



International Chamber of Commerce

The world business organization

Precaution, science, risk and trade

Prepared by the Task Force on Trade and Environment
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Summary

World business, as represented by ICC, supports an open multilateral trading system with rules and disciplines as elaborated under the GATT/WTO since 1948.

There is a growing tendency to deal with environmental or health concerns about new or existing technologies through an expanded use of precaution. This policy statement

- presents a world business perspective on precaution, and
- expresses concern about increasing recourse to trade-restrictive measures under the pretext of precaution.

The exercise of precaution in the context of international trade is expressly provided for in multilateral trade agreements under the GATT/WTO. The authority to take science- and risk-based action under these provisions should be maintained, as should the scientific discipline that underpins them.

In both domestic and international law, the identification and evaluation of risks associated with new and existing products and technologies should rely on sound, science-based risk assessment principles and high-quality data. Corresponding cost-effective, balanced and proportional measures should be taken to manage potential risks to health and the environment. Inevitably, some risk management decisions will be made in the absence of complete scientific data and information. Significant uncertainty where serious or irreversible damage might be caused justifies appropriate precautionary action. This should be taken in a cooperative spirit, in proportion to the seriousness of the risk, and with the least trade-restrictive effects, until such time as more complete information becomes available.

Precaution is integral to responsible business practices, a foundation of most contemporary environmental and health regulation, and a long-standing concept in many areas of international policy. In particular, where science cannot yet provide a full or appropriate evaluation in response to concerns about the consequences of a certain activity, technology or product, precautionary action is often taken. However, excessive precaution has the perverse effect of stifling the evolution of safer, beneficial technologies, and hinders economic development and improvements in the quality of life. The risks and benefits of proceeding should be weighed against the risks and benefits of maintaining the status quo. Thus, the implementation of a new technology requires a balanced application of precaution in risk management in both the public and private sectors.

Business fully supports the balanced, non-discriminatory and least trade-restrictive use of precaution, and implements it in many ways in its day-to-day operations. The private sector has to evaluate and manage economic activities, goods and services, and should take measures that will properly protect human health and the environment. All parties should recognize this and work together so that risks may be managed effectively and cooperatively, within an open, rules-based trade system.

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Analysis

In the context of multilateral trade and environment agreements, the challenge of the appropriate use of precaution lies in balancing the benefits derived from importing or marketing a product or technology and the legitimate concerns of society, especially when a potentially serious risk to the environment or health exists.

International trade law recognizes the right of countries to protect themselves - within the context of a multilateral rules-based trading system - from the import of products or materials that may pose a threat to human, animal or plant life or health. This is codified in GATT Article XX ("General Exceptions"), which reads in relevant part:

"Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (b) necessary to protect human, animal or plant life or health; (and)
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption;"

There is no international consensus on the definition of a precautionary approach, but it is generally understood to be applied as a risk management tool. It is cited as guidance for decisionmakers faced with potentially serious harmful effects to human, animal or plant health or the environment in the midst of scientific uncertainty as to the nature of the risk.

There are two well-known approaches to precaution.¹ One is Principle 15 of the 1992 Rio Declaration of the United Nations Conference on Environment and Development:

"In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

The Rio Declaration provides guidance in the case of a threat of serious or irreversible damage, but condones neither the unwarranted use of precaution nor the failure to address environmental protection. It also stresses the need to pursue international consensus approaches and avoid unilateral trade measures.

The other is the WTO Agreement on the Application of Sanitary and Phytosanitary Measures (SPS). This Agreement establishes more clearly the relation between science and precautionary action, codifying interpretation and practices that have evolved around Article XX.:

"Members shall ensure that any sanitary or phytosanitary measure is applied only to the extent necessary to protect human, animal or plant life or health, is based on scientific principles and is not maintained without sufficient scientific evidence..." (Article 2 paragraph 2), and

"In cases where relevant scientific evidence is insufficient, a Member may provisionally adopt sanitary or phytosanitary measures on the basis of available pertinent information, including that from the relevant international organizations as well as from sanitary or phytosanitary measures applied by other Members. In such circumstances, Members shall seek to obtain the additional information necessary for a more objective assessment of risk and review the sanitary or phytosanitary measure accordingly within a reasonable period of time." (Article 5 paragraph 7)

Notwithstanding the above guidelines and rules, governments have on occasion taken precautionary measures for prolonged periods ostensibly to protect the environment or health, where the scientific community has concluded that the potential risks are not sufficient to support such action, and without taking the necessary steps to clarify the existence, nature and extent of the alleged risks and the justification for the specific measures applied. Often, such measures are taken in response to political pressures on decisionmakers, and in some cases they are a disguised form of protectionism.

Developing countries, in particular, are concerned that environmental or health considerations could serve as a pretext for unduly restricting trade. ICC considers essential that precautionary measures and policies respect the needs of developing and least-developed countries, and are not employed as protectionist devices to keep out their exports. Furthermore, developing countries - through investment, capacity building, technical assistance and other means - should be encouraged to build-up their infrastructure, training and human resources to strengthen their technology assessment capabilities.

Economic development and technological innovation have led to dramatic improvements in health, the environment and the quality of life. In this respect, a misinterpretation of precaution - allowing it to be used as a rationale for trade-restrictive action without scientific justification -- could be counterproductive by stifling innovation. ICC is concerned that some governments as well as private groups favour extreme uses of precautionary measures, considering a modest indication of doubt or concern, or even an unanswered question, as an absolute standard for action overriding all other considerations, and in some cases, taking precedence over domestic and international regulations. Such unbalanced application of precaution has been used to justify restricting, or even eliminating a technology even though the risk may be remote or manageable and the evidence of the risk limited, unsupported or unverified. As a result, concern persists that governments will use this concept to justify discriminatory and trade-restrictive measures without scientific rationale instead of relying on existing domestic and international rules and disciplines and cooperative efforts to carefully evaluate and address the risk in question.

Science- and risk- based precaution is already practised in a number of priority areas and key industry sectors. For example, the safety assessment of food and food ingredients occurs at various levels in the private and public sectors. ICC believes that throughout the system, the focus should be on collecting and analyzing evidence of links to serious or irreversible adverse consequences, and that decisions should be based on such scientific evaluation, rather than political expediency driven by unsubstantiated fears or biases. ICC cautions that an over-simplistic extrapolation of the concept of precaution across different disciplines ignores both existing safeguards and qualitative differences. The imposition of unnecessary restrictions on trade and innovation and divergence from sound science and risk principles is unacceptable to business.

Objectives

Gaining the public's trust is vital for promoting economic progress, sustainable development, improving the quality of life and safeguarding an open and non-discriminatory multilateral trade system.

Understanding risk and dealing with uncertainty through appropriate risk management are basic tenets of sound business operations, management and business principles, reflecting the commitment of business to integrate environmental protection and health into its practices and product stewardship. It is, therefore, important that stakeholders and negotiators recognize the expertise of the private sector, enabling all parties to manage potential risks effectively. Precaution should be seen as an essential ingredient of risk management in the area of environment and health, and one of several

important considerations in adopting appropriate measures. ICC believes that precaution should be considered within a structured approach to risk management, comprising analysis, assessment, and the communication of risk. Potential risks should be managed without departing from the principles of sound science and in full recognition of the consequences of precautionary action.

Policy recommendations

Since few, if any, activities can guarantee zero-risk to the environment or health, precaution cannot justify a call for proof of zero risk or harm.

Governments should pursue appropriate international cooperation in scientific research, information sharing, risk communication and other non-trade restrictive approaches. Precautionary measures should be provisional and not be a substitute for specific regulatory provisions, nor should they cause policy gridlock or generate cumbersome and disproportionate regulation.

ICC believes that precautionary measures should be:

Analysis

- based on a weight-of-evidence approach using well-recognized scientific data and analysis showing that serious or irreversible damage can be reasonably expected to the environment or health as a consequence of a particular action, and targeted as precisely as possible at the specific issue of concern (e.g. specific chemical and specific application) using existing and reasonably obtainable knowledge;

Assessment

- subject to a preliminary risk assessment identifying at each relevant stage the effective degree of scientific knowledge and uncertainties, and to an independent, balanced and transparent scientific peer review process;

Necessity, due-process and review

- necessary to achieve acceptable management of risks to the environment and health, justified and subject to legal redress, and provisional (time-limited) and subject to periodic review based on the carrying out of further scientific research especially when there are long-term risks and substantial uncertainty;

Consistency

- consistent with measures already taken in similar circumstances;

Proportionality

- proportional both to the objective of a technology's development and to the potential risk, and thus include a cost/benefit assessment with the manifest intention of reducing the risk to an acceptable level, recognizing that zero-risk is not an option;

Least-trade restrictive

- applied in the least-trade restrictive manner in line with the principles and specific obligations embodied in WTO legal texts;

Urgency

- based on scientific evidence in cases where it is agreed that urgent action is required;

Transparency

- transparent and decided with the involvement of affected businesses and other relevant stakeholders; and

Notification

- communicated in a transparent and comprehensive manner to avoid unwarranted interpretations and impact.

Considerations like cultural, socio-economic values or other preferences play a legitimate role in public policy, but should not be allowed to inappropriately influence a science-based and legally defined approach to precaution.

Conclusion

Business supports cooperative international efforts involving both public and private sectors to develop and share scientific data that help improve the accuracy and relevance of risk assessments and recognizes best practices with regard to methodology and quality assurance. The responsibility remains with governments to ensure that precautionary risk-management measures that they take in circumstances of uncertainty involve scientifically substantiated threats to health or the environment, are least trade-restrictive and are taken only after full consideration of their negative impact on economic development and on further improvements in social and environmental wellbeing.

About ICC

ICC is the world business organization, the only representative body that speaks with authority on behalf of enterprises from all sectors in every part of the world. ICC promotes an open international trade and investment system and the market economy. Business leaders and experts drawn from the ICC membership establish the business stance on broad issues of trade and investment policy as well as on vital technical and sectoral subjects. ICC was founded in 1919 and today it groups thousands of member companies and associations from over 130 countries.

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1. The following multilateral agreements also include implicitly precautionary concepts: the Climate Change Convention; the Bio-Diversity Convention; the Bio-Safety Protocol; the Convention on Prior Informed Consent; Article XX ("General exceptions") of the GATT; the Preamble of the Marrakesh Agreement establishing the WTO; Article XIV of the General Agreement on Trade in Services (GATS); Article 2 paragraph 2 and Article 5 paragraph 7 of the WTO Agreement on the Application of Sanitary and Phytosanitary Measures; and Article 2.2 of the WTO Agreement on Technical Barriers to Trade

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