



[Home](#) [About Journal](#) [Manuscript requirements](#) [Article sections](#) [Published guidelines set](#) [Advertisement](#) [Member Center](#) [Invited Editorial](#) [Contact](#)

Your Position: [Chinese collective economy magazine "Economy and Law"](#)

In the WTO multilateral framework to see the precautionary principle

Volume: [2009 8 the next](#) section: Economic and Law [Author: Liu Weiwei](#) Source: China's collective economy

By [Liu Weiwei](#)

Abstract: In recent years strongly advocated by the European Union and implement the "precautionary principle" in his series of laws and regulations and policies to be reflected, but also precisely because of the application of the principle, making relevant laws and regulations has highlighted the role of trade barriers and strengthened. The "precautionary principle"-oriented policy-makers, trying to establish an environmental protection center, not subject to any interference with the risk of a perfect utopian world, but it failed to recognize the resulting economic and opportunity costs, related industries and the world the **scope of impact**. Articles in WTO multilateral trade system, the application of the precautionary principle of risk and its "scientific cloak of" hidden under the analysis of the role of technical barriers to trade.

Keywords: precautionary principle; WTO; barriers to trade

1, the risk of the precautionary principle in trade

With the rapid development of international trade, environmental protection, human health and food safety issues have been more and more widespread concern. Countries around the world competing to develop the relevant strategic policy, and have issued a series of **specific measures, these measures constitute a beautiful layers of technical barriers to become technical barriers to trade.** Which is the principle of prevention of an emerging field of environmental law principles, the intent is to prevent human health, life, natural resources, the risk of damage, the increasing scope of application of the principle to other areas. The precautionary principle in more and more legislation and policies to be reflected, although the principle advocates claimed that the principle of trying to protect human health, the environment and ensure the competitiveness of **industries to establish a reasonable balance between, but no doubt the on international trade had a significant impact can not be neglected.** In recent years, the precautionary principle's role in the trade area has received considerable national and even world-wide concern, especially the European Union, the importance and status of this principle in its legislation and policies to be reflected in both. In fact, with the EU's position in the world economic arena is on the rise, the risk of the precautionary principle in the government on public risk assessment and management role in the international context has become an increasingly deepening global

economic integration in the central theme. **The "precautionary principle"-oriented policy-makers, trying to establish an environmental protection center, not subject to any interference with the risk of a perfect utopian world, but it failed to recognize the resulting economic and opportunity costs, related industries and the world the scope of impact.**

2, WTO system the positioning of the precautionary principle

The Application of Sanitary and Phytosanitary Measures Agreement (Agreement on the Application of Sanitary and Phytosanitary Measures, SPS) section 5.7 is the WTO framework, the members may explain their right to apply the "precautionary principle" in a clause can be invoked. "SPS Agreement" members are expected to determine the appropriate level of sanitary or phytosanitary protection, should take into account the negative impact of trade will be reduced to a minimum level of objective should be to avoid the level of protection it considers appropriate in different circumstances, the existence of international trade discrimination or a disguised restriction of the arbitrary or unreasonable differences. Required pursuant to the Agreement, each Member shall ensure that the relevant rules set a reasonable goal to protect, within the limits necessary for the implementation of, and based on scientific principles, once did not have sufficient scientific evidence, shall not continue to maintain the rule, "SPS Agreement" Article 5.7 provides an exception to the requirement. This provision allows members to the scientific evidence is not sufficient to adopt the interim measures at the same time, this can be interpreted as, in the do not have to prove the safety of a product under the conditions of sufficient evidence, the members of the party can take preventive measures. SPS Agreement the provisions of Article 5.7 are usually considered to have the basic elements of the precautionary principle, but only with the relevant factors was not able to assume that Article 5.7 is the precautionary principle. At least from the bill itself, and the WTO Dispute Settlement Body (DSB) processing results for the case, DSB, and not Article 5.7, as the precautionary principle be applied.

In the beef hormone case, the EU invoked the "precautionary principle" to support its claim, while the Appellate Body rejected the principle in international law to make a clear comment on the status. This case, the EC did not assert its right from the United States and Canadian beef import ban is an interim measure, but invoked the "precautionary principle" to support its claim: its ban on beef hormones is based on risk assessment, and advocates of the precautionary principle is a customary rule of international law. The EU has put forward the precautionary principle is a fundamental customary international law or at least a general principle of law, the essence of the precautionary principle is that it not only for dealing with risks, but also for risk assessment. The EU believes that the Group of Experts on the precautionary principle can not be applied above have been defined in Article 5.1 of the SPS Agreement and 5.2 of the statements, as well as the precautionary principle in conflict with these provisions of the statement is not correct. The EU believes that SPS Agreement Article 5.1, 5.2 and Annex A.4, and did not describe a particular type of risk assessment, but simply illustrates the risk assessment factors to be considered. Therefore, the provision itself does not prevent the Member States in the face of conflicting scientific information and scientific uncertainty set based on careful consideration of the appropriate safety standards.

The Appellate Body for the "precautionary principle" and the "SPS Agreement" the relationship between the specific comments made, but still refused to "precautionary principle" of international law and the status of their views. The appeal mentioned in the report, first, the precautionary principle has not been written "SPS Agreement" and can not, as so with the other provisions of the agreement of measures inconsistent with its obligations under the legitimizing basis. Second, the precautionary principle in article 5.7 of the agreement is indeed reflected in the meantime, the precautionary principle in the preamble paragraph 6 and Article 3.3 is also reflected. These are clearly recognized the right to take their respective Member States consider appropriate measures to protect the level of these protective measures can be higher than currently existing international standards, guidelines and recommendations set forth in the level of protection. Third, the Group on whether there is sufficient scientific

evidence to prove the legality of SPS measures on issues such as definition, has the right to decide. Fourth, the precautionary principle itself does not, nor is there the text of the relevant guidelines of the Expert Group from the application of general principles of treaty interpretation to explain "SPS Agreement" provisions of the obligation of all freed. However, the Appellate Body that the "precautionary principle" in the status in international law has always been academics, managers, lawyers and judges to debate, some point of view, the principle of international environmental law has developed into a general field of principles of customary law. **However, whether this principle as a general principle or international customary law has been widely accepted by all members is still uncertain. Therefore, the Appellate Body unnecessary and non-cautious on this abstract question but important point.**

Thus, for the "precautionary principle" in international law the status of the law does not make a clear definition of "precautionary principle", at least outside the field of international environmental law, pending an authoritative interpretation. **We can draw the conclusion that the relevant provisions in the SPS Agreement, you can find the elements of the precautionary principle, the precautionary principle only when the scientific evidence is not very good when they could be invoked, but it must be based on a risk assessment. Moreover, the precautionary principle reflected in the SPS Agreement is limited, not clear. Also noteworthy is that, SPS agreement although under the system of coordination of WTO free trade and human, animal and plant health protection of these two different, to a certain extent, as opposed to the policy objectives of the results, but the legal regulatory system, there is more emphasis on trade自由.**

3, "TBT" Agreement on the precautionary principle role of the regulatory barriers to

Under the precautionary principle in risk, if a material, the product itself, or in their production, forming, assembly process, may be an uncertain future, for health or the environment caused by the potential and unknown risks, then this material or product will be banned or severely restricted. **On the surface, the precautionary principle is the public safety, health and food safety, "safety first" (better safe than sorry) management system under a scientific principles, but their real nature, not difficult to find in a much greater degree to play a role in achieving political goals. The precautionary principle, not based on reality and in particular the likelihood of actual risk, but rather to determine based on the experimental environment, in an uncertain future the potential risks that may occur or hazards, and thus determine the risk of a substance. Of the principle advocate of the environment for the establishment of a center, not subject to any risk of interference with a perfect utopian world, but fails to recognize the resulting economic and opportunity costs of related industries as well as the impact of society as a whole. The precautionary principle to risk-oriented policy-makers, trying to eliminate uncertainty, potential environmental or health hazards, but it brought new and greater public danger, and that such risk is not easy to assess and manage. If the principle has been adopted worldwide, then according to this so-called "scientific principles", all countries can change and the environment of a product based on the weak linkages between the presumption of evidence, and severe restrictions on their domestic or international trade.**

Under the WTO legal framework, there are two members of the development in order to prevent unnecessary trade barriers constitute technical regulations or standards developed by the special agreement, in addition to discussion before the "SPS Agreement", the other is the Agreement on Technical Barriers to Trade (Agreement on Technical Barriers to Trade, TBT), to a certain extent can be said that the two relevant provisions of the treaty, and risks are closely related to the precautionary principle. "TBT" the agreement is relatively wide scope of use apply to sanitary and phytosanitary measures, technical regulations, standards or other matters. **According to "TBT Agreement," Article 2 stipulates that all members are obligated to ensure that their development, adoption or implementation of technical regulations shall not in purpose or effect on international trade caused by**

unnecessary obstacles. In addition, the technical regulations on trade restrictions to achieve the legitimate objective should not exceed the limits necessary, taking into account the legitimate objectives of the risk of failure to achieve potential. Therefore, under the pretext of "green coat" and the precautionary principle, not only because of its risk assessment system foundation damage, which may result in greater risk, but also because of the role of trade restrictions under the framework of the appropriate violation of WTO obligations.

IV Conclusion

In view of the precautionary principle related to legal, economic, political, social and a variety of factors, in the WTO framework, for this problem started a discussion and concern, in so far submitted to WTO dispute settlement mechanism of the cases, there are also involved in the principles of the relevant案例. At the WTO level, the relationship between trade and the environment has attracted a wide-ranging discussion, but "risk prevention" has not yet made a clear positioning. **WTO rules do not hinder Member States to the extent it considers reasonable to take to protect the environment and human, animal, plant life or health-related measures, but the taking of such measures shall not be unreasonable restrictions on international trade effects. Thus, in the field of international trade for the precautionary principle should adopt a cautious approach, or their application is likely to create barriers to trade effect.**

References:

- 1, Bruce Stokes. New Trade Barriers: National Preferences [J]. National Journal, 2004 (4).
- 2, Lawrence A. Kogan. The Precautionary Principle and WTO Law: Divergent Views Toward the Role of Science in Assessing and Managing Risk, Seton Hall Journal of Diplomacy and International Relations [M] .Winter / Spring, 2004.**
- 3, Appellate Body Report on EC - Hormones [Z] .1998-2-13.
- 4, Lawrence A. Kogan, Looking behind the Curtain: The Growth of Trade Barriers That Ignore Sound Science, National Foreign Trade Council, Inc [Z] .2003 (5).**

(Author: China University of Politics and International Law)

Integrated Chinese magazine
editorial collective economy

[+ 千方百计拓宽农民增收渠道](#)

[+ 香蕉标准化生产攻克国际贸易绿色壁垒](#)

* The above copyright belongs to China's network of all the collective economy, and if reproduced, please reference.