

For Immediate Release

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Study Examines European Union Strategy to Erect New Barriers to Foreign Trade

As the so-called Doha Round of international trade negotiations moves towards a key point at meetings in Cancun, Mexico next week, discussions will focus on the need for greater openness in the world economy. But as a new analysis released today by the Washington Legal Foundation (WLF) reveals, one major participant in the talks, the European Union (EU), is quietly working to recast the rules of international trade to favor their heavy-handed approach to domestic regulation.

This latest installment in WLF's educational WORKING PAPER publication series, **"UNSCIENTIFIC 'PRECAUTION': EUROPE'S CAMPAIGN TO ERECT NEW FOREIGN TRADE BARRIERS"**, was written for WLF by international trade law expert Lawrence A. Kogan on behalf of the National Foreign Trade Council, a leading business organization advocating an open, rules-based global trading system.

The paper thoroughly documents the European Union's long-term strategy to change how international trade rules and international law evaluate whether a domestic regulation or standard constitutes a "non-tariff barrier" to trade. Such an effort is needed, Mr. Kogan argues, because Europe has over the last several decades imposed a vast system of environment, health, and safety rules based not on sound science, but on politicized, subjective notions of hazards. These measures, he contends, serve to protect ailing EU industries by imposing unnecessary restrictions that block foreign businesses' equal access to the European market. In order for Europe to continue imposing these "precautionary" regulations, it thus must dramatically alter the framework of international trade rules.

After a brief introduction, the WORKING PAPER reviews in great detail each step of the EU's calculated strategy to force international acceptance of its precautionary approach to developing standards and regulations. Mr. Kogan identifies the three major prongs of the EU's strategy as seeking to inject the "Precautionary Principle":

1. Into the World Trade Organization through creative interpretations of trade agreements applying to domestic environmental, health and safety regulations;
2. Within international standards through active and skilled participation in the international standards development process; and
3. Within bilateral and free trade and aid agreements and within EU trade capacity-building initiatives offered to developing countries.

Each of the paper's ten sections focuses attention on one or more of these three main focuses of the EU's strategy, providing examples of how Europe has pursued the effort thus far and how its trading partners have responded to counter them. The initial sections offer an overview of international trade rules as they stand today, and an explanation of exactly how the European Union's unscientific approach to regulating and setting manufacturing standards treads on those rules. These sections also discuss the difficulties the EU faces in trying to convert the standard for judging domestic rules from one based on science to one based on alleviating unproven hazards and risks.

Later sections of the paper delve into such critical areas as the international standards setting process and the EU's use of regional and bilateral trade talks and agreements to validate a precautionary approach to regulation. Mr. Kogan's analysis in these sections provides readers with significant insights on highly specialized and complicated areas of international trade law and policy. Readers will also find quite instructive Mr. Kogan's discussion of how the EU is pursuing acceptance of the Precautionary Principle as a "norm" of customary international law and World Trade Organization treaty law.

Mr. Kogan concludes his analysis by urging trade officials and political leaders in the U.S. and its allies to develop long-term strategies to effectively counter the European Union and its actions. Failure to do so will profoundly impact America's competitiveness in the world economy, and will lead businesses to offer fewer product choices to the marketplace, ultimately harming the purported beneficiaries of Europe's precautionary approach to regulation — consumers.

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Copies of this analysis, "**UNSCIENTIFIC 'PRECAUTION': EUROPE'S CAMPAIGN TO ERECT NEW FOREIGN TRADE BARRIERS**" WLF WORKING PAPER Number 118 (Sept. 2003), can be obtained by forwarding a request and a check for \$5 to: Publications Department, Washington Legal Foundation, 2009 Massachusetts Avenue, NW, Washington, D.C. 20036, or calling (202) 588-0302.