

## Definition of the Precautionary Principle

The precautionary principle is an approach to risk management that has been developed in circumstances of scientific uncertainty, reflecting the need to take prudent action in the face of potentially serious risk without having to await the completion of further scientific research. The most broadly accepted definition of the Precautionary Principle is Principle #15 of the June 1992, Declaration of the Rio Conference on Environment and Development, which reads:

“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.”

This definition of the precautionary principle is currently enshrined in the 1999 Canadian Environmental Protection Act (CEPA 1999):

“Whereas the Government of Canada is committed to implementing the precautionary principle that, 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.”

The precautionary principle has been incorporated into CEPA 1999 in the “Preamble”, “Administrative Duties” section and in the provisions with respect to controlling toxic substances. As one of the first countries in the world to implement the precautionary principle in its environmental legislation, Canada will also have to provide leadership and show innovation in determining how to apply the Principle and make it work.

This definition is also used in the Pest Control Products Act, with the addition of a reference to human health, appropriate in this case:

“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 adverse health impact or environmental degradation.”

Unfortunately, not all definitions currently in use in Canada are compatible with this definition. For example, in the Canada Marine Conservation Areas Act (Bill C-10) which received Royal Assent in June 2002, the definition reads as follows:

“Whereas the Government of Canada is committed to adopting the precautionary principle in the conservation and management of the marine environment so that, where there are threats of environmental damage, lack of scientific certainty is not used as a reason for postponing preventive measures”

This definition lacks certain key principles which are contained in the CEPA/Rio definition. These principles ensure a balance between the requirement for science in decision-making and the need to protect the environment in the face of probable threats:

- In this Act, the precautionary principle is invoked where there are “threats of environmental damage”. This provides no useful threshold to determine what level of threat, or how credible of a threat, is required. In CEPA 1999, the words “threats of serious or irreversible damage” signal a high threshold of imminent harm before the principle is invoked.
- In CEPA 1999, the words “lack of full scientific certainty” imply that there is still a need for sufficient scientific data to establish that a plausible threat exists for the possibility of serious or irreversible harm. Some degree of scientific certainty is

required before invocation of the precautionary principle is appropriate. Without the word “full” in the definition, there would be no clear threshold for any scientifically sound justification before action would be taken.

- Under the definition used in CEPA 1999, unlike that in the Canada Marine Conservation Areas Act, any measures to prevent the risk of harm are to be “cost-effective”. This ensures that with any actions taken, the cost of the measure is proportional to the risk of harm. As the scientific certainty of risk goes up, the justification for costlier measures is similarly increased.

In Bill C-52, the *Canada Consumer Product Safety Act*, introduced April 8, 2008, the words cost-effective are again missing:

“Whereas the Parliament of Canada recognizes that a lack of full scientific certainty is not to be used as a reason for postponing measures that prevent adverse effects on human health if those effects could be serious or irreversible;

In the fall of 2001, the federal government released a discussion paper on the precautionary approach entitled “A Canadian Perspective on the Precautionary Approach/Principle”. In that document, the government affirms its support for the Rio definition of the precautionary principle. The Canadian Chamber hopes that this support will lead to consistency across all legislation.

The goal of risk management is scientifically sound, cost-effective integrated actions that reduce risks while taking into account social, cultural, ethical, political and legal considerations. It is very important for business confidence and for public credibility that throughout government there is a consistent approach to risk management.

### **Recommendations**

That the federal government:

1. Use the definition of the precautionary principle agreed to internationally at the Rio Conference on Environment and Development in any new legislation, regulations or international treaties, conventions and agreements and amend any existing legislation which uses a different definition.
2. Work with our international partners to amend existing treaties so that any definition of the precautionary principle is compatible with the Rio definition.