

**LESSONS FROM KYOTO:
*PARIS AGREEMENT WILL
FAIL NATIONAL ECONOMIES
AND THE CLIMATE***

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EXECUTIVE SUMMARY

April 22, 2016, also known as “International Mother Earth Day,” marks the opening for countries that are parties to the United Nations Framework Convention on Climate Change (UNFCCC) to sign the Paris Climate Agreement. The Paris Agreement, which notably set forth non-binding greenhouse gas (GHG) emission reduction targets for both developed and developing countries, was adopted at the 21st UNFCCC Conference of the Parties (COP-21) in Paris, France, on December 12, 2015. For the Paris Agreement to enter into force, 55 countries representing 55 percent of global GHG emissions must first sign, then ratify the agreement.

While it is expected that representatives from roughly 130 countries, including the United States, will meet at the United Nations’ headquarters in New York City to sign the Paris Climate Agreement, it is critical that the Obama Administration be held accountable for lessons learned from the fallout of its failed predecessor: the Kyoto Protocol.

Accordingly, this U.S. Senate Committee on Environment and Public Works Majority Staff White Paper provides a detailed response to the Paris Agreement, reflecting on history and lessons from the Kyoto Protocol, the Obama Administration and public should consider, including:

- Kyoto Protocol was similarly considered “historic” with more than 150 countries, including both developed and developing countries, agreed to the protocol at COP-3 in December 1997; however, after an aggressive launch, it took more than seven years until the Protocol was signed then ratified by enough countries for it to enter into force.
- Just because a country signs a UNFCCC agreement does not mean the agreement has any legal effect in the country. The Clinton Administration signed the Kyoto Protocol in November 1998, more than six months after the agreement opened for signature. President Clinton never submitted it to U.S. Senate for ratification. In March 2001, President George W. Bush rejected Kyoto and the U.S. never became a party.
- Countries that have signed and ratified an agreement have the freedom to act in their best interest and withdraw. For example, Canada who signed Kyoto in 1997 and ratified it in 2002 withdrew in 2011– even in the midst of the first commitment period.
- Uniquely tailored GHG emission targets are not new. Kyoto included a variety of targets from 7% reductions to 10% increases that were meant to reflect countries’ abilities, but was met with mixed compliance as countries eventually developed policies that were good for their citizens and economy, rather than arbitrary GHG targets set by the UN.
- Kyoto was legally binding and countries still failed to comply. Non-binding targets in the Paris Agreement will not produce any greater confidence that countries will comply.
- Kyoto failed to produce a long-term meaningful approach to address global climate change, and so will the Paris Agreement. Countries adopting costly GHG-cutting policies under Kyoto’s first commitment period devastated their economies and actually increased GHG emissions at a rate faster than the U.S. Most of these countries have not committed to the second round of Kyoto commitments, which has not even entered into force, and many others have expressed reluctance in joining the Paris Agreement.

INTRODUCTION

The United Nations Framework Convention on Climate Change (UNFCCC) was established in 1992 to provide an international forum for countries to address climate change. That same year, after President George H. W. Bush signed the underlying treaty and the United States Senate ratified it, the U.S. became a party to the UNFCCC. By 1997, the UNFCCC had adopted its first legally binding international climate treaty with greenhouse gas (GHG) emission reduction targets in what was called the Kyoto Protocol.

The U.S. Senate Committee on Environment and Public Works (EPW) under the leadership of Senator James M. Inhofe (R-Okla.), has conducted vigorous oversight of the Kyoto Protocol and the decades-long effort by the UNFCCC to craft a successor to Kyoto, which most recently culminated with the Paris Agreement in December 2015. This EPW Committee Majority Staff White Paper expands on oversight of the Kyoto Protocol and the final Paris Agreement, serving to compliment the comprehensive account of the UNFCCC history and the intricacies leading up to the Paris Agreement in the December 3, 2015, EPW Committee Majority Staff Report, “Forecast for COP-21: Senate Predicts Obama Climate Promises to Come up Short Again.”

Over the course of EPW Committee oversight, an overarching theme has emerged: international climate agreements are a poor mechanism for addressing global climate change that result in bad policy and economic failures. The Kyoto Protocol provides the best example of how the Paris Agreement will unfold. Accordingly, this White Paper delineates the foundation of Kyoto and chronological fallout that the Paris Agreement is built upon.

Ultimately, 192 countries became parties to Kyoto, but only 36 countries that joined were subject to the binding GHG targets. The U.S. was not one of them, and for good reason. The Kyoto Protocol went into force in 2005 with its first compliance period set for 2008 to 2012. Countries that adopted aggressive GHG-cutting policies faced vast economic pains with little GHG reductions to show for it, especially as the developing world dramatically increased GHG emissions. Yet, during the same time, the U.S. experienced faster GHG emission reductions from innovation rather than climate policies. Aside from the negligible global environmental impacts of Kyoto, countries’ poor compliance demonstrated a deep flaw in the UNFCCC process, as nearly half, including the EU failed to meet the legally binding targets. Countries caught on to the pains of Kyoto as Canada formally withdrew in 2011, then Japan and Russia refused to join a second compliance period that was set to begin in 2013. To date, the second commitment period of Kyoto has not entered into force because there are not enough parties to trigger it.

The lessons from the Kyoto Protocol are important as countries prepare to sign the Paris Agreement. However, given Kyoto’s failure there is not much to succeed from. The Kyoto Protocol was legally binding and countries did not comply, some have entirely backed out. Paris is non-binding and countries expected to join have already taken actions that will increase GHG emissions while some have indicated they will wait to join. Indeed, if history is any indication, Paris will repeat Kyoto’s shortfalls.

I. Paris Agreement's Predecessor: Kyoto Protocol

On December 12, 2015, a Conference of the Parties (COP) to the United Nations Framework Convention on Climate Change (UNFCCC) embraced the Paris Agreement, which in part, included non-binding greenhouse gas (GHG) emission targets for both developed and developing countries.¹ Notably, the Paris Agreement was adopted as a successor to the long-running and controversial Kyoto Protocol. While the Obama Administration has touted the Paris Agreement as groundbreaking and building upon Kyoto's supposed success, this section will delineate the intricacies of Kyoto, which was far from successful and call into question the foundation for the Paris Agreement.

a. Mechanics of Kyoto

The UNFCCC adopted the Kyoto Protocol at COP-3 in Kyoto, Japan, on December 11, 1997, marking a turning point for international climate action and set the stage for the Paris Agreement today.² Kyoto was the first ever international climate treaty that established legally binding GHG emission targets and timetables. On the day of the Protocol's announcement, the UN touted its wide support, stating in a news release: "After 10 days of tough negotiations, ministers and other high-level officials from 160 countries reached an agreement this morning on a legally binding Protocol under which industrialized countries will reduce their collective emissions of greenhouse gases by 5.2%."³ Although the Protocol was historic for its targets and timetables, it was extremely limited in scope as most parties had nothing to lose by joining the agreement.

Specifically, the targets in Kyoto were assigned only to Annex I countries (e.g. developed nations, such as the U.S., European Union, and Japan)—developing nations (e.g. China, India, and Brazil) were completely exempt from the targets. In fact, 80

In fact, 80 percent of the world was exempt from the binding GHG targets in Kyoto.

percent of the world was exempt from the binding GHG targets in Kyoto. For developed countries, each were assigned a target based on its 1990 GHG emission levels that they were required to achieve over the period of 2008 to 2012. On average, the targets totaled five percent GHG emission reduction from 1990 levels by 2012. Some countries, such as the U.S., had a target to decrease emissions by seven percent, and others like Russia had a target of zero requiring nothing to change since 1990, while others like Iceland, had targets that actually

¹ U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, ADOPTION OF THE PARIS AGREEMENT, DRAFT DECISION -/CP.21, Dec. 12, 2015, <https://unfccc.int/resource/docs/2015/cop21/eng/l09r01.pdf>.

² UN Framework Convention on Climate Change, Kyoto Protocol, http://unfccc.int/kyoto_protocol/items/2830.php (last visited Apr. 19, 2016).

³ Press Release, U.N. Framework Convention on Climate Change, Third Conference of the Parties, Industrialized Countries to Cut Greenhouse Gas Emissions By 5.2%, Dec. 11, 1997, <http://www.meteor.iastate.edu/gcp/kyoto/finalagree.html>.

allowed them to increase emissions by 10 percent.⁴ The targets specified in the Kyoto Protocol are illustrated in the UNFCCC table below.⁵

Countries included in Annex B to the Kyoto Protocol for the first commitment period and their emissions targets	
Country	Target (1990** - 2008/2012)
EU-15*, Bulgaria, Czech Republic, Estonia, Latvia, Liechtenstein, Lithuania, Monaco, Romania, Slovakia, Slovenia, Switzerland	-8%
US***	-7%
Canada,**** Hungary, Japan, Poland	-6%
Croatia	-5%
New Zealand, Russian Federation, Ukraine	0
Norway	+1%
Australia	+8%
Iceland	+10%

* The 15 States who were EU members in 1997 when the Kyoto Protocol was adopted, took on that 8% target that will be redistributed among themselves, taking advantage of a scheme under the Protocol known as a “bubble”, whereby countries have different individual targets, but which combined make an overall target for that group of countries. The EU has already reached agreement on how its targets will be redistributed.

** Some EITs have a baseline other than 1990.

*** The US has indicated its intention not to ratify the Kyoto Protocol.

**** On 15 December 2011, the Depositary received written notification of Canada's withdrawal from the Kyoto Protocol. This action became effective for Canada on 15 December 2012.

For most parties, the targets were not an issue at the time of drafting Kyoto. According to one report, “By 1994, which was 4 years before the Kyoto Protocol was even open for signatures, members had already reduced emissions by 11.2%.”⁶ To appease EU members, there were also mechanisms in Kyoto that permitted countries to meet their targets through carbon trading rather than make reductions at home. Moreover, if a country failed to meet their target, the Protocol simply provided that a “penalty” of an additional third added to whatever GHG emissions reduction the country agreed to for the successor agreement expected more than a decade later, at COP-15 in 2009. With little consequences for non-compliance, and a seemingly clear path for compliance, countries easily embraced Kyoto at COP-3. However, soon thereafter, countries began to fully assess the impacts of the agreement and the backpedaling of promises followed.

⁴ U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, KYOTO PROTOCOL, TARGETS FOR THE FIRST COMMITMENT PERIOD, http://unfccc.int/kyoto_protocol/items/3145.php (last visited Apr. 19, 2016).

⁵ *Id.*

⁶ Dr. Craig Jones, *The Kyoto Protocol: Climate Change Success or Global Warming Failure?*, Circular Ecology BLOG, Mar. 2, 2015, <http://www.circularecology.com/news/the-kyoto-protocol-climate-change-success-or-global-warming-failure#.VxbDGfkrKUM>.

b. From Action to Inaction on Protocol

On March 16, 1998, the Kyoto Protocol was formally open for signature for one year.⁷ For the Protocol to “enter into force” and take legal effect, 55 countries representing 55 percent of global GHG emissions had to sign and ratify the treaty.⁸ Despite the strong showing of support at COP-3 in Kyoto, countries were slow to sign the Protocol. In fact, during the entire signature period only 83 of the 160 countries joining at COP-3 actually signed the Protocol.⁹ While the U.S. was one of them, it was not a swift decision or one with the support of the American people or Congress.

The U.S. did not sign Kyoto until November 12, 1998—more than six months after the Protocol was open for signature.¹⁰ Notably, it was not President Clinton or Vice President Al Gore who signed the Protocol; it was instead delegated to then-UN Ambassador Peter Burleigh.¹¹

The U.S. did not sign Kyoto until November 12, 1998—more than six months after the Protocol was open for signature.

Indeed, there were a number of reasons suggested for the delayed signing. One could perceive the Clinton Administration’s delay in signing as a tactical move until after the critical 1998 midterm election where Democrats were hopeful to, but fell short of, gaining a majority in the Senate. However, a much more likely reason is that the Clinton Administration was constrained by the requirements outlined in a Senate Resolution introduced by Senators Robert Byrd (D-West Virginia) and Chuck Hagel (R-Nebraska). This resolution commonly referred to as “Byrd-Hagel” passed the U.S. Senate by a vote of 95-0 on July 25, 1997.¹² Byrd-Hagel prohibited any international climate change agreement that would result in serious harm to the American economy and that did not impose binding emission limits on developing countries. Indeed, Kyoto would have caused serious economic harm to the U.S. Some of these impacts were highlighted in a December 3, 2015, EPW Committee Majority Staff White Paper:

“Studies at the time revealed that if the U.S. Senate ratified the Kyoto Protocol, gas prices would have increased by up to 53 percent and electricity prices would have

⁷ U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, REPORT OF THE CONFERENCE OF THE PARTIES ON ITS THIRD SESSION, HELD AT KYOTO FROM 1 TO 11 DECEMBER 1997, ADDENDUM, PART TWO: ACTION TAKEN BY THE CONFERENCE OF THE PARTIES AT ITS THIRD SESSION, Mar. 25, 1998, <http://unfccc.int/resource/docs/cop3/07a01.pdf>.

⁸ *Id.*

⁹ U.N. Framework Convention on Climate Change, Status of Ratification of the Kyoto Protocol, http://unfccc.int/kyoto_protocol/status_of_ratification/items/2613.php (last visited Apr. 19, 2016).

¹⁰ *Id.*

¹¹ Press Release, The White House Office of the Press Sec’y, Nov. 12, 1998, <http://clinton4.nara.gov/CEQ/19981112-7790.html> (last visited Apr. 19, 2016).

¹² S.Res.98 (A resolution expressing the sense of the Senate regarding the conditions for the United States becoming a signatory to any international agreement on GHG emissions under the United Nations Framework Convention on Climate Change), 105th Cong., available at <https://www.congress.gov/bill/105th-congress/senate-resolution/98>.

increased by 86 percent, while decreasing U.S. gross domestic product by as much as eight percent.”¹³

Due to the inevitable economic impacts and the dichotomy between requirements for developed and developing countries under Kyoto, the Clinton Administration realized they would not attain the requirements of Byrd-Hagel and as such never submitted the Protocol to the U.S. Senate for ratification. As a November 13, 1998, *New York Times* article on the Clinton Administration’s signing explained, “The White House has said all along that the United States would sign it before the deadline next March, but would not ratify it unless key American provisos are accepted. Given the pace of the continuing talks, that probably means not before the election in 2000.”¹⁴

“[T]he Kyoto Protocol is an unfair and ineffective means of addressing global climate change concerns.”

- President George W. Bush

Accordingly, though the U.S. signed the Protocol, it held no force or effect in the U.S. absent Senate ratification. Since GHG limits were not imposed on developing countries, the failure to meet Byrd-Hagel prompted President George W. Bush to announce the U.S. would not become a party to Kyoto.¹⁵ By March 13, 2001, President Bush formally wrote members of the U.S. Senate avowing U.S. opposition to the Kyoto Protocol.¹⁶ Specifically, President Bush wrote:

“As you know, I oppose the Kyoto Protocol because it exempts 80 percent of the world, including major population centers such as China and India, from compliance, and would cause serious harm to the U.S. economy. The Senate’s vote, 95-0, shows that there is a clear consensus that the Kyoto Protocol is an unfair and ineffective means of addressing global climate change concerns.”¹⁷

While the Bush Administration did not submit any document officially withdrawing the U.S. signature to Kyoto under President Clinton, a White House briefing on March 28, 2001,

¹³“FORECAST FOR COP-21: SENATE PREDICTS OBAMA CLIMATE PROMISES TO COME UP SHORT AGAIN,” S. COMM. ON ENV’T & PUB. WORKS, MAJORITY STAFF WHITE PAPER, Dec. 3, 2015, http://www.epw.senate.gov/public/_cache/files/15e8ee33-5f28-4bc3-bf7d-b1ec6349846e/white-paper-combined-120315-final.pdf (citing Energy Information Administration, A Briefing Paper on the Energy Information Administration’s Analysis and Report Prepared for the Committee on Science, U.S. House of Representatives: What Does the Kyoto Protocol Mean to U.S. Energy Markets and the U.S. Economy?, October 1998; available at: <http://www.eia.gov/oiaf/kyoto/kyotobtxt.html>).

¹⁴ John H. Cushman Jr., *U.S. Signs a Pact to Reduce Gases Tied to Warming*, N.Y. TIMES, Nov. 13, 1998, <http://www.nytimes.com/1998/11/13/world/us-signs-a-pact-to-reduce-gases-tied-to-warming.html>.

¹⁵ Letter from George W. Bush, XLIII President of the United States, to Members of the Senate on the Kyoto Protocol on Climate Change, Mar. 13, 2001, available at <http://www.presidency.ucsb.edu/ws/?pid=45811> (last visited Apr. 16, 2016).

¹⁶ *Id.*

¹⁷ *Id.*

clarified, “[T]hat signing the Protocol did not bind the United States to any action, and therefore there was no reason to unsign the treaty.”¹⁸

On the international front, the U.S. rejection of Kyoto slowed the ratification process. At the time, the U.S. was responsible for roughly a quarter of global GHG emissions and without the U.S., the Protocol fell short of the threshold required for it to enter into force. It was not until Russia ratified the Protocol in November 2004 that Kyoto went into force.¹⁹ As one article explained, “Implementation [of Kyoto] has been delayed because of a requirement that countries accounting for 55% of the world’s emissions must ratify it. That goal was only reached after Russia signed up to the deal last year.”²⁰ Kyoto entered into force on February 16, 2005 – more than seven years after the agreement had been reached.²¹

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¹⁸ Greg Kahn, *The Fate of the Kyoto Protocol under the Bush Administration*, 21 BERKLEY J. INT’L L. 3, 2003, available at <http://scholarship.law.berkeley.edu/cgi/viewcontent.cgi?article=1248&context=bjil>.

¹⁹ *Kyoto Protocol Comes into Force*, THE GUARDIAN, Feb. 16, 2005, <https://www.theguardian.com/science/2005/feb/16/sciencenews.environment>.

²⁰ *Id.*

²¹ UN Framework Convention on Climate Change, Kyoto Protocol, http://unfccc.int/kyoto_protocol/items/2830.php (last visited Apr. 19, 2016). Note: Australia did not ratify the Kyoto Protocol until November 2007.

II. Fallout from Kyoto

By the time Kyoto had entered into force it was becoming more obvious the framework in which the agreement was based would fail. For instance, several months after entering into force the Senate Committee on Environment and Public Works (EPW) held a hearing on October 5, 2005, entitled, “Kyoto Protocol: Assessing the Status of Efforts to Reduce Greenhouse Gases,” which exposed many warning signs that countries would fall short of meeting the Protocol’s targets.²² At the hearing, Chairman Inhofe (R-Okla.) questioned then U.S. Senior Climate Negotiator Harlan Watson about the status of EU countries meeting their targets.²³ Watson testified that at the time only two EU countries – the United Kingdom and Sweden – were on track to reaching their targets.²⁴ Watson also noted that at least 15 of the then 25 members of the EU had actually increased their emissions since signing onto Kyoto.²⁵ Another witness, Dr. Margo Thorning of the American Council for Capital Formation, told the EPW Committee that based on projected GHG emission increases for the EU, “policymakers are beginning to worry about the additional steps required to meet the targets.”²⁶ An examination of the first compliance period for Kyoto reveals they were right.

a. Kyoto’s First Commitment Period was a Failure

When the first commitment period for Kyoto started in 2008, there were 37 countries subject to the legally binding GHG targets. However, as time passed, countries’ struggle to comply became more pervasive. The first major blow to the Protocol took place in December 2010 as countries were negotiating the terms of a second commitment period under Kyoto to begin in 2013. At the beginning of the COP-16, in Cancun, Mexico, Japan – who was struggling to find ways to meet its GHG targets under Kyoto even though it was active in carbon trading – announced its refusal to join a second round of commitments under Kyoto.²⁷ Days later, Russia announced it would not renew its commitment under Kyoto.²⁸ As Russia’s climate change envoy, Alexander Berditsky, said: “Russia has repeatedly stated, including at the highest political level, that the adoption of commitments for the second commitment period under the

²² *Kyoto Protocol: Assessing the Status of Efforts to Reduce Greenhouse Gases: Hearing Before the S. Comm. on Env’t & Pub. Works*, 109th Cong. (Oct. 5, 2005), available at <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg37444/pdf/CHRG-109shrg37444.pdf>.

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* (Testimony of Harlan L. Watson, Ph.D., Senior Climate Negotiator and Special Representative, Bureau of Oceans and International Environmental and Scientific Affairs, U.S. Dep’t of State).

²⁶ *Id.* (Testimony of Margo Thorning, Ph.D., Senior Vice President and Chief Economist, American Council for Capital Formation).

²⁷ *Cancun climate change summit: Japan refuses to extend Kyoto protocol*, THE GUARDIAN, Dec. 1, 2010, <http://www.theguardian.com/environment/2010/dec/01/cancun-climate-change-summit-japan-kyoto>.

²⁸ *Cancun climate change conference: Russia will not renew Kyoto protocol*, THE GUARDIAN, Dec. 10, 2010, <http://www.theguardian.com/environment/2010/dec/10/cancun-climate-change-conference-kyoto>.

Kyoto protocol as it stands now would be neither scientifically, economically or politically effective.”²⁹

The following year, in Durban, South Africa, at COP-17, Canada, who had signed Kyoto in 1997 and ratified it in 2002, formally withdrew from the Protocol on December 15, 2011.³⁰ Canada, which was bound to six percent GHG reduction from 1990 levels under Kyoto, was 20 percent above 1990 levels at the time of its withdrawal.³¹ According to Canada’s Environment Minister Peter Kent: “No one really had an understanding of how difficult it was to decarbonize an economy, how difficult it is separate greenhouse gas emissions from energy production . . . These targets were essentially arbitrary.”³² Canada’s decision received mixed reviews from the international community. While Russia supported the decision, Japan called the decision “disappointing,” and China, a country that was not subject to any GHG reductions in Kyoto, remarked the decision was “preposterous.”³³

According to Canada’s Environment Minister Peter Kent: “No one really had an understanding of how difficult it was to decarbonize an economy, how difficult it is separate greenhouse gas emissions from energy production . . . These targets were essentially arbitrary.”

By 2012, the remaining 36 countries subject to the binding GHG targets in Kyoto had a poor record for compliance, with 17 failing to meet their targets. Based on data from a November 25, 2015, UNFCCC report on Kyoto Protocol compliance,³⁴ countries’ 1990 base year levels, Kyoto pledge, and actual emissions during the first commitment period are illustrated in the chart on the following page.

²⁹ *Id.*

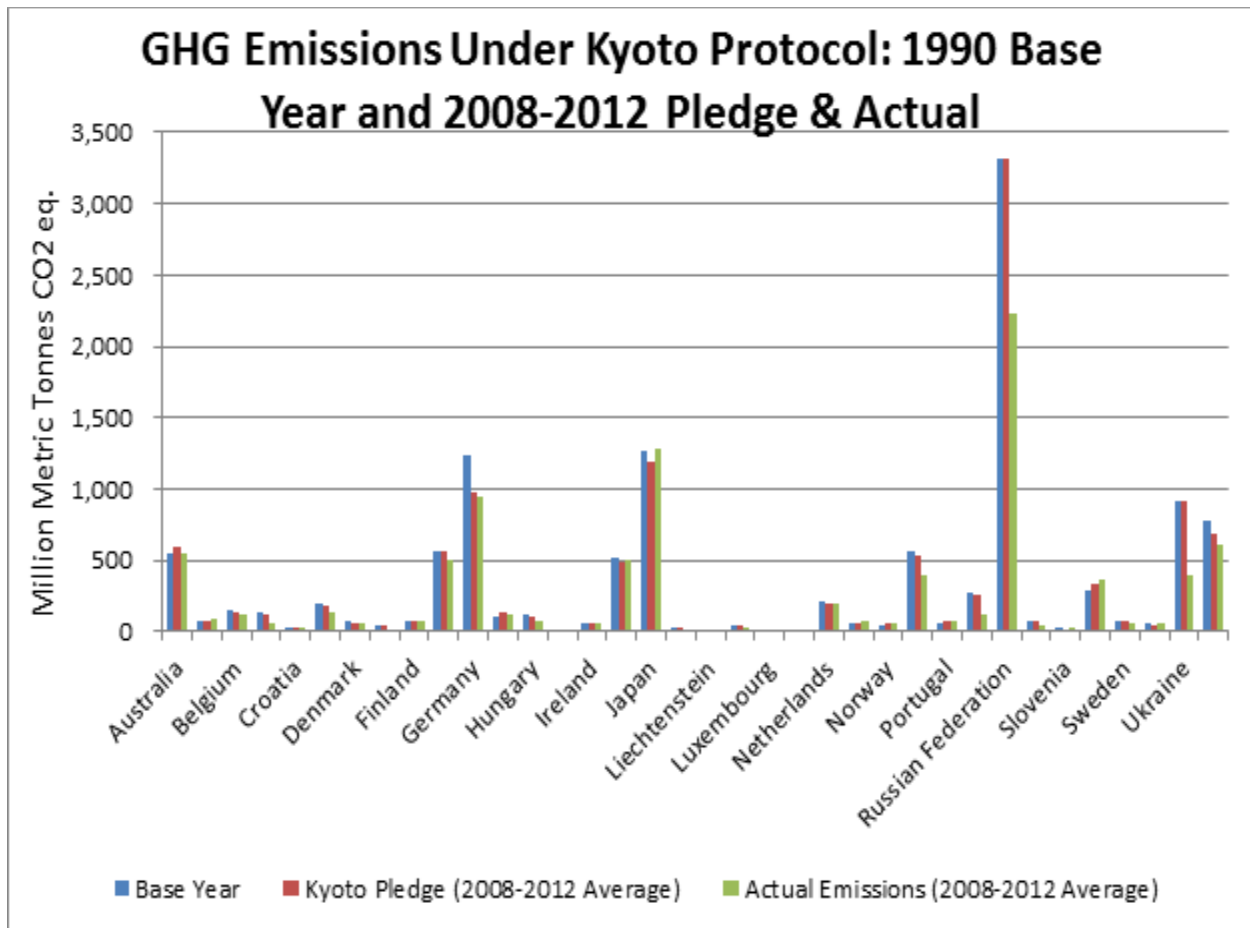
³⁰ U.N., Kyoto Protocol to the United Nations Framework Convention on Climate Change, Kyoto, 11 Dec. 1997, Canada: Withdrawal, Dec. 16, 2011, available at https://unfccc.int/files/kyoto_protocol/background/application/pdf/canada.pdf.pdf.

³¹ Steven Gelis, *Kyoto Protocol, 10 years later: Did deal to combat greenhouse emissions work and what of its future?*, NAT’L POST, Feb. 14, 2015, <http://news.nationalpost.com/news/world/kyoto-protocol-10-years-later-was-the-deal-to-combat-greenhouse-emissions-successful-and-what-of-its-future>.

³² *Id.*

³³ *Russia supports Canada’s withdrawal from Kyoto protocol*, THE GUARDIAN, Dec. 16, 2011, <http://www.theguardian.com/environment/2011/dec/16/russia-canada-kyoto-protocol>.

³⁴ U.N. FRAMEWORK CONVENTION ON CLIMATE CHANGE, ANNUAL COMPILATION AND ACCOUNTING REPORT FOR ANNEX B PARTIES UNDER THE KYOTO PROTOCOL FOR 2015, Nov. 25, 2015, available at <http://unfccc.int/resource/docs/2015/cmp11/eng/06.pdf>.



While some of these countries were close to meeting their targets, others including Japan—the host country for the signing of the Protocol—increased its GHG emissions. Some countries dramatically increased their GHG emissions; New Zealand’s emissions rose 20.4 percent and Spain’s emissions rose 23.7 percent to name a few.³⁵

Some barely met their target. For instance, an article entitled, “Australia hit its Kyoto target, but it was more a three-inch putt than a hole in one,” recounts: “no claim has been more audacious than the one now being told by the federal government about Australia’s ‘success’ in meeting its Kyoto emissions target.”³⁶ The article continued with then-Australian environment minister Greg Hunt quoted touting: “We are one of the few countries in the world to have met and beaten our first round of Kyoto targets and to be on track to meet and beat our second round of Kyoto targets.”³⁷

³⁵ *Id.*

³⁶ Clive Hamilton, *Australia hit its Kyoto target, but it was more a three-inch putt than a hole in one*, THE CONVERSATION, July 15, 2015, <http://theconversation.com/australia-hit-its-kyoto-target-but-it-was-more-a-three-inch-putt-than-a-hole-in-one-44731>.

³⁷ *Id.*

In fact, most of the countries who met their targets were not top emitters. For example, Latvia, Lithuania, and Romania, combined account for less than one percent of global CO2 emissions. Central and eastern European countries were not required to take much action as they had very high industrial emissions in the base year that had plummeted by the time Kyoto was signed. Acknowledging Europe’s minor efforts to comply, Chairman Inhofe’s opening statement at an October 2005 EPW Committee hearing quoted an European Environment Agency release from June 2005, which stated, “Modest total greenhouse gas emission reductions since 1990 were the result of a combination of one-off structural changes and specific policies measures.”³⁸

As for Russia and Ukraine, who may be viewed as over-achievers for their GHG emissions reductions during the compliance period, were in fact, not ambitious at all. As one report recounted:

“In December 1991 the Soviet Union formally collapsed. In the process it acknowledged the independence of the Republics of the Soviet Union, which established a number of newly declared independent states. There was rapid decline in heavy manufacturing industries across Russia and these states. These results are striking – without Russia and Ukraine (and without Canada pulling out) the Kyoto Protocol Parties would only have reduced their emissions by a mere 2.7%.”³⁹

Overall, a close examination of countries’ GHG emissions and targets reveals Kyoto did not serve to ensure parties complied with an international climate agreement. As described by Kenneth P. Green, an environmental scientist at the Fraser Institute, “You have to judge Kyoto to have been a failure. Just on the merits of what was done as a result of the agreement and countries not actually living up to their commitments or staying with the agreement.”⁴⁰

“You have to judge Kyoto to have been a failure. Just on the merits of what was done as a result of the agreement and countries not actually living up to their commitments or staying with the agreement.”

Aside from parties’ noncompliance with Kyoto, the lackluster support for a second round of commitments exposed even greater flaws with Kyoto. While Kyoto’s second round of commitments for 2013 to 2020 were adopted by the UNFCCC as the Doha Amendment to Kyoto in December 2012 at COP-18—nearly four years have

³⁸ *Kyoto Protocol: Assessing the Status of Efforts to Reduce Greenhouse Gases: Hearing Before the S. Comm. on Env’t & Pub. Works*, 109th Cong. (Oct. 5, 2005), available at <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg37444/pdf/CHRG-109shrg37444.pdf> (statement of Chairman Inhofe).

³⁹ Dr. Craig Jones, *The Kyoto Protocol: Climate Change Success or Global Warming Failure?*, Circular Ecology BLOG, Mar. 2, 2015, <http://www.circularecology.com/news/the-kyoto-protocol-climate-change-success-or-global-warming-failure#.VxbDGfkrKUM>.

⁴⁰ Steven Gelis, *Kyoto Protocol, 10 years later: Did deal to combat greenhouse emissions work and what of its future?*, NAT’L POST, Feb. 14, 2015, <http://news.nationalpost.com/news/world/kyoto-protocol-10-years-later-was-the-deal-to-combat-greenhouse-emissions-successful-and-what-of-its-future>.

passed—and it still has not gone into force.⁴¹ As of April 14, 2016, only 63 countries out of the 144 required for it to enter into force have ratified the Doha Amendment.⁴² Notably, the EU, one of the staunchest advocates for international climate agreements, has not even ratified the Doha Amendment.⁴³ New Zealand also recently joined Japan and Russia in announcing the country would not participate in the second round of Kyoto commitments.⁴⁴

b. Kyoto was “All Economic Pain, No Climate Gain”

Countries’ efforts to distance from Kyoto’s harsh binding targets are no surprise given the economic impacts of carbon cutting polices as compared to the questionable environmental benefits. Even before the first compliance period closed, then-EPW Committee Chairman Inhofe was on the Senate floor on September 25, 2006, explaining: “Many of the nations that

“Many of the nations that ratified Kyoto are now realizing what I have been saying all along: The Kyoto Protocol is a lot of economic pain for no climate gain.”
- Chairman Inhofe

ratified Kyoto are now realizing what I have been saying all along: The Kyoto Protocol is a lot of economic pain for no climate gain.”⁴⁵ As one example, at the time Canada withdrew from the Kyoto Protocol, the Government of Canada explained, “[f]rom an environmental perspective, the Kyoto Protocol has not served the international community well in meeting the real challenges of global climate change.”⁴⁶ Indeed, at an October 2005 EPW Committee hearing, Chairman Inhofe further signaled Kyoto’s failure on economic, political, and climate grounds:

“Some have dismissed these problems by suggesting that these countries would be able to meet their targets by adopting aggressive additional measures. But that ignores economic realities. Europeans are complaining about the high cost of gasoline. Businesses are complaining as well. . . These problems have not gone unnoticed at the political level.”⁴⁷

⁴¹ U.N. Framework Convention on Climate Change, Status of the Doha Amendment, http://unfccc.int/kyoto_protocol/doha_amendment/items/7362.php (last visited Apr. 19, 2016).

⁴² *Id.*

⁴³ *Id.*

⁴⁴ Climate change information – New Zealand, New Zealand’s emissions reduction targets, <https://www.climatechange.govt.nz/reducing-our-emissions/targets.html> (last visited Apr. 19, 2016).

⁴⁵ Floor Speech, U.S. Sen. James M. Inhofe, Chairman, S. Comm. on Env’t & Pub. Works, Sept. 25, 2006, available at <http://www.epw.senate.gov/speechitem.cfm?party=rep&id=263759>.

⁴⁶ Gov’t of Canada, Env’t & Climate Change, A Climate Change Plan for the Purposes of the Kyoto Protocol Implementation Act of 2012, <https://www.ec.gc.ca/Publications/default.asp?lang=En&n=EE4F06AE-1&xml=EE4F06AE-13EF-453B-B633-FCB3BAECEB4F&offset=3&toc=hide> (last visited Apr. 19, 2016).

⁴⁷ *Kyoto Protocol: Assessing the Status of Efforts to Reduce Greenhouse Gases: Hearing Before the S. Comm. on Env’t & Pub. Works*, 109th Cong. (Oct. 5, 2005), available at <https://www.gpo.gov/fdsys/pkg/CHRG-109shrg37444/pdf/CHRG-109shrg37444.pdf> (statement of Chairman Inhofe).

The Senate EPW Committee also received testimony shedding light on the impacts of Kyoto in Europe at a September 25, 2007, hearing. For instance, at the hearing Dr. Gabriel Calzada, associate professor of economics at King Juan Carlos University in Madrid, Spain, submitted written testimony stating, “Kyoto’s ‘cap-and-trade’ model is costing Spaniards a fortune even while their chances of complying with the Protocol are [nonexistent], as is typical throughout Europe and most of Kyoto’s few covered countries.”⁴⁸ This testimony, among other findings, was documented in a May 2008 EPW Committee Staff Report under then-Ranking Member Inhofe, which declared:

“The Kyoto Protocol, an international cap-and-trade system to control and reduce greenhouse gas emissions, has become a worldwide failure. Aside from constraining growth in all developed countries and allowing unrestricted development in countries such as China and India, Kyoto would not help to stop global warming.”⁴⁹

Years later, with the EU cap-and-trade scheme in crisis, high energy costs are accelerating Europe’s economic decline. The economic impacts in EU countries that adopted climate regulations, including Germany, Italy, Spain, and the UK have been disastrous. Serious concerns are now being raised over the economic viability of their manufacturing sectors as well as budget and energy poverty concerns. Recent testimony from Stephen D. Eule, vice president of the Institute for 21st Century Energy, of the U.S. Chamber of Commerce, at a November 18, 2015, EPW Committee hearing, entitled, “Examining the International Climate Negotiations,” shed light on this issue:

“That continent’s exorbitant energy prices, largely policy-driven, are ruining its competitiveness and turning energy-intensive industries into endangered species. More and more, we are seeing European companies fleeing sky-high energy costs and shifting production to the United States and other countries.”⁵⁰

Further, a December 21, 2015, *Wall Street Journal* article, entitled, “Obama the Unilateral Climate Warrior,” expanded on these impacts:

“For Europe, the Kyoto Protocol has forced EU states to adopt unilateral, and disastrously costly, decarbonization policies. With their manufacturers rapidly losing

⁴⁸ *Green Jobs Created by Global Warming Initiatives: Hearing Before the S. Comm. on Env’t & Pub. Works*, 110th Cong, Sept. 25, 2007, <https://www.gpo.gov/fdsys/pkg/CHRG-110shrg73571/pdf/CHRG-110shrg73571.pdf> (written testimony of Gabriel Calzada, Assoc. Professor of Economics, King Juan Carlos University).

⁴⁹ “THE ECONOMICS OF AMERICA’S CLIMATE SECURITY ACT OF 2007: S. 2191, LIEBERMAN-WARNER CLIMATE BILL,” U.S. S. COMM. ON ENV’T & PUB. WORKS, MINORITY STAFF WHITE PAPER, MAY 2008, available at http://www.epw.senate.gov/public/_cache/files/84039130-6b2d-4cbc-85df-929d6e938d90/whitepaperfinal.pdf.

⁵⁰ *Examining the International Climate Negotiations: Hearing Before the Subcomm. on Clean Air & Nuclear Safety, of the S. Comm. on Env’t & Pub. Works*, 114th Cong., Nov. 18, 2015, http://www.epw.senate.gov/public/_cache/files/3f20f502-aca6-433e-afc5-22b57d9d051f/eule-testimony.pdf (testimony of Stephen D. Eule, Vice President, of the Institute for 21st Century Energy, an affiliate of the U.S. Chamber of Commerce).

ground to international competition, governments are increasingly concerned about the threat high energy prices pose to Europe's industrial base.”⁵¹

Thus it is no surprise that in early 2014 the EU proposed an end to binding national targets for renewable energy production after 2020.⁵² According to a 2014 Manhattan Institute report, in 2012, each kilowatt hour of residential electricity cost 12 cents in the U.S., 26 cents in EU, and 35 in Germany.⁵³ In fact, between 2005 and 2013, the average price in EU rose 55 percent.⁵⁴

Australia has also learned from the economic pains of climate action. In July 2014, Australia's parliament repealed a 2012 carbon tax.⁵⁵ In remarks on Australia's repeal, Senator Inhofe explained in an op-ed entitled, "Obama's climate goals have already failed," published in *The Hill* in September 2014:

“Clearly, government regulations limiting greenhouse gas emissions are de facto brakes on any economy. Those who dispute or doubt this simply need look to Australia for a compelling case study. That country's carbon tax imposed a significant drag on its economy, and once Australia's political leaders summoned the will to repeal the tax in July, job creation improved.”⁵⁶

Ironically, emissions in the U.S. have declined more quickly than in the EU thanks to innovative new drilling practices developed by the oil and gas industry that allows for increased access to natural gas.

Ironically, emissions in the U.S. have declined more quickly than in the EU thanks to innovative new drilling practices developed by the oil and gas industry that allows for increased access to natural gas.⁵⁷ Even U.S. Secretary of State John Kerry has praised the U.S. GHG reductions achieved without being a party to Kyoto.⁵⁸ According to Secretary Kerry spokesman Alec

⁵¹ Benny Peiser, *Obama the Unilateral Climate Warrior*, WALL ST. J., Dec. 21, 2015, <http://www.wsj.com/articles/obama-the-unilateral-climate-warrior-1450742611>.

⁵² Stephen Castle, *Europe, Facing Economic Pain, May Ease Climate Rules*, N.Y. TIMES, Jan. 22, 2014, http://www.nytimes.com/2014/01/23/business/international/european-union-lowers-ambitions-on-renewable-energy.html?_r=4.

⁵³ Robert Bryce, *Maintaining the Advantage: Why the U.S. Should Not Follow the EU's Energy Policies*, Center for Energy Policy & the Env't, MANHATTAN INST., Feb. 2014, available at http://www.manhattan-institute.org/pdf/eper_13.pdf.

⁵⁴ *Id.*

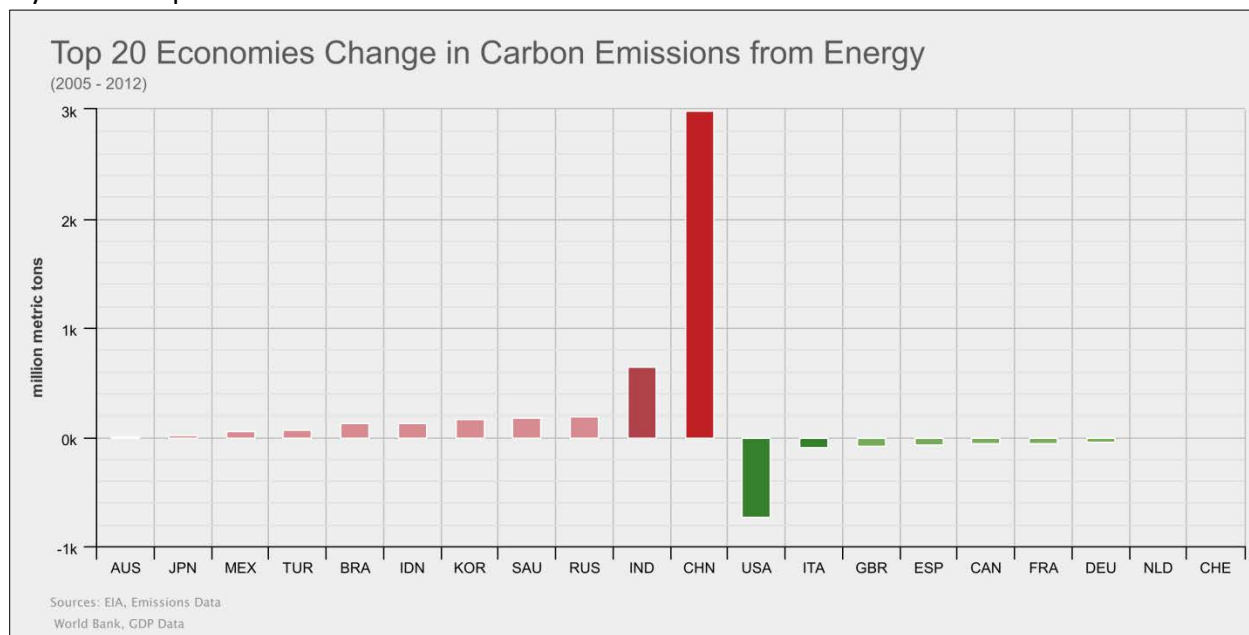
⁵⁵ Repealing the Carbon Tax, Australian Gov't, Dept' of the Env't, <http://www.environment.gov.au/climate-change/repealing-carbon-tax> (last visited Apr. 19, 2016).

⁵⁶ Sen. James M. Inhofe, *Obama's climate goals have already failed*, THE HILL, Sept. 22, 2014, <http://thehill.com/opinion/op-ed/218569-obamas-climate-goals-have-already-failed>.

⁵⁷ Matthew Philips, *Why the U.S. Is Cutting Carbon Faster Than Europe*, BLOOMBERG, Apr. 19, 2013, <http://www.bloomberg.com/bw/articles/2013-04-19/why-the-u-dot-s-dot-is-cutting-carbon-faster-than-europe>.

⁵⁸ Glenn Kessler, *John Kerry's misfire on U.S. performance on Kyoto emission targets*, WASH. POST, May 30, 2013, https://www.washingtonpost.com/blogs/fact-checker/post/john-kerrys-misfire-on-us-performance-on-kyoto-emissions-targets/2013/05/29/9a063d84-c8af-11e2-8da7-d274bc611a47_blog.html.

Gerlach, “Secretary Kerry’s absolutely correct that, even absent formal action, the U.S. is already making strides on reducing emissions, and as he said, as of the last report in 2011, our emissions levels are below the levels when the U.S. signed the Kyoto Protocol in 1997.”⁵⁹ Indeed, as depicted in the chart below, from the year Kyoto entered into force until the first commitment period ended in 2012, the U.S. was leading the top twenty economies in the world in reducing emissions without being a part of the Kyoto Protocol or embracing stringent EU style carbon policies.⁶⁰



While it is now obvious Kyoto was a failure on policy, economic, and climate grounds, it is critical the U.S. learn from these lessons. President Obama has acknowledged these failures, stating at COP-15 in Copenhagen, Denmark, on December 18, 2009, “Kyoto was legally binding and everybody still fell short anyway.”⁶¹ For these reasons, President Obama and the international community crafted the Paris Agreement to exclude legally binding GHG targets. However, as explained in the following section, Paris will fall just as short, if not more, than the Kyoto Protocol.

“Kyoto was legally binding and everybody still fell short anyway.”
-President Barack Obama

⁵⁹ *Id.*

⁶⁰ U.S. is Already Leading on Reducing Emissions, Climate Change and Energy, <http://www.climatechangeandenergy.com/#/?section=methaneemissionsfalling-while-production-rises> (last accessed Apr. 20, 2016).

⁶¹ Press Release, White House, *Remarks by the President during press availability in Copenhagen* (Dec. 18, 2009), available at <https://www.whitehouse.gov/the-press-office/remarks-president-during-press-availability-copenhagen>.

III. Paris is Kyoto 2.0

In order to build momentum for their cause, supporters of the Paris Agreement are quick to point out how COP-21 was different from past failures, but the reality is that the basic political and economic dynamics surrounding any international climate change agreement still stand and the difference between this conference and previous ones is primarily cosmetic. If the past is any indication, the result and primary purpose of the Paris Agreement will be to develop a sense of urgency to the cause of tackling climate change and then concoct new “successes” to broadcast to the world that progress is being made because of these agreements. These “successes” will then serve as justifications for increasingly drastic and unrealistic measures in emissions reductions, primarily from the U.S. and the EU, while other countries rightfully continue to develop economical energy sources to lift their citizens out of poverty. It is critical for the American people to understand how promoters of the Paris Agreement such as President Obama, officials at the UN, and other world leaders are selling this agreement to the public in order to serve their interests.

a. Empty Promises from the Obama Administration

President Obama has been working hard to sell his Climate Action Plan to the American people and leaders around the world in order to cement his legacy as a climate stalwart. Since Congress and the American people have previously rejected multiple attempts to pass legislation that would give EPA new authority to regulate GHGs, Obama is attempting to do through regulation what he could not get done through legislation. Specifically, President Obama has sought to use the Clean Air Act to justify the so-called Clean Power Plan or carbon rule, which would regulate carbon dioxide from existing fossil-fuel power plants.⁶² In an effort to garner support for the carbon rule, President Obama has promised it to the world, as it serves the capstone of the emissions reductions he promised in the U.S. Intended Nationally Determined Contribution (INDC).⁶³ Obama’s INDC pledges to the UNFCCC that the U.S. will decrease GHG emissions by 26-28 percent below 2005 levels by 2025.⁶⁴ Since President Obama is moving forward with his carbon rule without

In an effort to garner support for the carbon rule, President Obama has promised it to the world

⁶² Env'tl. Prot. Agency, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64661-65120, Oct. 23, 2015, available at <https://www.gpo.gov/fdsys/pkg/FR-2015-10-23/pdf/2015-22842.pdf>.

⁶³ United States Intended Nationally Determined Contribution, available at <http://www4.unfccc.int/submissions/INDC/Published%20Documents/United%20States%20of%20America/1/U.S.%20Cover%20Note%20INDC%20and%20Accompanying%20Information.pdf>.

⁶⁴ Press Release, White House, FACT SHEET: U.S. Reports its 2025 Emissions Target to the UNFCCC (Mar. 31, 2015), available at <https://www.whitehouse.gov/the-press-office/2015/03/31/fact-sheet-us-reports-its-2025-emissions-target-unfccc>.

new authority from Congress, he is doing so on a tenuous legal basis that makes it extremely likely the U.S. will not be able to meet the commitment to the UNFCCC.

In a recent, unprecedented move that further exposed the legal vulnerability of the carbon rule, the U.S. Supreme Court issued a stay on implementation of the rule throughout the entire duration of the litigation.⁶⁵ This is the first time in history the U.S. Supreme Court stayed a federal regulation in advance of a lower court reviewing the merits of the case. This means that states and EPA must halt their work on the carbon rule while it is being challenged in court, and it signals that the U.S. Supreme Court believes there is a good chance the rule, or at least parts of the rule, will be thrown out.⁶⁶ Even if the carbon rule is upheld, the stay will push back the timeline for states to implement the rule, which will still make it difficult if not impossible for the U.S. to meet Obama's INDC target by 2025.⁶⁷

This is the first time in history the U.S. Supreme Court stayed a federal regulation in advance of a lower court reviewing the merits of the case.

Jody Freeman, a former Obama administration climate advisor who has actively supported the carbon rule, even admitted, "The court's extraordinary decision here will legitimately raise questions from other countries about the ability of the country to deliver on the administration's pledge in Paris and the depth of the US's commitment to deal with this problem in a meaningful way."⁶⁸ Freeman appears to be right, Zou Ji, the deputy director general of China's National Center for Climate Change Strategy and International Cooperation said, "Look, [if] the United States doesn't keep its word. Why make so many demands on us?"⁶⁹ Navroz K. Dubash, a senior fellow at the Center for Policy Research in New Delhi, also told the *New York Times* that, "this could be the proverbial string which causes Paris to unravel."⁷⁰

On April 12, 2016, Chairman Inhofe explained the significance of the stay as it relates to Obama's commitment in Paris on the floor of the U.S. Senate:

The Supreme Court dealt the president's legacy a major blow when it voted 5-4 in February to block the implementation of Obama's Clean Power Plan while it is being

⁶⁵ Robinson Meyer, *The Supreme Court's Devastating Decision on Climate* (Feb. 10, 2016), *The Atlantic*, available at <http://www.theatlantic.com/technology/archive/2016/02/the-supreme-courts-devastating-decision-on-climate/462108/>

⁶⁶ *Id.*

⁶⁷ Greg Stohr & Jennifer A. Dlouhy, *Obama's Clean Power Plan Put on Hold by U.S. Supreme Court* (Feb. 9, 2016), *Bloomberg*, available at <http://www.bloomberg.com/politics/articles/2016-02-09/obama-s-clean-power-plan-put-on-hold-by-u-s-supreme-court>.

⁶⁸ Andrew Restuccia, *Court ruling may reawaken global mistrust of US on climate change* (Feb. 10, 2016) *PoliticoPro*, available at <https://www.politicopro.com/energy/story/2016/02/pro-cpp-paris-restuccia-094050>.

⁶⁹ Coral Davenport, *Supreme Court's Blow to Emissions Efforts May Imperil Paris Climate Accord* (Feb. 10, 2016), *N.Y. Times*, available at <http://www.nytimes.com/2016/02/11/us/politics/carbon-emissions-paris-climate-accord.html? r=1>

⁷⁰ *Id.*

litigated by over 150 entities – including 27 states, 24 trade associations, 37 rural electric co-ops, and 3 labor unions.

*This decision likely delays implementation of the rule until the next President and completely upends Obama’s Paris agreement.*⁷¹

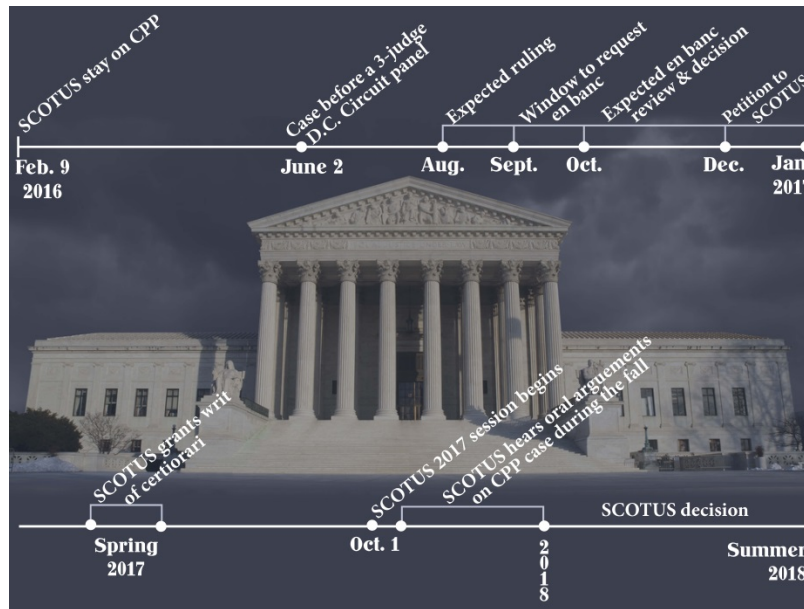
Chairman Inhofe further detailed the lengthy timeline before EPA could resume any efforts implementing the carbon rule:

Furthermore, the litigation on the Clean Power Plan won’t get resolved until likely 2018 – this means the regulations will be blocked for at least the next two years.

First the 3-judge panel on the D.C. Circuit will need to hear the case, which will take place in June. The 3-judge panel will issue a decision sometime this fall, and it will almost certainly be challenged with a request for en banc review by the entire D.C. Circuit.

*Then a decision from an en banc panel won’t come until months later – likely by the end of the year. This decision too will almost certainly be appealed by the U.S. Supreme Court. If the Court decides to hear the case, a final decision is expected late 2017 or early 2018.*⁷²

The chart below shows the timeline for litigation of the carbon rule following the U.S. Supreme Court stay of the rule on February 9, 2016.



Source: Senate Committee on Environment and Public Works (Apr. 12, 2016)

⁷¹ Senator James M. Inhofe, Address to the U.S. Senate about Empty Paris Promises, (April 12, 2016), available at <http://www.epw.senate.gov/public/index.cfm/audio-video-rep?ID=B94EFBCD-FB8A-4A9D-9A12-9F84A3A61480>.

⁷² *Id.*

In addition to litigation on the carbon rule, there is ongoing litigation involving the new source rule, which limits carbon dioxide emissions from new fossil-fuel generated power plants.⁷³ Like the carbon rule, any decision on the new source rule will likely be appealed to the U.S. Supreme Court with a decision expected in 2018. Specifically, on March 24, 2016, the D.C. Circuit issued a court order on the new source rule litigation briefing schedule, which set final briefs due—after the U.S. Presidential election—on November 14, 2016.⁷⁴ Oral arguments have not yet been scheduled, but the D.C. Circuit Handbook stipulates that oral arguments typically take place at a minimum 45 days after briefing is completed, making December 30, 2016, the seemingly earliest possible date for oral arguments.⁷⁵ However, given the New Year holiday and looming administration transition, it is highly unlikely oral arguments will occur prior to Inauguration Day on January 20, 2017.

The new source rule litigation schedule is critical to Obama’s Climate Action Plan and INDC because it serves as the legal prerequisite for the carbon rule. Therefore, if the new source rule

Like the carbon rule, any decision on the new source rule will likely be appealed to the U.S. Supreme Court with a decision expected in 2018.

is struck by the courts, both rules will be struck down. This is a likely scenario as the new source rule also rests on shaky legal ground, mostly because it hinges on the argument that carbon capture and storage (CCS) has been adequately demonstrated, despite being a relatively undeveloped and expensive technology.

Despite these significant hurdles, President Obama and his administration continue to mislead the

American public and the rest of the world about the feasibility of his plan to reduce emissions. Following the announcement of this unprecedented decision by the U.S. Supreme Court, President Obama dismissed the stay as a simple procedural obstacle that will be overcome, “This is a legal decision that says, ‘Hold on until we review the legality.’ We are very firm of the legal footing here.”⁷⁶ White House spokesman Eric Shultz took it one step further when he said that the U.S. would “unequivocally” meet its INDC targets and temporary extensions for wind and solar tax credits will “...have more impact over the short term than the Clean Power Plan.”⁷⁷

This is markedly different than what U.S. State Department Special Envoy for Climate Change Todd Stern, who negotiated the terms of the Paris Agreement for the Obama administration,

⁷³ *State of West Virginia, et al. v. EPA*, No. 15-1399 (D.C. Cir.) (West Virginia and 23 other state governments and agencies filed a lawsuit against the new power plant rule).

⁷⁴ <https://www.politicopro.com/f/?id=00000153-a9dd-dc95-a5db-affd14540001>

⁷⁵ [https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Handbook%202006%20Rev%202007/\\$FILE/HandbookMarch2016Final.pdf](https://www.cadc.uscourts.gov/internet/home.nsf/Content/VL%20-%20RPP%20-%20Handbook%202006%20Rev%202007/$FILE/HandbookMarch2016Final.pdf)

⁷⁶ Alex Guillén, *Obama: Don’t ‘despair’ over Supreme Court stay of carbon rule* (Feb. 11, 2016) PoliticoPro, available at <https://www.politicopro.com/energy/whiteboard/2016/02/obama-dont-despair-over-supreme-court-stay-of-carbon-rule-067431>.

⁷⁷ *Officials Reject Claims ESPS Stay Undercuts Attainment of Paris Targets* (Feb. 10, 2016) InsideEPA, available at <http://insideepaclimate.com/climate-daily-news/officials-reject-claims-esps-stay-undercuts-attainment-paris-targets>.

said in a declaration to the D.C. Circuit in December 2015—before the U.S. Supreme Court stay—which argued against granting a stay of the carbon rule. In the declaration Stern argued that the stay would undermine U.S. “leadership” on climate change and would prompt other countries to lessen their commitments at COP-21 in Paris.⁷⁸ It is obvious that the Obama administration realizes the significance of the stay on the ability of the U.S. to meet the INDC, but must act otherwise to cement their legacy.

Indeed, analysis regarding the U.S. ability to fulfill the INDC comes up well short of the goal, even with the carbon rule, but if the rule is struck down, fulfilling the commitment becomes a nearly insurmountable challenge. For instance, the U.S. Chamber of Commerce states, “We estimate that the shortfall would expand the current range of 45% to 49% to a range of 60% to 63% - that’s more of a chasm than a gap.”⁷⁹ The chart below breaks down just how difficult it will be for the U.S. to meet its INDC given the current policy framework.



Source: U.S. Senate Republican Policy Committee (Feb. 23, 2016).

Others have weighed in on the claim that the tax credits for wind and solar will allow the U.S. to meet the INDC and came to the conclusion that although the credits will drive some growth in renewables in the short-term, there is no way for the U.S. to meet the INDC commitment absent the carbon rule.⁸⁰ There are additional analyses from organizations such as Climate Action Tracker, Rhodium Group, Climate Advisors, and the Niskanen Center that all find that even with the carbon rule, the U.S. will not be able to achieve its INDC.⁸¹ On July 8, 2015, at an

⁷⁸ Marlo Lewis Jr, *Spinning the Stay* (Feb. 16, 2016) Competitive Enterprise Institute, <https://cei.org/blog/spinning-stay>.

⁷⁹ Steve Eule, *The Obama Administration GHG Emissions Pledge “Gap” Just Became a “Chasm”*, Institute for 21st Century Energy of the US Chamber of Commerce, <http://www.energyxxi.org/obama-administration-ghg-emissions-pledge-%E2%80%9Cgap%E2%80%9D-just-became-%E2%80%9Cchasm%E2%80%9D>.

⁸⁰ Paul C Knappenberger & Patrick J Michaels, *Spin Cycle: Green Tax Credits Supplant Clean Power Plan to Meet Our Paris Commitment* (Feb. 16, 2016), CATO Institute, <http://www.cato.org/blog/spin-cycle-green-tax-credits-supplant-clean-power-plan-meet-our-paris-commitment>.

⁸¹ *Id.*

EPW Committee hearing entitled, “Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy,” Mr. David Bookbinder, former Chief Climate Counsel for the Sierra Club and proponent of carbon regulation, also confirmed that achieving the U.S. INDC was infeasible:

*The INDC listed the “Domestic laws, regulations, and measures relevant to implementation”, followed by the relevant regulatory actions completed since 2009, and additional measures that the Administration is undertaking. Unfortunately, even when combined, I do not see how these measures will allow the U.S. to meet the lower end - 26% - of that goal.*⁸²

As another practical matter, the U.S. may be barred from funding the UNFCCC and the Green Climate Fund, which is the account used to transfer money from the U.S. to other countries for climate finance. This is because the UNFCCC recently accepted Palestine as a full member. As noted in an April 18, 2016, letter sent to U.S. Secretary of State John Kerry from 28 senators, U.S. law prohibits distribution of funds to any UN affiliated organization that grants full membership to a state or organization that does not have the internationally recognized attributes of statehood.⁸³ This is significant as the U.S. is a major source of funding for UNFCCC and Palestine’s acceptance to the UNFCCC appears to require the U.S. to disengage or lessen involvement in the UNFCCC, which could have implications for U.S. participation in the Paris Agreement.

Fortunately for the Obama Administration and many other leaders of the Paris Agreement, they will not be around when these realities become more apparent. While it is well known that the Obama Administration will end before the Paris Agreement signing closes, it is surprising so many key officials involved in the Paris Agreement are headed toward the exit even before the Earth Day signing ceremony in New York City. For instance, shortly after the U.S. Supreme Court stay of the carbon rule, Todd Stern attempted to address the fears of other countries regarding the potential of the U.S. pulling out of the deal saying, “I don’t think any president is going to pull us out of Paris,” he announced his resignation.⁸⁴ Stern, who also promised the UNFCCC parties in Brussels in February, the U.S. is “sticking to our plan to sign,” left the Obama Administration on April 1, 2016—just weeks before the Paris Agreement signing. On the same day Stern left, Andrew Light, a U.S. State Department senior climate change adviser and India specialist who also attended COP-21 stepped down.⁸⁵

⁸² *Road to Paris: Examining the President’s International Climate Agenda and Implications for Domestic Environmental Policy Before the S. Comm. on Env’t and Pub. Works*, 114th Cong. (2015) (statement of David Bookbinder, Adjunct Scholar Niskanen Center, available at

http://www.epw.senate.gov/public/_cache/files/96e1aded-05af-485a-9e23-544f82e0f4bc/bookbinder.pdf.

⁸³ Letter from John Barrasso, U.S. Senator, et al to John Kerry, U.S. Secretary of State (Apr. 18, 2016), available at http://www.barrasso.senate.gov/public/Files/Barrasso_UNFCCC_4_18_16.pdf.

⁸⁴ Andrew Restuccia, *Top climate diplomat to leave Obama administration next month* (Mar. 21, 2016), PoliticoPro, available at <http://www.politico.com/story/2016/03/top-climate-diplomat-to-leave-obama-administration-next-month-221038>.

⁸⁵ PoliticoPro, *Afternoon Energy* (Apr. 4, 2016) available at <https://www.politicopro.com/tipsheets/afternoon-energy/2016/04/white-house-releases-climate-change-report-016650>.

None of the officials making promises today will be around to be held accountable for implementation of those promises tomorrow.

In addition to Administration officials, the top climate change official at the UN who was charged with leading negotiations at COP-21, Christiana Figueres, recently left her post,⁸⁶ along with Laurent Fabius, the French foreign minister who hosted the Paris negotiations.⁸⁷ Although it is to be expected for many people to move on given the finale of COP-21 and the end of the Obama

administration, their departures should serve as an important reminder that none of the officials making promises today will be around to be held accountable for implementation of those promises tomorrow.

b. EU Climate 'Leadership' Fatigue

Given the massive uncertainty of the commitment from the U.S. and fatigue from costly policies that failed to meet targeted reductions in emissions under Kyoto, European leaders are likely avoiding the subject when it comes to international climate commitments, despite optimistic rhetoric. In addition to the lack of enthusiasm within the EU to develop more stringent climate policies, certain member countries are pushing back at EU leadership on climate due to their need for affordable and reliable energy. As demonstrated during Kyoto, the EU was unable to meet their targets, despite much political ambition. It is therefore even more unlikely that the EU will meet the emissions targets agreed to at COP-21 given the political climate and technological and affordability challenges.

Following COP-21 there has been much discussion of climate policy at the EU level and whether current climate policies are ambitious enough to meet commitments made in Paris. Their discussion has been focused on whether the EU's pre-Paris target of reducing emissions by 40 percent below 1990 levels by 2030 is in line with the aspiration of keeping temperature increases under 2 degrees Celsius prior to the end of the century.⁸⁸ EU leaders ultimately decided not to announce more stringent targets despite pressure from

EU leaders ultimately decided not to announce more stringent targets despite pressure from environmentalists and environmental ministers.

⁸⁶ Matt McGrath, *UN climate chief Christiana Figueres to step down* (Feb. 19, 2016), BBC News, available at <http://www.bbc.com/news/science-environment-35612559>.

⁸⁷ Merrit Kennedy, *French Foreign Minister Laurent Fabius Is Stepping Down* (Feb. 10, 2016), NPR, available at <http://www.npr.org/sections/thetwo-way/2016/02/10/466279865/french-foreign-minister-laurent-fabius-is-stepping-down>.

⁸⁸ Barbara Lewis, *Climate change, energy is back on EU summit agenda: draft* (Mar. 16, 2016), Reuters, available at <http://www.reuters.com/article/us-europe-migrants-climatechange-idUSKCNOW11NY>.

environmentalists and environmental ministers.⁸⁹ According to environmentalists this flies in the face of the intention to continually ratchet up policies, leading one observer to comment on the official document announcing the EU's intention to keep the same emissions target that was already in place, "It was the first official document to signal how the unprecedented global consensus would translate into action. The answer: it won't – at least not before 2030."⁹⁰ This should serve as a signal to the world that even the EU is losing their appetite for continually ratcheting up their emissions targets.

In order to increase its energy security, the EU is going through the process of further harmonizing their energy policy and infrastructure to further the "Energy Union," which is meant to provide value to their customers by better connecting different markets, lessen reliance on Russia, and address climate change. However, competing concerns between Russia's energy dominance and climate change concerns of individual countries are making the process increasingly difficult for any policy changes to be made.⁹¹ The need to build new infrastructure to decrease Russia's dominance in transporting fossil fuels is being contested by environmentalists who believe that Europe should be moving away from fossil fuels altogether. However, it is hard to envision the EU putting themselves at an even greater security risk in the name of climate change.

The current low price of oil is putting further pressure on EU policies designed to push renewable energy, by making the economics of wind and solar even more uneconomical than they have been in the past, despite costly subsidies that have already dramatically raised the price of electricity as much as 133 percent in some countries in Europe.⁹² The low price

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environment for oil has caused the carbon price in the EU's Emissions Trading System to spiral to a 20 month low last January.⁹³ This has made it less likely that industry will take actions to reduce emissions since it is not costly to simply purchase credits to offset their use.

The EU has also announced that it will not be one of the early adopters of the Paris agreement.⁹⁴ Although the EU negotiates international climate change agreements as a bloc, each of the 29 member states requires actions to be taken before

⁸⁹ *Id.*

⁹⁰ Megan Darby, *Is Brussels killing the Paris climate dream?* (Mar. 9, 2016), available at <http://www.climatechangenews.com/2016/03/09/isbrusselsburyingtheparisclimatedream/>.

⁹¹ Anca Gurzu, *Europe's energy (dis)union* (Oct. 6, 2015), POLITICO, available at <http://www.politico.eu/article/europe-energy-union-community-infrastructure-pipelines-interconnectors-plan-juncker/>.

⁹² Terry Jarrett, *Europe has problem that may soon become ours* (Apr. 14, 2016), Breitbart, available at <http://www.breitbart.com/big-government/2016/04/14/europes-energy-crisis-poses-warning-u-s/>.

⁹³ Sara Stefanini, *Climate targets suffer as carbon price slumps* (Jan. 26, 2016), POLITICO, available at <http://www.politico.eu/article/carbon-eu-ets-emissions-trading-system-oil-gas/>.

⁹⁴ Jean Chemnick, *Climate deal to be ratified without Europe's help – for now* (Apr. 18, 2016), E&E News, available at <http://www.eenews.net/climatewire/2016/04/18/stories/1060035780>.

the EU can ratify the agreement.⁹⁵ This could affect decision made at the next UN summit since the EU would only be an “observer” to the negotiations and therefore not able to directly influence future commitments, which would likely result in lower ambition since the EU generally pursues more aggressive emissions reductions and is considered a key contributor to climate finance efforts.

In addition to these broader issues, individual member states in the central and eastern parts of the EU are fighting back on climate policies due to their heavy reliance on coal. Poland has been the most outspoken country against Paris agreement.⁹⁶ Countries that are considering joining the EU, such as Kosovo, are being pressured against developing coal resources to stay in line with EU targets, despite their critical need for affordable and reliable energy.⁹⁷ These tensions are likely to become more pronounced as the EU gets further along into implementation of their target.

If Kyoto is any indication of how the EU will continue to attempt to reduce emissions under the Paris Agreement, it is likely that the targets will ultimately be ignored. Further complicating compliance with the Paris agreement are the current political challenges facing Europe, the economic challenges facing renewable energy, and technological challenges that will inevitably continue to occur as more renewable energy is forced onto the grid.

c. India and China Sign Up for Business as Usual

One of the biggest “achievements” of the Paris Agreement, as sold by the Obama administration and other proponents of the deal over previous international climate change agreements, is the inclusion of developing countries, such as India and China in the deal. However, it is not the first time these countries have decided to join an international climate agreement—they were parties to the Kyoto Protocol. While it is the first time these two countries have voluntarily agreed to GHG emission targets, it is mainly political theater—like most aspects of this deal—to forward the interests of those most involved in orchestrating the agreement.

China pledged to “peak” their emissions by 2030, not exactly an ambitious agreement.⁹⁸ Testimony from Mr. Stephen Eule with the U.S. Chamber of Commerce before an EPW Committee hearing entitled, “Examining the International Climate Negotiations,” on November 18, 2015, confirmed that China’s pledge was empty:

⁹⁵ *Id.*

⁹⁶ *Id.*

⁹⁷ Keith Johnson, *The energy-starved Balkan nation needs a new power plant. But is dirty brown coal the best way to build the economy* (Apr. 5, 2016), available at http://foreignpolicy.com/2016/04/05/tiny-kosovo-faces-a-big-energy-dilemma-kosovo-c-lignite-world-bank-coal/?utm_source=&utm_medium=email&utm_campaign=1104.

⁹⁸ Julian Ponthus, *China to cap rising emissions by 2030 in boost to Paris U.N. Deal* (Jun. 30, 2015) Reuters, available at: <http://www.reuters.com/article/2015/06/30/us-france-china-climatechangeidUSKCN0PA1G420150630>

An examination of the Chinese commitment reveals it to be little better than business as usual. For example, International Energy Agency (IEA) historical and forecast data show that carbon dioxide emissions from China already are expected to peak around 2030 at 9.5 billion TCO2 and that zero-emitting energy will provide 18 percent of total energy demand. IEA data also suggest that from 1990 to 2005, China reduced its carbon dioxide emissions intensity by 58 percent to 61 percent – essentially the same rate it is pledging for 2005 to 2030. In other words, business as usual.⁹⁹

In response to the Chinese commitment, Chairman Inhofe has further explained the true implications of the deal:

If the president was serious about achieving a substantive climate agreement, he would spend more time working with Congress instead of developing press releases with the Chinese government. These public pledges sound good, but come with serious economic consequences for the United States. The Obama administration will use regulatory overreach to claim our nation's commitment, while China's pledge has no guarantee of enforcement. This is a great deal for the Chinese who are slated to continue increasing emissions with the potential of capping them years from now. China stands to not only inherit a bounty of U.S. taxpayer dollars through various 'climate change' and 'sustainability' initiatives but also inherit U.S. manufacturing jobs and economic investment that the president's carbon mandates will deliver straight to Beijing.¹⁰⁰

More recent analysis from the London School of Economics indicates that China's emissions have already peaked, underscoring the fact that they have committed themselves to little.¹⁰¹ In addition to committing themselves to an essentially meaningless commitment in terms of reducing their emissions, China stands to gain from participation in the Paris Agreement by pushing the U.S. and EU to make economically costly emissions reductions.

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India is another major developing country that is seen as an essential participant to any successful climate change deal. Like China, India has made essentially empty promises to be a participant in the deal while demanding subsidies to help the country develop its renewable energy.

⁹⁹ *Examining the International Climate Negotiations Before the S. Comm. on Env't and Pub. Works*, 114 Cong. (2015) (statement of Stephen Eule, Vice President, Institute for 21st Century Energy of the U.S. Chamber of Commerce), available at http://www.epw.senate.gov/public/_cache/files/3f20f502-aca6-433eafc5-22b57d9d051f/eule-testimony.pdf.

¹⁰⁰ Press Release, Senator James M. Inhofe, Inhofe Statement on China's Climate Announcement (Sept. 25, 2015), available at <http://www.epw.senate.gov/public/index.cfm/2015/9/inhofe-statement-on-china-s-climate-announcement>.

¹⁰¹ David Stanway, *China CO2 emissions may have peaked in 2014: study* (Mar. 7, 2016), Reuters, available at <http://uk.reuters.com/article/us-china-carbon-idUKKCN0W900J>

Specifically, India has pledged to reduce the intensity of its carbon dioxide emissions and boost the share of electricity produced from sources other than fossil fuels by 40 percent by 2030.¹⁰²

At the November 18, 2015, EPW Committee hearing, Senior Fellow for the Manhattan Institute for Policy, Oren Cass, confirmed that India's commitment does not seriously change the natural trajectory of their emissions:

*Analyses from multiple perspectives demonstrate the emptiness of this commitment. In April, India's Centre for Policy Research estimated an emissions trajectory for the country absent further policy action and the INDC commitment falls squarely in the middle of the established range. Bloomberg finds it significantly worse than BAU [Business as Usual] and researcher Glen Peters has shown the proposed progress is slower than historical trend. Indeed, the most obvious reference point is in the INDC itself: India reports that its energy efficiency has already improved more than 17 percent between 2005 and 2012. Assuming no change in its carbon intensity of energy, India could improve only half as fast going forward and still achieve its 'goal.'*¹⁰³

Some other smaller developing countries are catching onto the empty promises of the Paris Agreement and are wondering if it is really any different than previous agreements despite the enhanced marketing. That is why an influential Malaysian think-tank called the Third World Network recommended that members of the Arab Group of Nations wait to get stronger assurances on finance, technology and compensation for damage from extreme weather before signing the Paris agreement. Specifically, the think tank wrote, "...we lose the political leverage that is critical to secure the necessary conditions that will enable developing countries to meet their obligations" if those countries were to immediately sign the agreement.¹⁰⁴ Third World Network deals with developing countries such as China, India, Saudi Arabia, Venezuela, Iran and Ecuador. Members of these poorer states, many with rich oil and gas resources, are hesitant to embrace a deal that they feel they will not benefit from instead of worrying about how the deal will or will not mitigate climate change.

Like Kyoto, most of the weight for achieving emissions reductions has been placed on the U.S. and EU, while other major emitters like India and China have essentially been given a free pass. Other third world countries are waiting to see how they can benefit from the Paris Agreement instead of joining. Both the U.S. and EU have major policy and economic hurdles they must overcome if they are to even come close to meeting their non-binding goals. These hurdles make it all the more likely that the U.S. and EU will fall short of their targets as they are not binding and the history of international climate agreements show that once climate change

¹⁰² A.P., *India Pledges to Cut Emissions Intensity to Help Fight Climate Change* (Oct. 1, 2015), Wall Street Journal, available at <http://www.wsj.com/articles/india-pledges-to-cut-emissions-intensity-to-help-fight-climate-change-1443752106>.

¹⁰³ *Examining the International Climate Negotiations Before the S. Comm. on Env't and Pub. Works*, 114 Cong. (2015) (statement of Oren Cass, senior fellow, Manhattan Institute for Policy Research), available at <http://www.epw.senate.gov/public/cache/files/6658e59c-1098-4820-8360-3d61a34985bf/cass-testimony.pdf>

¹⁰⁴ Ed King, *Developing nations urged to boycott Paris Agreement Signing* (Mar. 29, 2016), Climate Change News, available at <http://www.climatechangenews.com/2016/03/29/developing-nations-urged-to-boycott-paris-agreement-signing/>.

policies start to cause economic harm they are abandoned. There is momentum for the Paris Agreement now, but it remains to be seen what will happen when the press releases turn into action.

CONCLUSION

Perhaps one of the best known phrases regarding the lessons of history is, “Those who do not learn from history are doomed to repeat it.” Now that the UNFCCC has been holding negotiations for international climate agreements for over twenty years, there is plenty of history that can be used to predict whether the recent Paris Climate Agreement will achieve the goal, “to intentionally transform the economic development model, for the first time in human history,” as stated by former UN Climate Chief Christiana Figueres.

As this EPW Committee Majority Staff White Paper explains, if the past is any indication, countries will or will not reduce emissions based on what is politically and economically feasible regardless of their non-binding INDC promises because of the immense damage draconian cuts in GHG emissions would have on each individual states’ population. Figueres might even agree with that statement and has admitted; “This is probably the most difficult task we have ever given ourselves.” Attempting to “decarbonize” the world economy given the depth of the current economic and political costs of actually doing so is akin to defying gravity.

Countries that have tried to implement the carbon-cutting policies that are being pushed as the solution to climate change and compliance with international climate agreements have yet to upend the economic development model. Even the EU, an entity that has prided itself as a “leader” on climate change policy for embracing the most stringent targets and policies aimed at “decarbonizing the economy” is starting to brush up against the wall of reality and reassess their priorities. This is similar to other countries such as Japan, Canada, and Australia who have tried to “do something about” climate change in the past and ended up reversing course due to the harsh impacts of “decarbonization” policies.

So why do officials like President Obama and Figueres continue to promote this approach to solving climate change given the unrealistic chance an international climate agreement will have a serious effect on global temperatures and weather patterns? There are many incentives at play to further their own legacies and political goals, and they will not be in a position to be held accountable to their current constituencies when the fallout comes from full implementation of the carbon-cutting policies they have advanced.

Serious economic damage has already been incurred upon the U.S. coal industry and the communities they serve in the name of President Obama’s “leadership” on climate change—while other countries increase their coal usage. Attempting to comply with the Paris Agreement has the potential to further harm Americans in all sectors of the economy for little to no impact on the climate. The American people must understand the dynamics and the hollow promises of Paris Agreement supporters, less they allow these meaningless agreements to gain credibility and cause further damage the American economy and sovereignty.