenhouse gas emissions nationally. Most experts predict that the United States will enact major legislation to this effect in the next few years. This legislation should serve as the vehicle for enacting Climate and Competitiveness Protection Authority. Consequently, the United States could give U.S. companies and labor organizations greater certainty about how domestic and international systems will evolve. It would also help ensure that U.S. climate foreign policy ties in well with U.S. domestic climate policy, making each fully consistent with the full range of U.S. national interests, including those related to the competitiveness impacts of climate policy.

Summary of Recommendations

What follows are my seven recommendations for how to move forward along the lines I have outlined above; opposition to any one of them should not affect the wisdom of pursuing the others.

1. Future international climate change agreements should be handled as congressional–executive agreements, not as treaties, so as to secure the best possible agreements and guarantee full involvement of both houses of Congress in U.S. climate foreign policy.
2. The president and Congress should agree on U.S. foreign policy objectives on climate change well before the United States concludes new international agreements in this area.
3. These negotiating objectives should include competitiveness-minded provisions, including requirements that all major emitters mitigate their emissions equitably and authorizations for nations to create safeguards that protect vulnerable domestic industries and workers from unfair foreign competition.
4. The president and Congress should create mechanisms to improve coordination during climate negotiations, including regular reporting requirements and a formal congressional observer group.
5. In exchange for this augmented role and to help secure the best possible agreements, Congress should agree to review concluded climate agreements under simplified review procedures that guarantee that the agreements will receive a timely and fair hearing.

6. Congress should implement these recommendations by enacting into law Climate and Competitiveness Protection Authority to structure U.S. climate change foreign policy.
7. Congress should make this new authority a part of any major federal climate statute, such as a cap-and-trade bill.

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For more detail on the two World Trade Organization cases, *Tuna-Dolphin* (WTO Env. Dispute No. 4) and *Shrimp-Sea Turtle* (WTO Env. Dispute No. 8), mentioned on page 5, see www.wto.org/english/tratop_e/envir_e/edis04_e.htm and www.wto.org/english/tratop_e/envir_e/edis08_e.htm.