

NATIONAL FOREIGN TRADE COUNCIL, INC.

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The Honorable Nancy Pelosi
U.S. House of Representatives
235 Cannon House Office Building
Washington, DC 20515-0508

Dear Madam Speaker:

I am writing to bring to your attention a paper the National Foreign Trade Council made public today titled, "WTO-Compatibility of Four Categories of U.S. Climate Change Policy." It examines major energy and climate related bills introduced in the 110th Congress from the perspective of their compliance with World Trade Organization (WTO) rules. Most important, the NFTC report also suggests that it is in the United States' best interest as a global leader to develop climate change policies that are consistent with our multilateral obligations.

As an organization focused on international trade and tax policy, the NFTC does not advocate a particular policy on climate change and does not endorse any specific legislation, but we strongly recommend that any action Congress takes be WTO-compliant. Climate change is a global issue, and success in dealing with it will inevitably depend on multilateral cooperation. There are already WTO rules that are directly relevant to some of the proposals being considered in Congress, and, as the body of international trade law pertaining to the environment is further developed, there will no doubt be more. If the United States is to avoid WTO litigation regarding our own measures and also be a world leader in the shaping of new international rules, it is critical that we be scrupulous in making sure our own legislation conforms to existing rules and that we are actively participating in multilateral efforts to further refine those rules. If we do neither, we will find ourselves trapped in WTO litigation against our own laws, and further disadvantaged by the development of new rules that do not take our concerns and priorities into account. It makes little sense to enact laws here that will only become the subject of WTO complaints by allied nations in the future.

The NFTC report examines seven leading bills pending in the Congress based on the policy tools they employ, including energy efficiency regulations and standards, government-administered eco-labeling, subsidies to encourage climate-friendly investments, public procurement of climate-friendly goods and services, and emissions trading. Following are several of our conclusions:

- The emissions cap-and-trade system proposed in S. 2191 may in theory be one of the most WTO-compatible policy tools, as emissions permits are not currently considered a "good" or "service," but because such programs often involve government subsidies or require eco-labeling, their implementation may raise WTO concerns.
- The provisions for government procurement of climate-friendly goods included in H.R. 3221 do not appear to be in violation of the WTO Agreement on Government Procurement.

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- Subsidies for renewable energy included in the form of loan guarantees for renewable fuel facilities proposed in H.R. 6 are likely to violate the WTO Agreement on Subsidies and Countervailing Measures.
- Government-administered eco-labeling proposed in H.R. 6 may violate the WTO Agreement on Technical Barriers to Trade.

The report concludes, “In the end, passage of domestic legislation that is WTO-compliant will accelerate the meeting of U.S. national energy and climate change policy imperatives; will level uncertainties for U.S. enterprises, furthering their leadership in international commerce; and will give the United States a positive international reputation that could positively affect areas of diplomacy outside the sphere of climate change.”

I hope this report will prove useful in your deliberations on climate change legislation. For a complete copy of the report, please click [here](#). If you would like further information, please contact me at breinsch@nftc.org.

Sincerely,



William A. Reinsch
President