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VIEWS

U.S. Should Not Import European Laws

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By Steven Milloy

As globalization fosters economic growth around the world, Americans should be vigilant of an unintended consequence: the imposition on U.S. businesses and consumers of the non-science-based, environmentalist-promoted, European Union-embraced standard known as the "precautionary principle."

The precautionary principle is the subject of a new Washington Legal Foundation report entitled "[Exporting Precaution: How Europe's Risk-Free Regulatory Agenda Threatens American Free Enterprise.](#)" Authored by Lawrence Kogan of the Institute for Trade Standards and Sustainable Development, the report describes how "international bureaucrats and influential activist groups use the precautionary principle as a vehicle to diminish America's competitive position in the global economy and advance special interest agendas hostile to free enterprise and technology."

Kogan aptly calls the precautionary principle "regulation without representation."

The precautionary principle is a scheme for establishing environmental, health and safety regulations that are based on irrational fears rather than empirical science.

Under the precautionary principle, activities, products and substances may be banned or restricted if it is merely possible that they or the processes used for their manufacture, formulation or assembly might cause health or environmental harm under some unknown and unspecified future circumstances. In other words: It focuses on purely hypothetical risks rather than actual hazards.

The precautionary principle inherently rejects scientific and cost-benefit analysis as bases for regulation. It is arbitrariness unleashed in the hands of powerful government regulators and others who have no use for facts or common sense.

Although the European Union expressly admitted that no evidence indicates biotech foods are less safe than conventional foods, the EU's precautionary principle-based [Biosafety Protocol](#) was used to block more than \$2 billion worth of U.S. biotech crop exports from 1998 to 2005, according to Kogan.

The EU's Cosmetics Directive bans the use of chemicals called "[phthalates](#)" in cosmetic products even though no scientific data suggest that consumer exposure to phthalates in

cosmetics and personal care products poses a human health risk. By also banning animal testing on most cosmetics prior to consumer use, Kogan says, a strictly applied Cosmetics Directive would run counter to U.S. laws and regulations mandating animal testing of cosmetics classified as over-the-counter drugs and require reformulation of almost all current cosmetics products.

The EU also intends to make the garbage pail obsolete by presuming that all trash is hazardous. Under the precautionary principle, EU businesses must develop "life cycle management principles" that include "take-back" provisions under which businesses must reclaim and dispose of all new products put on the market upon their obsolescence, mostly at business' expense.

The EU also applies the precautionary principle to industrial chemicals, disinfectants, preservatives and global warming. Science is out; capriciousness is in.

The tangible impact of the precautionary principle is immense.

"The administrative, financial and legal burdens imposed by EU precaution-based environmental regulations are cumulatively equivalent to a hidden business tax that, as of 1999, constituted as much as 15 percent of the new capital invested by certain European industry sectors," writes Kogan.

The precautionary principle may help to explain why EU nations lag behind the U.S. in economic growth. According to a June 2004 report from the Swedish think tank Timbro, U.S. gross domestic product (the measure of the value of the goods and services produced by a country in a given year), was 17 percent higher than the nearest European country, Switzerland.

There are also intangible costs associated with the precautionary principle. Intellectual property rights are compromised because confidential information must be shared among producers, intermediaries and distributors in a product's vertical supply chain. Labeling steers consumers to bureaucrat- and environmentalist-preferred products, such as those labeled "eco-friendly," rather than politically incorrect brand name goods.

It doesn't take too much to imagine the harm the precautionary principle could do if imported into the U.S. as a legal standard. Existing standards of negligence, strict liability, products liability and public nuisance might go out the window in favor of legal outcomes like the \$253 million verdict against Merck in a recent Vioxx trial.

Although Merck had complied with all legal requirements for testing and labeling and there was no scientific evidence supporting the verdict, emotional jurors nevertheless wanted to send Merck and the drug industry a precautionary principle-tyoe message: 'Stop doing the minimum to put your drug on the market," Kogan points out.

And all this may be coming our way.

Kogan describes how American and European environmental and so-called "social responsibility" groups operated fear campaigns to generate public pressure for the EU to implement the precautionary principle. Now, these same groups are using strict EU laws and regulations as a platform for promoting similar regulatory change in the U.S.

Large multinational corporations, primary instruments of globalization that are subject to EU regulation, are now trying to import those same regulations back to the U.S. General Electric, for example, is subject to the EU-adopted Kyoto Protocol, and is actively advocating that Congress enact global warming regulation. Significantly hampered by its self-inflicted wound, the EU

supports U.S. adoption of the precautionary principle as a means to become more economically competitive with American products and services.

We ought to take action "to extinguish the complex threat posed by the precautionary principle," Kogan writes. "The stakes are very high. America's very enterprise system, individual freedoms and international interests may be hanging in the balance."

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