

are treated differently than trade in other goods, though only a handful of countries have signed the AGP.⁷²⁵ It remains to be seen if the WTO would ignore trade discrimination in government procurement.

In summary we can state that Kyoto offers significant barriers to trade and has the potential to contravene the hard won trade legislation protected by the WTO. The entire rationale of Kyoto appears to be anti-growth and anti-development. This is especially curious given that technology, progress and higher living standards account for a cleaner and more sustainable economic development policy. If trade were responsible for environmental destruction then the poorest countries should be the most environmentally friendly. This is obviously not the case. Trade creates wealth and wealth cleans up the environment.⁷²⁶ Trade can improve the environment in a number of important ways:

- By increasing real income and standard of living so that more resources can be dedicated to cleaning up the environment.⁷²⁷
- Reducing population growth through the higher education that comes with higher incomes.
- Reducing waste through efficiency gains of competition and economies of scale.⁷²⁸
- Encouraging intergovernmental cooperation and providing access to technology for dealing with waste.⁷²⁹

If there is a market failure and producers pollute and do not account for these costs in their cost-benefit analysis, this might lead to over-pollution or the wastage of common resources. This may damage the environment by increasing energy consumption, farming, and wastage and by lowering prices and increasing demands; as well as leading to the overuse of natural resources.⁷³⁰

Given these failures there is a legitimate need for government regulation but no analyst has made the case that domestic or national regulations are inferior to Kyoto, or less able to achieve sensible environmental protection without imperilling the WTO regime.

WTO VS. KYOTO IN PRACTICE

The GATT/WTO rules that are—or may become—sources of conflict between the WTO and Multilateral Environment Agreements (MEAs),⁷³¹ such as the Kyoto Protocol, are as follows:

1. GATT Article I, the Most Favoured Nation clause, requires equal treatment among WTO signatories. Yet a number of MEAs require parties to those agreements to apply more restrictive trade rules against non-parties to the agreements than parties.
2. GATT Article III, the National Treatment clause, requires imported products to be treated no less favourably than “like” domestic products. Governments cannot impose restrictions on how a foreign product was made if those production methods had no effect on the product’s performance or characteristics. Under the “like” product definition, import restrictions on the basis of non-product related process and production methods (PPMs) were not permitted.
3. GATT Article XI bans quotas and the use of import or export licenses. However, some existing MEAs impose licensing requirements, which might violate Article XI.
4. GATT Article XX exempts certain measures from other WTO obligations if under Article XX (b) they are “. . . necessary to protect human, animal, or plant life and health . . .” or under Article XX (g) they relate “. . . to the conservation of exhaustible natural resources.” However, that Article requires that such measures must not be applied in an arbitrary or unjustifiably discriminatory manner or act as a disguised restriction on trade.

Common violations of the above articles of the WTO would include:

- Border adjustment measures to offset environmentally driven taxes or subsidies which conflict with trade rules.
- Cross border pollution with trade sanctions that break WTO rules.
- Weakly regulated pollution havens that attract foreign investment.