

## EU and 'Green' Plans for the Precautionary Principle: Redefining the Role of Science and Technology for the World

### I. Establishing the Precautionary Principle as an Absolute Global Standard

One American anti-technologist who represents himself as an adviser to Romano Prodi of the EU Commission, comments how Europe plans to establish the Precautionary Principle as the unchallenged international standard by which governments oversee and regulate science and technology.

“Chances are that most people have never heard of *‘the precautionary principle’*. This relatively new term *is the most radical idea for rethinking humanity’s relationship to the natural world since the 18<sup>th</sup>-century European Enlightenment*. Its potential impact is already being felt within the business community and the halls of government, with profound implications for all of us.

Recently, a congressional committee released emails between the United States and Europe about the future of scientific research, technology innovation and entrepreneurial risk-taking. At issue is a proposed EU directive that would force companies to prove chemical products introduced into the marketplace are safe before being granted permission to market them.

...The American chemical industry is furious...What’s at stake here goes far beyond the chemical industry. *The EU is attempting to establish a radical new approach to science and technology based on the principle of sustainable development and global stewardship of the Earth’s environment.*

In November 2002, the EU commission adopted a communication on the use of what it calls the ‘precautionary principle’ in the regulation of science and technology innovation and the introduction of new products into the marketplace. The precautionary principle is designed to allow government authorities to respond preemptively, as well as after damage is inflicted, with a lower threshold of scientific certainty than has been the rule of thumb in the past. ‘Scientific certainty’ has been tempered by the notion of ‘reasonable grounds for concern’. The precautionary principle gives government the flexibility to respond to events in real time, so that potential adverse impacts can be forestalled or reduced while the suspected causes of the harm are being evaluated.

*At the heart of the precautionary principle is a radical divergence in the way Europe has come to perceive risks compared to the U.S. In Europe intellectuals are increasingly debating the question of the great shift from a risk-taking age to a risk-prevention era.* That debate is virtually non-existent among American intellectuals. Risks of all kinds are now global in scale, open-ended in duration, incalculable in their consequences, and not compensational. Acid rain, the tear in the Earth’s ozone layer, and the spread of virtual and biological viruses, are among the new genre of man-made threats. No one can escape their potential effects. When everyone is vulnerable, and all can be lost, then traditional notions of calculating and pooling risks become virtually meaningless. This is what European academics call a risk society.

*The EU hopes that by integrating the precautionary principle into international treaties and multilateral agreements, it will become the unchallenged standard by which governments oversee and regulate science and technology...*[T]he US views Europe’s tightening regulatory regime as a noose around US exports and is determined to thwart its efforts. America’s National Foreign Trade Council warned that the EU’s invocation of the precautionary principle ‘has effectively banned US and other non-EU exports of products deemed hazardous’ and stifled scientific and industrial innovation.

*The precautionary principle is deeply at odds with the traditional Enlightenment idea about science. Risk taking is at the heart of modern science. To attempt to put limits on scientific pursuits, in lieu of greater certainty about their potential impacts on the environment, is, some scientists say, tantamount to squelching our very notion of progress.*

*The precautionary principle says in effect, that because the stakes are so high, we have to weigh even the most dramatic benefits against the prospects of even more destructive consequences. The old Enlightenment science is too primitive to address a world where the bar for risk has been raised to the threshold of possible extinction itself. When the whole world is at risk because of the scale of human intervention, then a new scientific approach is required that takes the whole world into consideration” (emphasis added).*

Jeremy Rifkin, “A Precautionary Tale – The EU Plans New Regulations for Scientific Risk-taking, Based on the Principle of Sustainable Development. US Big Business is Furious”, The Guardian (May 12, 2004), at: (<http://www.guardian.co.uk/analysis/story/0,3604,1214638,00.html> ).

## II. Citizens Must Demand and Take Action to Roll Back WTO Rules that Conflict With the Precautionary Principle

The editor of one Washington environmental newsletter devoted an entire editorial to explaining how the precautionary principle is an idea whose time has come. It also notes that since powerful forces are arrayed against it, there is nothing inevitable about its adoption, implementation and diffusion. It then advises citizens to take and demand action, including the rollback of WTO rules.

“The industrial age’s experience with leaded gas, ozone destruction, involuntary chemical poisoning of virtually every person on earth, and global warming – among many other phenomena – highlight the importance of acting to prevent public health and environmental harms before they occur, and acting even when there is less than complete certainty about the risks of such harms occurring.

With application of many novel technologies, such as genetic engineering and nanotechnology speeding to market, society faces a choice: Undertake an experiment on a planetary scale to determine if these technologies endanger human well-being and the ecology – and try afterwards to fix whatever problems emerge – or act in preventive fashion to assess what problems might occur, and take action to avoid them in advance of widespread diffusion of the technologies. *The Precautionary Principle says: Take the second course.*

*The core mandate of the Precautionary Principle...is to take preventive action in the face of uncertainty to prevent harm. It should guide not just environmental protection, **but management of the economy.***

*The Precautionary Principle directs that where public health and environmental protection is at stake – as it is generally throughout much of the functioning of the economy – the proponents of an activity bear the burden of showing it is safe. Rather than passively accept technological and other choices made by corporations, society should consider alternatives to proposed activities, and opt for the safest option, including the possibility of doing nothing. Because it insists on intentionality – that society should actively consider options and make conscious decisions about what products it will use and in what circumstances, how products may be manufactured, and many other technological and economic matters – the Precautionary Principle emphasizes the centrality of establishing democratic decision-making and citizen authority to make decisions that now are often left, by default, to corporations.*

...[B]ig business generally finds *the Precautionary Principle* threatening. That’s because it

*imposes new duties and responsibilities on private corporations, even as it says, that decision-making authority should be transferred from the private corporate realm to the public sphere.*

*...Perhaps the most serious threat to implementation of the Precautionary Principle is the claim that it conflicts with governmental obligations under the World Trade Organization (WTO) agreements and other trade deals. The European Union has been a global leader in beginning to incorporate the Precautionary Principle in its policymaking.*

*...In addition to the direct lobby pressure on the EU, private industry has developed a series of well-crafted arguments about how Precautionary Principle-based regulatory systems violate WTO*

*rules, and these corporate groups have in many cases induced the U.S. to launch WTO challenges to EU policies based on these theories.*

*The National Foreign Trade Council (NFTC)...has issued a series of reports arguing that precautionary action conflicts with countries' WTO duties. The centerpiece of the council's elaborate argumentation is this: The WTO's Sanitary and Phytosanitary Standards Agreement (SPS Agreement, covering food safety and animal and plant health standards) and Technical Barriers to Trade Agreement (TBT Agreement, covering regulations, standards, testing and certification procedures) require countries not to use standards more stringent than those established by international agencies. Countries may exceed these standards only in very rare circumstances, and based on risk assessments. Regulatory action in the face of uncertain evidence - the core of the Precautionary Principle - conflicts with these WTO rules.*

*As it happens, the NFTC's arguments are good ones, at least in WTO terms. Consumer and environmental critics have long complained that the WTO agreements - drafted under industry influence, or, in many cases, directly by industry lobbyists - contradict the Precautionary Principle...*

*...Countries that lose WTO cases may maintain their offending rules - but only at the price of expensive trade sanctions or fines.*

*Thus although the Precautionary Principle may be an idea whose time has come, there is nothing inevitable about its adoption, implementation and diffusion. Powerful forces are arrayed against it. One of the chief benefits of the Precautionary Principle, as its adversaries acknowledge, is that it helps frame issues in a way that empowers citizens to take action. Unless people take and demand action - including the rollback of WTO rules - Precautionary Principle foes will manage to suppress this rising and vital public health and environmental doctrine" (emphasis added).*

"Precaution and Power", Editorial, the Multinational Monitor, September 2004 - Vol. 25 - No. 9, at: (<http://multinationalmonitor.org/mm2004/09012004/september04editorial.html> ).

### III. Global Civil Society Must Resist Industry Efforts to Challenge the Precautionary Principle

One green publication noted how environmental campaigners from Friends of the Earth anticipate an all-out assault on EU health and safety rules by big business.

*"After the administration caused consternation at the EU last week by launching a dispute over Europe's moratorium on GM foods at the World Trade Organization, Friends of the Earth accused them of caving in to the powerful business lobby group, the National Foreign Trade Council...The NFTC has a...hit...list of regulations it would like Europe to abandon...said Liana Stupples, the policy and campaign director at FOE [Friends of the Earth]...The US State Department website*

prominently displays a paper titled “Looking Behind the Curtain: The Growth of Trade Barriers that Ignore Sound Science”, published by the NFTC, whose members include Halliburton, the energy firm once run by vice-president Dick Cheney.

*...The report criticises Europe’s practice of banning imports it believes may be risky, deriding this ‘precautionary principle’ as ‘an inherently unscientific touchstone’. It calls Europe’s restrictions on GM crops a ‘disguised trade barrier’ ...The list of products that could be affected include a wide range of foods and other consumer goods, from cars to toiletries...U.S. firms are concerned that ‘burdensome national standards and technical regulations are increasingly being used by foreign countries to protect ailing industries and block market access to US exports’ the report says. Ms Supples said the NFTC appeared to want the US to use the GM foods case as a ‘show of strength’ to force the EU into relaxing a much wider range of trade rules... ‘Unless the EU fights back hard and stops further expansion of WTO rules in Cancun in September, much of what Europe holds dear will be systematically attacked’, said Ms. Stupples” (emphasis added).*

Heather Stewart and Charlotte Denny, “US Uses GM Foods in First Assault of EU Trade Battle”, The Guardian (May 20, 2003).

The green group Friends of the Earth warns about how the US business lobby is endeavoring to undermine the precautionary principle.

“A who’s who of the US business lobby – the National Foreign Trade Council, the International Chamber of Commerce, the US Chamber of Commerce and the Biotechnology Industry Organization – is *battling to undermine the precautionary principle, one of the key features of international environmental agreements and national environmental policy* in favor of what they term ‘sound science’.

*The precautionary principle holds that potentially dangerous activities can be restricted or banned by governments on the basis of uncertainty, without having to provide conclusive scientific evidence that damage will occur. ‘Sound science’, on the other hand, would allow business much greater leeway, especially in cases where negative impacts cannot be proven in advance. The precautionary principle is the basis for policies ranging from many national governments’ quarantine regulations to the EU’s GMO legislation.*

*WTO rules are an effective means for the corporate lobby to undermine the precautionary principle because they can argue that environmental measures restrict trade more than is necessary and therefore contradict WTO agreements.*

*...The National Foreign Trade Council...made a huge splash with its 2003 paper “Looking Behind the Curtain: The Growth of Trade Barriers that Ignore Sound Science”, which argues that the EU’s moratorium on GMOs as well as laws for tracing and labeling GMOs must be countered. The paper also calls for the overriding of Japanese and Korean quarantine requirements for fresh produced and processed fruit and nuts; the striking down of bans in many countries on various food additives; the overturning of EU chemicals legislation; and the trashing of a host of other national environmental and health policies. The paper received strong support from the US government, and the US Department of Commerce personnel were apparently so impressed by the ideas it contained that they placed it prominently on their website.”*

“Trade - Business Rules: Who Pays the Price? How Corporate Influence in the WTO Impacts People and the Environment”, Friends of the Earth International and Corporate Europe Observatory (Aug. 2003 – Issue 103), at p.13.

The editor of a Washington DC environmental newsletter notes how the precautionary principle, which is supported by health and environmental groups, conflicts with WTO mandates. It also warns how corporations are trying to crush the Precautionary Principle.

“...[T]he EU has proceeded with efforts to develop a new regulatory framework for biotech. This new framework is arguably as or more worrisome to biotech industry interests as the temporary ban on genetically modified products... Under the EU system, companies seeking to market biotech products must first submit an application including a full environmental risk assessment... The EU is further seeking to adopt legislation on biotech labeling and traceability. The labeling requirement would be a mandatory obligation to label their foods as containing GMOs or as GMO-free. The traceability requirement would oblige food manufacturers to be able to trace any product back to the farm, to ensure a product labeled as GMO-free was in fact not contaminated with a biotech ingredient along the way.

*...Neither the moratorium nor the existing and proposed EU rules discriminate against foreign producers – domestic and foreign biotech purveyors are treated identically. Nonetheless, the United States says the moratorium violates WTO rules... ‘The WTO agreement on sanitary and phytosanitary measures (SPS) recognizes that countries are entitled to regulate crops and food products to protect health and the environment... [H]owever...members [must] have sufficient scientific evidence for such measures...’*

*...As Lori Wallach of Public Citizen’s Global Trade Watch says, ‘The science on the long-term health and environmental effects of GMOs is incomplete, making limits on GMOs a prudent policy to avoid possibly irreversible damage to public health or the environment’. Such an approach embodies the Precautionary Principle. But the Precautionary Principle itself conflicts with WTO mandates.*

*Explains Wallach: ‘The WTO contains extensive subjective, value-oriented rules constraining signatory countries’ domestic food safety policies that limit the subject matter, level of protection and design of food safety policies. One such WTO rule puts the burden of proof on countries seeking to regulate a product to show it is dangerous. This WTO rule means that policies based on the Precautionary Principle – that a manufacturer must show a product safe over the long term before it goes on the market – are forbidden’.*

*A May report by the National Foreign Trade Council (NFTC), a U.S. business group that has been extremely effective in setting the corporate agenda on trade-related issues – and then turning the agenda into law and policy – highlights the priority corporations place on crushing the Precautionary Principle. The EU rules on biotech are only the most prominent of precautionary rules that the NFTC argues conflict with WTO rules... The NFTC report makes clear how much corporations believe is at stake in the biotech case” (emphasis added).*

Robert Weissman, “Throwing Precaution to the Wind”, *The Front, The Multinational Monitor*, Vol. 24, No. 6 (June 2003), at: (<http://multinationalmonitor.org/mm2003/03june/june03front.html>).

Two environmental and social journalists comment about how corporate efforts to crush the precautionary principle pursuant to WTO rules will remove critical national public policy decisions from democratic control and prevent the adoption of precautionary measures that could lead to a sustainable future.

“Since its founding, critics have complained that the World Trade Organization (WTO) is designed to strip sovereignty from nations, removing critical public policy decisions from democratic control. The world may now be entering an era when those abstract concerns become concrete in ways that will outrage millions of people – as well as imperil efforts to protect human health and the environment.

...In announcing their intention to file a [WTO] case...against the European Union over its de facto moratorium on approval of genetically engineered agricultural crops...U.S. Trade Representative Robert Zoellick and Secretary of Agriculture Ann Veneman rhapsodized about the wonders of biotechnology. But if the United States proceeds with the case, it won't turn on the merits of biotech.

...Remarkably, *WTO rules place the burden on the regulators to show something is unsafe. These rules flip on its head the Precautionary Principle, which places the burden on the entity introducing a new product into the environment or food supply to show it is safe. The Precautionary Principle suggests erring on the side of safety, not recklessness. It is arguably the single most important concept to guide the world to a sustainable future.*

*There's a whole lot of subtext to the U.S. challenge to the European Union moratorium...But a crucial piece is an effort to crush the Precautionary Principle.* This was articulated in a May report by the National Foreign Trade Council... 'Some societies, such as those within the European Union, embrace the mindset of precaution', complains the NFTC, 'and presume that a product is severely hazardous until proven safe, thereby effectively requiring proof of zero-risk. By contrast, other societies, such as the United States do not rely on such a broad presumption.' In the United States, 'unless a given product is proven hazardous, it is deemed safe, thereby acknowledging that a certain amount of risk is unavoidable in every day life.'

*That characterization overstates the safety bias of the Precautionary Principle – it does not require certainty or zero risk or deny that a certain amount of risk is unavoidable in life – but it does portray the basic dichotomy relatively accurately.*

...*The U.S. challenge to the EU's biotech moratorium is designed to invoke WTO rules to tell the EU that it has ceded its right to pursue such precautionary initiatives.* The same applies to the rest of the world, and even the United States itself, despite the fact that these precautionary measures begin to chart the way forward for a sustainable future" (emphasis added).

Russell Mokhiber and Robert Weissman, "Throwing Precaution to the Wind", Common Dreams Newscenter (June 5, 2003), at: (<http://www.commondreams.org/views03/0605-01.htm>); Global Policy Forum (June 4, 2003), at: (<http://www.globalpolicy.org/globaliz/econ/2003/0605precaution.htm>).