

application of trade measures against Kyoto non-participants when climate change remedies satisfy the non-discrimination principle. This would occur when Kyoto obligations have universal acceptance and when climate change remedies require a very serious trade measure for their resolution, and when other, reasonably cooperative measures to address climate change problems have failed.⁷⁴⁰ In reading the Kyoto protocol and its intention it could be that the above conditions have been met.

Further as a result of the Shrimp-Turtle case, trade restrictive environmental measures—including [Process and Production Methods] PPM-based measures—can be justified under GATT provisions if such measures were agreed and negotiated multilaterally.⁷⁴¹ Some analysts argue that unilateral measures might be acceptable if they were adopted after serious efforts to reach an international agreement with states whose WTO rights might be affected by an environmental policy measure. As for countries such as the U.S., which have not agreed to Kyoto, climate change activists stress that there can be imposed a legally required minimum cooperation effort to judge the behaviour of industrialized countries which seek to avoid any meaningful steps to address the climate change challenge. Viewed from this angle, one would have to ask whether WTO parties that resist or even obstruct international cooperation on climate change, and thus violate their international obligations to cooperate in this field, lose some of their legitimacy to challenge climate change policy measures adopted by more constructive and progressive governments as WTO-incompatible.⁷⁴²

Since the U.S. has signed the UN Framework Convention on Climate Change even if it has not ratified the Kyoto Protocol, the U.S. could therefore lose some of the protections afforded it under WTO rules in any WTO dispute brought by the EU or other Kyoto participant. Unless the U.S. takes a formal step to withdraw from the Framework Convention, as it did in the case of the International Criminal Court, a WTO Dispute Panel or the Appellate Body could, in keeping with the Vienna Convention and customary international law, deny the U.S. legal standing to challenge, for example, EU measures to enforce Kyoto.

The WTO's Appellate Body's decision in Shrimp-Turtle has seemingly established the principle that non-product related PPMs are acceptable restraints on trade where a country claims to be protecting a resource that is found in the global commons. There is some risk then that the EU and other like-minded countries might resort to trade measures in the form of border tax adjustments or other barriers to offset the competitive advantage allegedly enjoyed by firms in the U.S. and other non-Annex 1 countries because of their non-adherence to Kyoto. For instance an EU 'eco-dumping' suit, would force the pro-growth World Trade Organization to address anti-growth multilateral environmental agreements (MEAs) such as Kyoto. It is not clear whether the WTO, confronted with this conflict, would remain true to its pro-growth mission. Such a suit would also trigger an interesting battle over the freedom of states to refuse to adopt the policies of others, without incurring penalty for unfair trade practice.⁷⁴³

THE POLITICS OF KYOTO

The science which purportedly supports the IPCC and Kyoto accords is at best controversial and incomplete. By most estimation's in order to have a negligible impact on climate change, Kyoto will cost about \$150 billion per year. This is the same as providing immediately to all third world inhabitants access to drinkable water, health, education and sanitation—twice.⁷⁴⁴ Those who favour such international accords have almost a religious faith in the efficacy of UNO agreements and their benignity. Such a religiosity contravenes the basic principles of national determination and policy setting especially when coupled with an unscientific thesis that appears to be catalyzed by political motivations. It should be remembered that during the 1970s the same phraseology used to today to explain global warming, was used by the UN, the media and some governments, who predicted eco-system catastrophe due to global cooling.⁷⁴⁵

The Kyoto agreement and its policy on how nation states may reduce emissions, also contravenes in significant ways existing multi-lateral and bi-lateral trade agreements. Why then would rational nation