

The Precautionary Principle in World Trade Organization Dispute Settlement

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Introduction

The precautionary principle is so significant for making environmental policy as well as a primary element of some multilateral agreements for the environment. It is very crucial to have precautionary measures to tackle the harm to the environment. In other words, other serious risks harm the environment, for instance, restriction on the trading of goods, substances that cause ozone depletion, as well as genetically adjusted organisms, also main have importance in making barriers to trade. In large perspective, all these concerns arise from the application of principles of the World Trade Organization in a period of globalization where it is necessary to encompass border measures for trade liberalization as well as another delving environmental and domestic health regulations. This essay will discuss the trading system with the integration of precautionary principles. It will also concentrate on the point that the response of WTO to the challenges faced by the Member States incorporates precautionary principles at the time of panel dispute^[1]. This essay will, also elaborate that there might be a possible WTO dispute settlement system that is not enough to decide on some disputes. It might be possible to clarify the dispute system with a more flawless implementation of precautions.

Discussion

There are civil society as well as policymakers that are associated with environmental and health issues who claim that precautionary measures are necessary due to inadequate scientific evidence of risk, yet when failure to act could tend to irreversible risks or danger to the health of humans or otherwise environment. The precautionary principle is the fundamentals that are essential to attain sustainable development; it is important to have environmental measures to predate, prevent as well as mitigate the reasons for environmental degradation. In this way, it does not make sense to postpone the measures to stop environmental degradation where there is a threat of high irreversible risk or damage^[2].

It is so important to incorporate or integrate precautionary measures to practice the minimum restrictive measures of trade. It is crucial to achieve as well as attain the same level of environmental or health protection in various possible ways. There are the components of precaution that have been integrated into the WTO agreement going on Sanitary and Phytosanitary Measures. In the meantime, the SPS agreement displays the right of each member of the WTO to take measures. These measures

are also necessary to attain the level of Phytosanitary as well as health protection. It is too necessary for these measures to have scientific principles as well as follow international standards. There is scientific justification that makes the greater level of protection in comparison to international standards.

There are particular regulations for measures of sanitary and Phytosanitary for the protection of animal, plant, or human life. As well as there is also specific considerable regulation for health that comprises some specific measures implemented only when it is necessary to protect the life or health of the animal, plant, or human. These scientific principles do not unjustifiably or arbitrarily differentiate among members. The agreement of SPS allows the Members to ratify measures of SPS, the condition of this happening is to ensure definite obligations come across. There is a much bigger threshold of necessity tests that do not permit preventive action to take place at a time when scientific evidence is lacking^[3]. Member tends to take action through the burden of proof that is shown by the term 'necessary.'

Also, recently there is a new thing happened no member of WTO would not cross the 'necessary' barrier. Even though the SPS Agreement is explained in the same language as Article XX. According to this, the SPS agreement has an exception that it is right to receive provisional processes related to the requests for risk assessment. SPS agreement permits the implementation of sanitary and Phytosanitary events on a conditional basis^[4]. It is suitable and effective when there is scientific uncertainty. There are some specific conditions to fulfill and realize the measures. In addition, the measure is implemented in a condition where relevant and significant information of science is not enough. As well as, the measure is implemented well with accessible, applicable information. In addition, members will not be able to adopt measures well until they have additional information. In this way, members execute and conduct a review over a period, and the case develops.

According to article 5.7, there is a great need for countries to invoke precautions to end imports and validate their deed with a risk valuation. If the importing country does not adopt the SPS measure that is not established on international standards, then the exporter has the choice to request a description of the measure relative to Article 5.7. In this situation, there is the responsibility of the defending member to describe the measure. Therefore, the precautionary measure also permits to take action to be executed to stop harm. On the contrary, these actions are also taken to escape provisional measures that have been implemented under emergency conditions.

Similarly, precautionary language is also set up in the WTO Agreement named Technical Barriers to Trade. The United States organized a panel to find out particular measures through the EC directive that aimed to stop the imports of meat products taken from cattle preserved with specific hormones to promote growth objectives. EC is enticed to the Appellate Body, which has a stance that measures are opposite to Article 3(3) as well as 5(1).

In the first case, there is a question for WTO whether this precautionary principle has the same basis as international law. The EC argued that the panel had blundered in dealing properly with the

principle in explaining the SPS provisions. After this, it made a proper law that the rule must follow the general regulations of law or international law. Appellate Body decided that it would not keep a stance as a legal position of the precautionary principle^[5]. As well as, it is assumed that it is unnecessary or possibly impulsive and still anticipating influential formulation. As a result, the rules of the treaty that are explained in Article 31 suggest that there is no possible discharge of obligations of the judiciary concerning WTO to explain the SPS provisions. It is further concluded and emphasized in Appellate Body that there must be a common meaning that relates to the context of the treaty as well as explains the purpose and object. These ordinary meanings will be guiding principles for precautions that can suggest and stop the precautionary principle from overriding.

Even though it is obvious and clear that the Appellate Body understands the obligation to explain the SPS Agreement, it follows the common principles of treaty interpretation, but it does not give attention to giving importance to Article 31(3) (c). In this way, the provision is not invoked by disputing parties. It is further discussed that the Appellate Body takes the precautionary principle as a non-binding rule. It seeks out risk assessment just as an evaluation of science. It does not take and consider it a political decision. However, the Appellate Body must have taken a stance relative to the principle of whether they took a position of customary rule developing into international law. In addition, this customary rule will also bind the parties that are involved in the dispute.

In the meantime, EC does not appeal to Article 5(7). As well as the Appellate body holds back from identifying whether the rule of exemption can prove the measures of SPS. It can be considered by understanding the contextual explanation of SPS provisions that a member can give a petition. The condition of a member to invoke is possible when the measure will explain the risk assessment. As well as, the other condition is for the measure to be based on access-related information. It can be said or concluded that the Appellate body examines the precautionary principle just like a line of attack and is not considered a rule.

It is mainly observed that there is a broken promise that is considered a case of dispute in WTO. The members of WTO agreed that when they face the possibility that members are not following the trade rules as well as these members are violating the rules. At that moment, they will make use of the process that will help settle and tackle the disputes among members[6]. It will also be suitable to tackle the dispute in this manner instead of acting as unilaterally. It also means that members respect the agreed process, and procedures as well as recognize judgments.

There is also a condition of occurrence of a dispute between members. It occurs and arises when one country embraces with trade policy and takes action according to it. At that point, members of the WTO assume that the actions and procedures of countries are against the agreements of the WTO[7]. As well as, they consider that the actions of a country are not parallel to the obligations. In this situation, there are chances that a third country claims to declare an interest in this regard and has the intention to respect all the rights that are available to them.

There is a significant procedure of WTO that highlights and emphasizes the principles of law. These

principles and guidelines establish the trading system well and make the system more predictable or secure. It also establishes a more defined system with clearly defined principles with a proper timetable for accomplishing a case. A panel establishes first verdicts and is then permitted by the members of WTO. There are also specific and particular points of law that make the appeals. The point of discussion is here not to authorize a judgment just. It is here the priority to tackle and settle disputes. For that reason, there is a priority for the dispute to be settled by providing consultation^[8]. Also, there are three experts in the panel who belong to different countries. These experts will assist in investigating the evidence as well as will decide which member is wrong or right^[9]. As a result, the report of the panel goes to the dispute settlement body. This body will also be responsible for casting off the report using consensus.

It is widely considered that WTO is not separate from the prevalent platform of public international law. If the precautionary principle is evolving as custom and traditional international law, then this law will assist in providing a guideline for decision-making. It will be certain to declare that the precautionary principle is considered too same as common international law. It might also be possible that precaution is not indefinite to WTO specifically when the question is raised for its application as well as use in public health. There is a recent report by a health organization that explains the income and positive growth of more open trade can be responsible for resources, goods, services as well as information for real health^[10].

There are the widely important WTO Agreements that help to permit as well as allow the government to achieve positive results for national health as well as policy purposes. There are WTO Agreements that also provide assistance and take measures to control trade while protecting health. It is very important to have a precautionary principle that is related to developing countries. It is considered a relevant issue that is concerned with trade in goods that are prohibited in the domestic country. In this course, precautionary principles limit the trade of particular goods as the domestic country does not allow or permit trade in these specific goods. In 1982, developing countries raised the issue of trade in those goods that are not allowed in the domestic country to be traded. In this situation, countries restrict trade as well as the sale of specific goods with the reason that it may have an impact on the environment or health^[11].

There are various ways to address the issue of this trade of goods that are prohibited by domestic countries. This issue has great worth and importance, especially within developing countries. The explicit nature of the precautionary principle might assist in spreading the debate. It will provide a more legal tool to WTO to progress this critical issue as well as to address the debate more effectively. It will be effective to resolve or determine the issue in a manner that the precautionary principle would particularly support in giving a talk about the issue.

It can be evaluated that the precautionary principle is an effective source that provides a transparent and reasonable policy for making a decision^[12]. These decisions are taken in a sense where scientific uncertainty is there to resolve the issue. It offers various options of policy in a way that does not lead to just bans. There are very specific as well as particular situations that can provide a source to

trigger it. It also assists in incorporating as well as integrating several defining characteristics. However, these precautionary principles are helpful to provide a credit of reputable minimal scientific opinions as well as a setback of a load of proof.

There is an approach of precautionary that is very helpful in providing and building sustainable development. It provides a great path for states, civil society, as well as international organizations, along with more significant business and scientific communities[13]. In other words, this great value of a precautionary principle is effective in restricting humans from doing certain activities. The reason behind this restriction is that the activities of humans may react in such a way that it can cause danger as well as harm to natural resources or human health. In this way, the activities of humans can also affect the ecosystems as well as the health of humans ^[14].

It is essential to have a precautionary principle regarding environmental protection and human health to build sustainable development. It is the accountability for harm and makes sense to sustainably utilize natural resources. It will be a great step to attain the objective in a way that is based on planning following clear, definite criteria. It will also be effective to get objective by considering possible ways while assessing the environment. The envisaged activities can be problematic in a manner that causes irreversible as well as long-term harm^[15]. As a result, this long-term harm will be strong enough to build as well as establish a load of proof on the individual.

There is a great need to establish strong decision-making processes. These decision-making processes will help endorse different approaches to the precautionary process. It will help out, particularly in risk management, as well as the incorporated adoption of specific measures^[16]. There must be an appropriate precautionary measure in a condition where the absence of risk looks as approved scientifically. The measures for precautionary must have the ability to incorporate a specific element that relates to independent judgment. The precautionary measures must include a factor that seems to be transparent as well as up-to-date.

In recent years, it is acceptable to have a precautionary principle that also displays a reflection on international treaty law. It has also increased the frequency as well as the growing level of formal reputation. However, it has not achieved the full level of recognition as an international custom. It can be observed that governments should feel an obligation everywhere to protect their people and citizens from damage. In the meantime, this danger may be in the sense that they are aware of or that harm of which the government has no awareness. These recognizable risks are a source that threatens property as well as life. The reason behind the high importance of the precautionary principle is that it helps to address those cases that have a minimum level of knowledge^[17].

However, the precautionary principle is a source to highlight that governments have an obligation in a sense to act even in the condition where scientific uncertainty undergoes. It has the potential to stick to the central belief of international law for the environment over a long period. The proper making of international legal principles will help to provide the position for acceptance of the law on regional, domestic as well as international levels. The legal precepts will help to transpose in a way through

which it can spread into widely national systems. This national system of administration and law will provide an obvious objective of producing desirable results in practice.

Conclusion

It is the mission as well as the objective of WTO to set free the trade between the members in a way that minimizes barriers and hurdles while making the trade. For this reason, precautionary principles have been developed or established to take protective actions. It can face the restriction of trade at a time of trade when there is a great chance of danger to the environment. It can be concluded well that the rules of WTO that aim to prevent barriers to trade maybe not be related to established precautionary principles. It is also well recognized that members have an open right to identify the level of defense of the environment as well as health. It depends on members to determine what they consider right or appropriate. Certainly, It does not matter if members select that level that has a risk of zero or not. On the other hand, the WTO panel of adjudicators limits the control of members on how the condition of protection is suitable to achieve. Also, it is well recognized the particular situation of the precautionary principle when it will be applicable. In this way, it will be certain to apply in a condition when there is a specific reason to believe. As well as, it is applicable when there is enough scientific uncertainty. In this situation, the state will decide to take protective action to keep health as well as the environment away from harm.

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