

related PPMs.²¹ On October 25, previously arranged high level bilateral environmental consultations with the EU in Brussels allowed us to deliver a strong message on the importance of a credible result on ecolabelling in the CTE report.

A short side meeting with Korea on October 29 allowed us to develop two alternate drafting suggestions that addressed concerns pertaining to whether addressing transparency implied coverage and application of the Agreement to PPMs. These suggestions, following the departure of the Chair, served as the basis for a drafting group meeting on October 31. The Halloween meeting produced an acceptable if weak reference to TBT that was limited to notification provisions. On November 1, Brazil, Mexico and the USA all made suggestions to strengthen the crucial coverage paragraph (paragraph 185 of the final report) that made it explicitly clear that the only area of ambiguity was with respect to non-product related PPMs and that the reference to the TBT referred to all provisions, including transparency. The USA particularly wanted to make clear that this conclusion had no implications for mandatory labelling programs. The end result was a clear text that had a positive introductory statement on ecolabelling, appropriate focus on transparency, strong reference to TBT provisions, and future work that allowed for discussion of PPMs. This draft was acceptable to Canada, particularly given the earlier danger of a TBT-minus result.

At the beginning of the marathon negotiating session of November 6, we met Egypt and ASEAN who had not been able to participate in the November 1 drafting group. Their concern, ironically, was not with the crucial coverage paragraph but rather with the introductory paragraph (paragraph 183 of the final report), particularly the positive reference to ecolabelling programs and Agenda 21 (which had been largely agreed). There was no consensus on elements of future work (paragraph 186). We explained that we either had to list all five elements or none, given that each responded to particular concerns of delegations.²² The consensus was for a short reference to future work but one that significantly included reference to the TBT Committee and work in other fora such as UNEP, UNCTAD, ISO, OECD and ITC.

The USA and EU could not accept the weakening of the positive reference to ecolabelling and Agenda 21. We then advised interested delegations that we were going back to the original text of November 1 as the basis for negotiations. When we discussed ecolabelling late that night, Egypt raised many of the same concerns regarding the Agenda 21 reference. The compromise was to add a sentence directly taken out of Agenda 21, as originally suggested by ASEAN.²³ India made a number of small helpful drafting suggestions. The end result was a stronger and more positive introductory paragraph than in the November 6 draft.

With respect to the coverage paragraph, the EU wanted less clear wording with respect to what the "without prejudice to the views of Members" referred to - i.e., life cycle approaches rather than non-product related PPMs. The Canadian delegation intervened strongly, noting the need for precision given that life cycle approaches may or may not result in non-product related PPM-based criteria and that Canada could not accept any result that would imply that a standard developed through LCA but performance-based (e.g., energy efficiency), was not covered by the TBT Agreement. The EU later accepted this argument. Canada was, ironically, absent