

# WORLD TRADE ORGANIZATION

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**Committee on Sanitary and Phytosanitary Measures**  
**Committee on Technical Barriers to Trade**  
**Committee on Trade and Environment**

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## EUROPEAN COUNCIL RESOLUTION ON THE PRECAUTIONARY PRINCIPLE

### Submission by the European Communities

The attached Resolution of the European Council on the precautionary principle was received from the European Communities with the request that it be circulated to Members for their information. This resolution was adopted at the European Council Meeting in Nice on 7-9 December 2000, as Annex III of the Presidency Conclusions. This submission is a follow-up to the Communication of the European Commission on the precautionary principle, adopted 2 February 2000. The previous document was circulated to delegations as WT/CTE/W/147-G/TBT/W/137 and G/SPS/GEN/168.

## EUROPEAN COUNCIL RESOLUTION ON THE PRECAUTIONARY PRINCIPLE

- A. Whereas the principles laid down in the EC Treaty provide that Community action must aim at a high level of protection of human health, consumers and the environment and that these objectives must be integrated into the European Union's policies and action;
- B. Whereas the Treaty recognizes, in Article 174(2), that the precautionary principle is one of the principles to be taken into account in Community policy on the environment; whereas this principle is also applicable to human health, as well as to the animal health and plant health sectors;
- C. Whereas it might be useful to examine, in due course and in the appropriate fora, whether it is necessary and possible formally to consolidate the precautionary principle, in accordance with the case law of the Court of Justice of the European Communities, also in other Treaty provisions specifically concerning health and consumer protection;
- D. Recalling that the recognition of this principle is to be seen from a perspective of sustainable development;
- E. Recalling that this principle is included in various international texts, *inter alia* the 1992 Rio Declaration, the 1992 Convention on Climate Change, the 1992 Convention on Biological Diversity, the 2000 Protocol on Biosafety and a number of Conventions on protection of the marine environment;
- F. Pointing to the importance of work in progress on the subject in the Codex Alimentarius context;
- G. Whereas the precautionary principle must not be used in order to introduce disguised trade restrictions;
- H. Whereas the preamble to the World Trade Organization (WTO) Agreement sets out general objectives which include sustainable development and environmental protection and conservation; whereas Article XX of the GATT and Article XIV of the GATS contain general exceptions, while Article 5(7) of the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS) lays down rules on the procedure to be followed in the event of risk and insufficient scientific evidence; whereas the Agreement on Technical Barriers to Trade (TBT) allows account to be taken of the risks that failure to apply measures might pose for human health or safety, animal or plant life or the environment;
- I. Whereas the European Union attaches great importance to helping developing countries to participate in the SPS and TBT Agreements in view of their particular difficulties in that respect;
- J. Recalling the recommendations made by WTO panels, in particular by the Appellate Body in the hormones case, concerning the right of WTO Members to "establish their own appropriate level of sanitary protection, which level may be higher than that implied in existing international standards, guidelines and recommendations", and to take into consideration minority expert opinion;

K. Realising that public authorities have a responsibility to ensure a high level of protection of human health and the environment and have to address increased public concern regarding the risks to which the public are potentially exposed;

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1. Welcomes the Commission's initiative in presenting a communication on the precautionary principle, the broad lines of which the Council endorses;
  2. Considers that the precautionary principle applies to the policies and action of the Community and its Member States and concerns action by public authorities both at the level of the Community institutions and at that of Member States; that such authorities should endeavour to have that principle fully recognized by the relevant international fora;
  3. Notes that the precautionary principle is gradually asserting itself as a principle of international law in the fields of environmental and health protection;
  4. Considers that WTO rules do basically allow account to be taken of the precautionary principle;
  5. Believes that under international law the Community and the Member States are entitled to establish the level of protection they consider appropriate in risk management, that they may to that end take appropriate measures under the precautionary principle and that it is not always possible to determine in advance the level of protection appropriate to all situations;
  6. Sees a need to establish guidelines for use of the precautionary principle, in order to clarify arrangements for its application;
  7. Considers that use should be made of the precautionary principle where the possibility of harmful effects on health or the environment has been identified and preliminary scientific evaluation, based on the available data, proves inconclusive for assessing the level of risk;
  8. Considers that the scientific assessment of the risk must proceed logically in an effort to achieve hazard identification, hazard characterization, appraisal of exposure and risk characterization, with reference to procedures recognized at Community level and internationally, and that, owing to insufficient data and the nature or urgency of the risk, it may not always be possible to complete every stage systematically;
  9. Considers that, in order to carry out the risk assessment, public authorities must have suitable research facilities and rely in particular on scientific committees and on relevant national and international scientific work; that the public authorities are responsible for organizing the risk assessment, which must be carried out in a multidisciplinary, independent and transparent manner and ensure that all views are heard;
  10. Considers that an assessment of risk must also report any minority opinions. It must be possible to express such opinions and bring them to the knowledge of the parties involved, in particular if they draw attention to scientific uncertainty;
  11. Affirms that those responsible for scientific assessment of risk must be functionally separate from those responsible for risk management, albeit with ongoing exchange between them;

12. Considers that risk management measures must be taken by the public authorities responsible on the basis of a political appraisal of the desired level of protection;
13. Believes that, in selecting the risk management measures to be taken, consideration should be given to the whole range of measures enabling the desired level of protection to be achieved;
14. Considers that all stages must be conducted in a transparent manner, in particular the risk assessment and management stages, including the monitoring of measures decided upon;
15. Considers that civil society must be involved and special attention must be paid to consulting all interested parties as early as possible;
16. Considers that appropriate means must be used for communicating information on scientific opinion and risk management measures;
17. Considers that measures must observe the principle of proportionality, taking account of short-term and long-term risks and aiming to achieve the desired high level of protection;
18. Considers that measures must not be applied in a way resulting in arbitrary or unwarranted discrimination; where there are a number of possible means of attaining the same level of health or environmental protection, the least trade-restrictive measures should be opted for;
19. Considers that measures should be consistent with measures already adopted in similar circumstances or following similar approaches, having due regard to the latest scientific developments and developments in the level of protection sought;
20. Stresses that the measures adopted presuppose examination of the benefits and costs of action and inaction. This examination must take account of social and environmental costs and of the public acceptability of the different options possible, and include, where feasible, an economic analysis, it being understood that requirements linked to the protection of public health, including the effects of the environment on public health, must be given priority;
21. Considers that decisions taken in accordance with the precautionary principle should be reviewed in the light of developments in scientific knowledge. To that end the impact of such decisions should be monitored and additional research conducted in order to reduce the level of uncertainty;
22. Considers that, when determining measures taken in accordance with the precautionary principle and in monitoring them, the competent authorities should be able to decide case by case, on the basis of clear rules established at the appropriate level, who is responsible for providing the scientific data required for a fuller risk assessment; Such an obligation may vary according to the circumstances and the aim must be to strike a satisfactory balance between the public authorities, scientific bodies and economic operators, taking into account in particular the responsibility held by economic operators by virtue of their activities.
23. Undertakes to put into practice the principles contained in this Resolution;
24. Calls on the Commission to:

- Systematically apply its guidelines on the conditions for use of the precautionary principle, making allowance for the specific features of the various areas in which they may be implemented;
- incorporate the precautionary principle, wherever necessary, in drawing up its legislative proposals and in all its actions;

25. Calls on the Member States and the Commission to:

- **Attach particular importance to the development of scientific expertise and to the necessary institutional coordination;**
  - ensure that the precautionary principle is fully recognized in the relevant international health, environment and world trade fora, in particular on the basis of the principles put forward in this Resolution; to pursue that aim and ensure that it is taken into account as fully as possible, particularly at the WTO, and at the same time help to explain it;
  - ensure that the public and the various parties involved are informed as fully as possible about the state of scientific knowledge, the issues at stake and the risks to which they and their environment are exposed;
  - work actively for international partners' commitment to reaching an understanding on the application of the principle; and
  - have this Resolution as widely disseminated as possible.
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