Tools and Approaches for Applying Precaution in the Context of Chemicals Safety: An Introduction

Dr. Franz Xaver Perrez

Head of Section Global Affairs, Federal Office for the Environment, Switzerland

IFCS Forum V, Budapest, 26. 9. 2006

Overview:

1. Introduction
2. Background: Origins of the Concept
3. Issues Surrounding the Application of Precaution
   (a) Elements of the Concept
   (b) Main "Challenges"
   (c) Status in International Law
4. Relevant International Instruments
5. Commonalities
6. Conclusions

Background: Origins of Precaution

- growing appreciation of the scientific uncertainties;
- irreversible consequences of not taking a preventive measure;
- evolved in national legislation;
- internationally, invoked in the early 1980's;
- Rio Declaration (1992) as entry point into international policy

Elements of the Concept

Rio Principle 15:

> "In order to protect the environment, the precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation."

Elements of the Concept

Rio Principle 15:

- protection of the environment;
- threat of serious or irreversible damage;
- scientific uncertainty;
- cost-effectiveness;
- does not require, but allow action;
- application according to capability

Elements of the Concept

Stockholm Convention (Art. 1):

"Mindful of the precautionary approach as set forth in Principle 15 of the Rio Declaration on Environment and Development, the objective of this Convention is to protect human health and the environment from persistent organic pollutants."

SAICM (§ 14(e)):

Appropriately to apply the precautionary approach, as set out in Principle 15 of the Rio Declaration on Environment and Development, while aiming to achieve that chemicals are used and produced in ways that lead to the minimization of significant adverse effects on human health and the environment

Elements of the Concept

It is argued that specific instruments clarify for their scope:

- application for protection of human health;
- other threshold than “threat of serious or irreversible damage”;
- cost-effectiveness is not always required;
- precautionary measure should be provisional;
- obligation to seek to obtain additional information.

Main Challenges to a Common Understanding

Main Challenges:

- principle versus approach;
- risk management tool or as broader overarching principle;
- precaution and trade – risk of protectionism;

Different Views on the Status of Precaution in International Law

Relevant International Instruments in Context of Chemicals Safety

- Montreal Protocol (1987);
- Bamako Convention (1991);
- IFCS Bahia Declaration and the associated Priorities for Action beyond 2000;
- Stockholm POPs-Convention (2001);
- WSSD Johannesburg Plan of Implementation (2002);
- SAICM (2006).

General Commonalities with regard to the Concept

Important elements when applying precaution:

- domestic regulation and concrete context;
- does not require, but allow action;
- scientific uncertainty;
- pertinent indication for possible harm;
- normally seen as risk management tool;
- based on scientific assessment;
- transparent, intelligible, review, proportional;
- no disguised trade barrier;
- in certain policy areas application for health

Conclusions

There are differences and commonalities;

- differences seem to relate to conceptual issues and the political and regulatory framework, including different standards;
- commonalities seem to relate to the fact that many countries do apply precaution;
- Rio Principle 15 as generally accepted formulation of common understanding;

Constructive way forward: transparency and focus on concrete application.