

US PROPOSAL REGARDING FURTHER WORK ON TRANSPARENCY
OF ECO-LABELLING

The United States believes that transparency in eco-labelling schemes, including opportunity for timely input by all interested parties, is essential, from both a trade and environmental perspective. While not a panacea, transparency can be important in avoiding potential trade difficulties and has important benefits from the environmental perspective because it increases the legitimacy of, and participation by interested parties in, such programmes.

It would be useful for the CTE and TBT Committees to develop a common understanding of how such programmes are covered under current WTO transparency disciplines, to identify areas of particular concern associated with the development of eco-labelling programmes where there may be gaps in the existing transparency provisions, and, as appropriate, amplify current WTO transparency requirements.

The United States believes that it is important to have transparency in the design of eco-labelling programmes, the selection of products to be covered by eco-labelling, the selection of criteria for receipt of an ecolabel and the design of any conformity assessment procedure. In other words, there should be full transparency with an opportunity for timely public input covering each critical stage of a programme's development, which may occur separately or simultaneously, including:

1. the development or existence of such programmes (including full information on their statutory or regulatory basis) and procedures for input from interested parties;
2. the selection of products proposed for criteria development;
3. the development of any life-cycle considerations and scientific analysis used to underpin criteria development;
4. the draft criteria for product groups, whether new or revised;
5. the development of any interpretive or explanatory documentation, including scientific documentation, necessary to understand how the criteria are to be implemented; and
6. manner in which non-domestic environmental protection practices will be taken into account in determining product eligibility.

The Agreement on Technical Barriers to Trade contains very specific obligations concerning transparency. Whether a measure is voluntary or mandatory, governments and private standardizing bodies are obliged to provide public notice of a proposed standard, technical regulation or conformity assessment procedure; solicit comments from interested parties; and take those comments into account before adopting a final rule. In addition, when these are proposed mandatory, legal requirements of governments, the proposal is notified to the WTO Secretariat for distribution to other Members. When they are voluntary, notification is made (pursuant to the Code of Good Practice) via the publication of a work programme, at least twice a year, of standards anticipated to be developed. Successful implementation of these provisions can help prevent the creation of technical trade barriers including many, but possibly not all, of the concerns that have been expressed with respect to eco-labelling schemes.

A key question is at what stage an eco-labelling programme is considered by Members to be "draft" and whether that incorporates the six elements identified above for eco-labelling programmes. The TBT Committee has reached a Decision on the timing of notifications as follows:

"When implementing the provisions of Articles 2.9.2, 3.2 (in relation to Article 2.9.2), 5.6.2 and 7.2 (in relation to Article 5.6.2), a notification should be made when a draft with the complete text of a proposed technical regulation or procedures for assessment of conformity is available *and when amendments can still be introduced and taken into account*". (Emphasis added)

In answering the question posed above, it is useful to look at the process by which ecolabels are developed. For instance, in developing eco-labelling programmes based on life-cycle considerations, it is necessary to define the product that will be subject to an ecolabel, perform a life-cycle assessment of the environmental impacts of the product and then prepare the draft standard based on that inventory. By the time the draft standard has been developed, the opportunity for meaningful input by the full range of interested parties may be significantly narrowed by decisions taken at previous stages. If the first opportunity for comment comes only after a draft standard has been prepared, it may be impossible to influence the decision on product coverage of the ecolabel because the standards making body will have already made a significant investment in time and resources in the preparation of the life-cycle information. Also, since there is no standard agreed methodology for performing life-cycle assessments, there is considerable room for honest disagreement on the manner in which they are conducted and the results they yield.

The United States believes it would be useful for the Committee on Trade and Environment and the Committee on Technical Barriers to Trade, meeting jointly or separately, to provide an early opportunity for delegations to exchange views as to at what point in the process of development of an ecolabel do the transparency obligations of the TBT Agreement require that an opportunity be provided for input from all interested parties. This discussion, of course, would be without prejudice to any delegation's view on the coverage of particular types of eco-labelling programmes under the TBT Agreement. If there is a view that critical points in the development of ecolabels may not be covered by such obligations, it may then be useful for the Committees to consider whether it would be desirable to clarify or add to existing transparency obligations.