



# The Green New Deal: A Ten-Year Window to Reshape International Economic Law

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**Todd N. Tucker\***

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\* **Todd N. Tucker** is a political scientist and fellow at the Roosevelt Institute. His research focuses on political economy, democracy, and judicial politics. Dr. Tucker has testified before legislatures and expert committees around the world. His writing has been featured in *Politico*, *Time Magazine*, *Democracy Journal*, and *Washington Post*. He is author of *Judge Knot: Politics and Development in International Investment Law* (Anthem Press 2018).

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## **Executive Summary and Introduction**

This working paper proposes a global Green New Deal to complement the domestic one. It argues that this parallel initiative is desirable and even necessary to avoid a conflict between a socially sustainable de-carbonization of the planet and existing global trading rules.

The stakes of getting the national and international balance are high: the U.S. has by far the most historic responsibility for climate change, accounting for a third of emissions over the 1850 to 2014 period (Gillis and Popovich 2017). It is thus a practical and moral necessity for the U.S. to act if there is any hope. Moreover, if the U.S. addresses climate change and others do not, we can expect firms to simply offshore their production from the U.S. to countries with laxer regimes – and their pollution in the process. One study found that as much as 21 percent of China’s emissions are due to carbon emissions caused by goods produced for the U.S. market (Zhou 2017). And, as this paper points out, when the U.S. acts unilaterally, it can be and has been successfully challenged before international trade tribunals. Thus, it is essential to internationally coordinate and re-write the global rules if humanity is to address the existential threat of climate change.

The first section outlines some of the domestic factors that led environmental advocates to construct the Green New Deal, while the second section addresses the misplaced criticism that such an initiative is lacking in international scope. A third section outlines the international strategies and rule changes that could complement the domestic initiative, including establishing a tariff-free zone among countries that institute a Green New Deal and embargoing those that do not. A final section concludes. Due to space constraints, this paper does not address in detail all of the legal and technical issues involved in implementing a Global Green New Deal. Readers are encouraged to read items from the bibliography.

### **WHY A GREEN NEW DEAL?**

Climate change is one of the most serious threats to national and international security and prosperity that the world has ever seen. If the Earth does not reach carbon neutrality by the year 2050, we will see higher sea levels, more storms and droughts, and widespread displacement of human and animal populations. Even the climate change skeptical Trump administration predicts a seven degree

Fahrenheit increase in global temperatures by 2100, a level that scientists say will kill off many coral reefs, put parts of Miami and Manhattan underwater, and unleash extreme heat waves (Eilperin, Dennis, and Mooney 2018)

Nonetheless, political will to reverse warming and weather changes has been lacking – even though economists have found there are imminently plausible technical and political means for doing so (Paul, Mason, and Fremstad 2019). Part of the difficulty has been the U.S. political system’s high number of veto points – a political science term to refer to political actors who normally have the capacity to block change. Individual senators from tiny states have enormous capacity to block legislation from moving forward (Tucker 2019a), while U.S. courts exercise aggressive judicial review in a manner that seems increasingly biased against policy reform (Tucker 2018b). Meanwhile, countervailing institutions like labor unions that could overcome or pressure against these veto points have been decimated (Tucker 2018a).

Past U.S. climate efforts have attempted to deal with these veto points by circumventing them. This strategy has a certain logic. After all, in 1997, the US Senate preemptively rejected the Kyoto Protocol, and in 2009 never took up the American Clean Energy and Security Act (also known as the Waxman-Markey climate bill), which had been passed by the House. As a result, the Obama administration relied on regulatory tools and non-treaty instruments when it came to climate policy – strategies that have been partly wound down by the Trump administration and courts (Aschwanden 2015).

A newer generation of political leadership is attempting to address this stalemate not through avoiding politics but by changing them. In February 2019, Rep. Alexandria Ocasio-Cortez (D-N.Y.) unveiled the Green New Deal – a ten-year proposed mobilization to completely decarbonize the US economy by politically embedding climate solutions in a popular anti-inequality agenda, creating high-paying union jobs and addressing racial and gender inequities (Ocasio-Cortez 2019). This is backed by sound research: regional, class, and racial disparities are associated with higher rates of emissions (Holmberg 2017). The “yellow vest” protests faced by French President Emmanuel Macron over the last year reinforce why many U.S. environmentalists see climate and inequality as inextricably linked. French policymakers sought to use the revenue from carbon taxes (which fall most heavily on poor and working class people) to fund government budget deficit reduction (Mufson and McAuley 2018).

In contrast, many social scientists think that (at a minimum) revenue needs to be recycled to citizens through a carbon dividend. In the U.S., the debate among reformers is whether a pay-off is enough, or whether a more inclusive and participatory New Deal-level mobilization is needed (Hook 2019). In this latter view, much as disruptive trade liberalization in the mid twentieth-century was embedded in domestic social contracts that elevated labor unions, welfare states, and restrictions on finance (Ruggie 1982), the Green New Deal's advocates seek a 21<sup>st</sup> century "embedded de-carbonization."

### **Contra critics, the Green New Deal is (or could be) an internationalist agenda**

The Green New Deal was immediately criticized on multiple fronts, including for its supposed lack of detail on necessary international coordination. For instance, economist Noah Smith of Bloomberg wrote that, "because the U.S. only produces 14% of global carbon emissions (and falling every day), the Green New Deal won't actually reduce climate change... [it] doesn't focus on the international aspect at all. In other words, the current GND just doesn't look like it'll do much to actually save the planet."<sup>1</sup>

In fact, the Green New Deal framework has both explicit and implicit international dimensions. In this respect, it has much in common with the original New Deal, whose architects sought its internationalization (Patel 2016). The Green New Deal is not yet elaborated in detailed legislation, but rather takes the form of a resolution outlining five goals, 14 projects, and 15 requirements to evaluate said projects. Most of these components are explicitly international in focus or are framed in an open-ended fashion that would allow for an international dimension. Indeed, only three of the goals, six of the projects (43 percent), and three of the requirements (20 percent) are explicitly national in focus. The remaining 57 percent of the projects and 80 percent of the requirements are either explicitly or potentially international in scope. These are summarized in Table 1 below.

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<sup>1</sup> <https://twitter.com/Noahpinion/status/1094110992638693377>

**Table 1: Green New Deal – International and National Dimensions**

<b>Section</b>	<b>Explicitly National (denoted eg “in the US”)</b>	<b>Explicitly International (denoted eg “overseas”)</b>	<b>Potentially International (no explicit qualifier)</b>
(1) Goals	(B) Job creation and prosperity (C) Sustainable infrastructure and industrial policy (D) Healthy future		(A) “achieve net-zero greenhouse gas emissions through a fair and just transition for <i>all</i> communities and workers” (emphasis added) (E) Protecting “frontline and vulnerable communities” (FVCs)
(2) Projects	(B) US infrastructure (C) US power demand met through 100% clean energy sources (E) Decarbonizing US buildings (F) Decarbonizing US manufacturing (G) Decarbonizing US farming (H) Decarbonizing US transportation	(N) Promote “international exchange of technology, expertise, products, funding, and services, with the aim of making the United States the international leader on climate action, and to help other countries achieve a Green New Deal.”	(A) Resilient community-defined projects (D) Smart grids (I) Mitigation (J) Conservation and reforestation (K) Restore damaged ecosystems (L) Clean hazardous sites (M) Identify and clean up new emission sources
(3) Requirements	(C) Training and higher ed with focus on FVCs so all Americans “can be full and equal participants” (H) “guaranteeing a job with a family-sustaining wage, adequate family and medical leave, paid vacations, and retirement security to all people of the United States” (O) US social safety net and rights (health, housing, security, water, air, food, access to nature)	(K) “enacting and enforcing trade rules, procurement standards, and border adjustments with strong labor and environmental protections— (i) to stop the transfer of jobs and pollution overseas; and (ii) to grow domestic manufacturing in the United States” (N) “ensuring a commercial environment where every businessperson is free from unfair competition and domination by domestic or international monopolies”	(A) Public resources to communities, agencies, businesses – with public stakes and return (B) Environmental and social accounting through old and new laws (D) Public investment in new tech (E) Just transition (F) Democratic participation in planning, implementation, administration (G) Creation of [only] high quality union jobs [and local hiring] <sup>2</sup> (I) Collective bargaining rights (J) Labor standards (L) Protecting public patrimony/oceans and not abusing eminent domain (M) Indigenous rights

<sup>2</sup> The official resolution does not call for only union jobs to be created, but does call for hiring of local workers (perhaps an indirect way of making it national in scope). Accompanying fact sheets feature the reverse of each clause.

## **How to Rewrite the Rules for “Embedded De-carbonization”**

While the Green New Deal is not explicit about what shape a complementary global governance system would take, a few preliminary observations can be made.

First, it envisions a time-limited, ten-year period where the US economy would be fundamentally refashioned – a process that will have to be accommodated in US law. For instance, Requirement G’s possible use of federal government power to promote unionization would be a significant shift from the approximate class neutrality of the National Labor Relations Act (as amended by Taft-Hartley). Moreover, while Requirement L warns against the abuse of eminent domain, various of the Projects may have implications for private property rights – particularly in regards to green buildings and protecting ecologically sensitive areas. Finally, Requirements C, H, and O will require a significant expansion of the social safety net – which (like the Affordable Care Act) will be challenged in the courts. Thus, a cost-effective Green New Deal would likely require major overhauls of statutes and suspensions or relaxing of certain constitutional restraints.

Second, the Green New Deal can be expected to generate extraterritorial effects that could invite international legal challenge. For instance, Requirement K envisions renegotiated trade and procurement rules that would “stop the transfer of jobs and pollution overseas.” This is arguably a higher baseline than the US has enacted in recent trade agreements and tax laws, which (at worst) incentivize or (at most) slightly dis-incentivize but not block offshoring. If trading partners are unwilling to help the US accomplish that goal, there could be a challenge at the World Trade Organization (WTO). Moreover, Requirement N demands that every businessperson be “free from unfair competition and domination by domestic and international monopolies” – an exacting standard that may also generate geo-economic tensions with allies and adversaries alike. Finally, Green New Deal implementers’ apparent wish to embed de-carbonization in local communities and economies may lead them to institute various “Buy and Hire Local” schemes and subsidies in energy, agriculture, services, and manufacturing. Academic research shows that such linking to local economies is a way to overcome people’s resistance to the economic costs of decarbonization (Stokes 2016) (Hess et al. 2018). Yet depending on how these Buy Local rules are shaped, they too may invite international legal challenge.

This is far from a trivial threat. Federal regulations enacted or contemplated in the past already raised potential trade pact compatibility issues. In the 2000s, a proposed border adjustment tax (one way of combating U.S. firms simply exporting their pollution) was singled out for special concern, as were technical regulations around the auto sector (Pauwelyn 2007) (Tucker 2012). And in 2019, the WTO ruled against the Buy Local components of seven American states' renewable energy plans as *per se* violations of trading rules. Now, the Trump administration will have to decide to appeal the ruling or sue the states to get them to comply with the ruling (Tucker 2019b).

**If domestic law will need reshaping to accommodate the Green New Deal, it stands to wager that international law will as well.** Otherwise, we can expect attempts at using trade and investment agreements for “semi-preemption”<sup>3</sup> or chilling of the Deal’s more ambitious aspects. If the Green New Deal operates as intended – endogenously generating a political coalition capable of overcoming domestic gridlock – this apparent conflict may not be a problem on the ground. Political actors willing to sidestep domestic constraints may care even less about international law compliance pressures. While that may be good enough for legislators looking to score political victories, there are several principled reasons for concern about the conflict of laws. First, it may poison the well on international collaboration needed to reduce planetary emissions. Second, it gives domestic opponents of the Green New Deal a rhetorical resource to mobilize. Third, sustained non-compliance by the US of international legal obligations could weaken the already fragile authority of international law – something that can in theory be useful for advancing global progress.<sup>4</sup>

Towards the end of resolving this conflict, the Green New Deal should be accompanied by a refashioning of international law along several tracks.

First, for the mobilization’s ten-year duration, the obligations of extant international trade treaties should be temporarily suspended. In their place, nations would implement a two-track treatment of goods flows under a Global Green New Deal. For nations that agree to implement domestic Green

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<sup>3</sup> International law rarely actually preempts national law, but a conflict of laws between the two levels can lead to compliance pressures.

<sup>4</sup> Put differently, even if there is not a conflict of law problem in a strict legal sense, there could be political value in suspending extant international obligations as a way of focusing the public’s attention on the mobilization. For instance, even unmeritorious challenges of Green New Deal regulatory takings could lead to an erosion of public support. In the equivalent to a war-time mobilization, these distractions may prove unacceptable.

New Deals and decarbonize their economies, tariffs on all goods would go to zero for ten years. For those that do not, tariffs would rise to the equivalent of Column 2 treatment (non-normal trading relations status). During the mobilization, Global Green New Deal countries would perform and make public a full audit of their progress towards these commitments every six months. If they fall short, they would be subject to legal challenge at the WTO's Dispute Settlement Body, which would be converted to an enforcement body for the Global Green New Deal for the ten-year period. (Nations could institute this scheme via a docking mechanism a la Mauritius Convention, whereby any prior international treaty obligations would be suspended by a later-in-time convention (Kaufmann-Kohler and Potesta 2016).) At the end of the ten-year period, countries would hold a negotiation to decide whether to keep the Global Green New Deal in place (as perhaps more time will be needed), return to WTO obligations, or develop an entirely new treaty framework.

Second, investment treaty obligations should be similarly suspended for a ten-year time frame. In their place, *ad hoc* arbitration should be available to any investor or civil society group that alleges a government is not upholding its obligations under the Global Green New Deal. As with a similar proposal made elsewhere on labor rights (Tucker 2018a), the immediate function here is naming and shaming, though sustained violation by a country could be a precursor to multilateral trade sanctions under the alternative WTO scheme mentioned above.

Finally, a suite of policies complementary to the Green New Deal requirements should be put in place in international economic law and foreign policy practice as outlined in Table 2, including:

- A financial transaction tax could increase the coffers of the Green Climate Fund (Goering 2017),
- The US could transfer all publicly funded green technology for free to poor countries (but can still require US production for local US projects to meet the US full employment objectives),
- Economic development obligations could be enforced through the new trade rules, which would obligate each nation to engage in robust community-wide adjustment assistance for frontline and vulnerable persons and regions (Meyer and Sitaraman 2018),
- A worker power agreement and strengthened International Labor Organization could ensure that countries increase union density (Tucker 2018a),
- The UN could accelerate work on a global oceans treaty (Nyman et al. 2018),



- An effective competition standard – instead of the consumer welfare standard – could be enforced via the new trade rules (Steinbaum and Stucke 2018), and
- The US could revive Franklin Roosevelt’s call for a Second Bill of Rights and Four Freedoms (Paul, Darity, and Hamilton 2018) (Flynn and Holmberg 2019).

This agenda would go a long way towards ushering foreign policy out of its elite roots in state secrecy and towards a more popular and inclusive formulation (Leira 2019).

**Table 2: Possible Elements of a Global Green New Deal**

US Green New Deal	Globalizing Green New Deal
(A) Public investment	(A) Green Climate Fund/ Financial Transaction Tax
(B) Environmental and social accounting	(B) New damages calculations in investment law
I Training and higher ed with focus on FVCs	I Best practices exchange
(D) Public investment in new tech	(D) Technology transfer to poor countries
I Just transition	I Enforceable economic development chapter
(F) Democratic participation in planning, etc.	(F) Private right of action in climate disputes
(G) Creation of union jobs	(G) Worker Power Agreement
(H) Job guarantee	(H) Full Employment Mandate at IFIs
(I) Collective bargaining rights	(I) Worker Power Agreement
(J) Labor standards	(J) Worker Power Agreement / ILO
(K) Pro-labor, pro-environment trading rules	(K) 10-Year two-tier trade pact
(L) Protecting public patrimony	(L) Global oceans treaty
(M) Indigenous rights	(M) UN Declaration, Plus
(N) Anti-monopoly policy	(N) Effective Competition standard in trade pact
(O) Social safety net and rights	(O) Four Freedoms / Second Bill of Rights

## CONCLUSION

An adequate climate response must be both national and international. The U.S. has the lion’s share of responsibility for past carbon emissions – so it must be a part of the solution. Meanwhile, the U.S. is responsible for only a minority of current emissions, and failure to get other countries on board means that emissions will simply “leak” overseas – along with U.S. jobs.

As this working paper indicated, there are numerous potential conflicts between ambitious domestic climate policy and current international trading rules. Yet this need not be a barrier. The ten-year

mobilization of the Green New Deal offers an opportunity to remake and green an international trade architecture that is already in crisis. The ideas proposed in this paper contribute to a growing literature on how to best internationalize the Green New Deal and address potential conflicts between climate and trade policy (Beachy 2016) (Kaufman 2018) (Castano Tierno 2019). Although many specific routes are open, it is vital that the campaign for a new economy be accompanied by new and more just economic rules – both at home and abroad.

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