

The Precautionary Principle as a means of dealing with Environmental and Sustainable Development Risks

Dr. Wybe Th. Douma, T.M.C. Asser Institute, The Hague

Introduction

Although environmental change has moved backward on the present international agenda, the state of the world's environment does not show that environmental security has been realized. Depleting natural resources form a growing concern that form a threat to security and stability. Furthermore, regional and international trade regimes often seem to have just started to acknowledge the importance of sustainable development, let alone making concrete progress in contributing to it and working out ways to define a balanced relationship between trade regimes on the one hand and environmental treaties on the other hand. Similarly, the right of states to deal with risks to the environment and human health needs further fine-tuning in order to avoid trade wars, which are all the more likely at times of economic downfall.

Risks

The debate on environmental and health risks can be divided in three camps:

- The 'sound science' approach ("science has all the answers")
- The radical precautionary approach ("science offers no answers")
- The moderate precautionary approach ("science determines what is known / not known about a risk, policy makers formulate a decision")

The 'sound science' approach suffers from the existence of numerous cases where at a certain moment in time, due for instance to unknown factors, it was impossible to come up with a scientific calculation of a risk to the environment or human health.

As science is able to contribute to numerous issues, the radical precautionary approach also disqualifies itself.

The debate on the third approach, possibly due to the high political and economic interests at stake, remains highly controversial. Especially where scientific uncertainty stands in the way of coming up with full proof of the magnitude or even the existence of a risk, following a precautionary approach often still leads to accusations of protectionism under a green veil, and of following an anti-scientific approach.

Dealing with Risks

At the WCED in Rio de Janeiro, the Rio Declaration was adopted in which Principle 15 reads as follows:

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.

This non-binding principle found its way into numerous binding international environmental instruments and into other non-binding declarations, in which the link between sustainable development and the principle is often underlined.

Its scope is widened more and more. Whereas the principle was invoked at first where 'pure' environmental pollution issues were concerned, it now is held to be applicable in situations where health of humans, animals or plants is at stake, or where depletion of natural resources and their management are concerned (for instance calculation of fisheries quota).

Many claim the principle already forms a rule of international customary law, although international courts and tribunals are still hesitant to confirm this view.

In WTO law, a variant of the principle is present. Although the WTO regime, as explained by a number of Panels and Appellate Bodies, does acknowledge the possibility of adopting national protection measures even when no full scientific certainty about their need exists, the way in which the necessity of such measures must be 'proven' remains a point of debate. In the field of GMOs, the Cartagena Protocol did little to balance its regime with that of the WTO in this respect.

Within the EC, the principle was codified in 1993, albeit without defining it in the EC Treaty. The Commission tried to contribute to the debate by releasing its Communication on the Precautionary Principle in February 2000. The response

from the side of the USA showed that not all worries were taken away by this document.

Tasks Ahead

Further Trans-Atlantic consultation on the precautionary way of dealing with risks is necessary in order to avoid conflicts.

Such consultations would also contribute to reaching agreement on improvements to or finetuning of trade regimes and standard setting regimes (notably in the Codex Alimentarius).

Finally, they would contribute to improving the effectiveness of international and regional regimes with regard to the management of natural resources and the protection of the environment.

In its turn, more effective trade and environmental regimes that are in an improved balance with each other would contribute to reaching the goal of sustainable development, and thus to enhanced environmental security.