

Trade and Precaution: Their Progressive Interlace

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Abstract

Problem statement: The principle of precaution has developed in International Law, as it has been present in either explicit or implicit forms in most of the celebrated international treaties dealing with the protection of the environment, over the past two decades. In spite of the huge recognition that this principle has got through incorporation, in the international order, this principle continues to be the greatest puzzle in International law for being vague, ambiguous and imprecise as well as its status in relation to being a principle of customary International Law. Conclusion/Recommendation: Elements of precaution have been incorporated into the WTO Agreements (SPS and TBT) and for the examination of the relationship between the two can only be analyzed by determining the basis upon which these measures are put in place in the agreements. WTO aims at progressive liberalization of trade and greater freedom to take risks, while precaution is an opposite attitude in decision making that reflects an aversion to risk in the face of uncertainty. The trade rules of the WTO permit countries to invoke precautionary measures especially on the basis of health or environment while justifying trade restrictions, but they face real challenges when defending a precautionary action before the WTO Dispute Settlement Body. The relationship between Multilateral Environmental Agreements (MEA) and the WTO is undergoing a change from being theoretical to a tenuous one due to the new trade trends and its upshot on the environment. This paper looks to find the middle path needed for further trade progression while minimizing the effects on the environment. And answer some questions like, when an invocation of the precautionary principle is trade protectionism in disguise, who should bear the burden of proof when there is disagreement between parties and the effect of new trade regulations on the developing countries.

... **Multilateral environmental agreement and the precautionary principle:** The precautionary principle is central to environmental policy making and is a key element of several Multilateral Environmental Agreements (MEAs) and declarations[42,46,53-65] and the precautionary principle has received an extraordinary amount of attention from domestic and international jurists in the last decade or so, becoming one of the most well-known and talked-about international environmental rules. The principle has become entrenched in international environmental protection and resource management regimes, in light of

scientific uncertainty regarding how to deal with a myriad of health, safety and environment-related concerns, governments are putting in place precautionary measures to address local and global issues[66].

The origins of the formalized Precautionary Principle can be traced back to the German vorsorgeprinzip, which means literally ‘forecaring principle’ or simply ‘care[67,68]. The precautionary principle stands for the “common sense idea that public and private interests should act to prevent harm[69]”. That means that decision makers must not wait for unambiguous proof of a cause and effect relationship between a substance, process, or activity and an environmental harm before acting to reduce or eliminate the harm[14]. As such, precaution is not so much a rule as a process--it serves as a guide for the process of interpretation and norm formation towards sustainability[70]. It is perhaps best perceived as “a meta-juridical principle which provides a conduit between legal and non-legal forms of normativity[71] “. (p. 324)

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