# Trade provisions within the Treaty to end plastic pollution

Key takeaways and reflections on the zero draft

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#### Why trade measures are within the scope of UNEA Resolution 5/14?

- The mandate is to address the issue of plastic pollution
- Nothing in the mandate prescribes the means from which to achieve it
- The INC can determine which means to take to achieve the mandate
- The treaty shall create a comprehensive trading system to regulate the international trade of polymers, chemicals and polymers of concern, products, and wastes covered under the treaty
  - Control & compliance with treaty obligations
  - Harmonization & non discrimination
  - Avoid free riding

3. Decides that the intergovernmental negotiating committee is to develop an international legally binding instrument on plastic pollution, including in the marine environment, henceforth referred to as "the instrument", which could include both binding and voluntary approaches, based on a comprehensive approach that addresses the full life cycle of plastic, taking into account, among other

UNEA Resolution 5/14

4. *Also decides* that the intergovernmental negotiating committee, in its deliberations on the instrument, is to consider the following:

(a) Obligations, measures and voluntary approaches in supporting the achievement of the objectives of the instrument;

# Existing trade provisions in the zero draft

- The Zero draft contains a stand alone trade provison
- There are elements of a functioning system but there are also significant gaps
- There are ways to make it **more** comprehensive
- Possibility to **streamline**

art II
1. Primary plastic polymers
2. Chemicals and polymers of concern
3. Problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics
a. Problematic and avoidable plastic products, including short-lived and single-use plastic products9
b. Intentionally added microplastics
4. Exemptions available to a Party upon request
5. Product design, composition and performance
a. Product design and performance
b. Reduce, reuse, refill and repair of plastics and plastic products
c. Use of recycled plastic contents
d. Alternative plastics and plastic products
6. Non-plastic substitutes
7. Extended producer responsibility
8. Emissions and releases of plastic throughout its life cycle
9. Waste management
a. Waste management
b. Fishing gear
10. Trade in listed chemicals, polymers and products, and in plastic waste
a. Trade in listed chemicals, polymers and products
b. Transboundary movement of plastic waste
11. Existing plastic pollution, including in the marine environment
12. Just transition
13. Transparency, tracking, monitoring and labelling 19

#### Potential elements to address trade within the treaty

- Comprehensive trading system
- Permits
- Ensure that said materials and products covered under the treaty are:
  - Produced
  - Managed
  - Traded in full compliance with the requirements of the treaty

"To facilitate its full, fair and effective implementation, the Instrument should establish a comprehensive system to regulate the international trade of polymers, chemicals and polymers of concern, products, and wastes covered by the Instrument, for which phase out targets and timelines or other commitments are agreed. This system, must include at minimum a comprehensive permitting system to ensure covered products and substances moving in international trade have been produced and handled in full compliance with the provisions of the Instrument.

Every shipment of covered materials and products from a Party must be accompanied by an export permit, confirming that said materials and products have been produced, managed, and traded in full compliance with the requirements of the Instrument."

#### Potential elements to address trade within the treaty Compliance

- Ilegal trade
- Compliance

"Each party shall ensure that there is no illegal trade or trade in violation with this Instrument."

#### Potential elements to address trade within the treaty National authorities

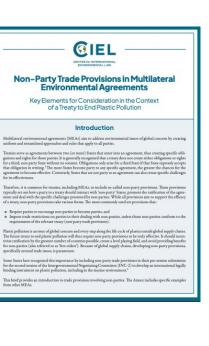
National authority to regulate exports and imports of covered materials and products

"Each party shall identify or if necessary establish a responsible national authority for regulating exports and imports of covered materials and products."

#### Potential elements to address trade within the treaty Non-Party trade provision

 Inclusion of an explicit, comprehensive and clear non-Party trade provision

"Each Party shall apply any export, re-export, or import measures relating to products and materials covered by the present Instrument to Parties and non-Parties on a non-discriminatory basis. Where export or re-export is to, or import is from, a State not a Party to the present Instrument shall provide comparable documentation issued by the competent authorities in that State which substantially conforms with the requirements of the present Instrument for permits and certificates may be accepted in lieu thereof by any Party, provided such non-Party State has adopted and implemented measures to phase out such materials and substances in conformity with the Annexes hereto."



# WTO Rules are not an obstacle!

- States have already implemented (some) trade measures to fight plastic pollution
  - Lack of harmonisation,
  - Can create trading frictions and disputes
  - Need comprehensive, harmonised, non discriminatory or arbitrary trading system for plastics
- Trade measures in MEAs provide harmonization and lower the risks of WTO disputes
  - Non-Party trade provisions are also key
- WTO rules have sufficient scope to accommodate trade-related measures under MEAs
- Actions by one WTO member to comply with the trade measures of an MEA have never been challenged by another WTO member



### Zero draft

#### The removal of subsidies that support the production of plastics

- To end plastic pollution, there is an urgent need to phase down plastic production (i.e. incorporate upstream control measures)
- Addressing subsidies for primary plastic polymers and chemicals of concernn is key
- Zero draft included the "removal of subsidies and other fiscal incentives to the production of primary plastic polymers"
- We are working on identifying optimal implementable measures:
  - A **timeframe** for the removal of targeted subsidies
  - Inclusion and reporting of measurable subsidy elimination targets and practical phase-out plans incorporated in National Plans
  - Compliance mechanism allowing for the review and assessment of Party compliance with the transparency, elimination, and reporting obligations
- Interessesional work is key under the umbrella of intersessional work on production

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Tackling Subsidies for Plastic Production:
Key Considerations for the Plastics Treaty Negotiations
Executive Summary
In February 2022, the United Nations Environment Assembly adopted a mandate to establish an intergovernmental negotiating committee [INC) that will 'develop an international legally binding instrument on plastic pollution, includ- ing in the marine environment. <sup>41</sup> To achieve this objective, it is essential for policymakers to holinitally analyze — and work toward environment — ceiting fiscal incentives and subsidies for the production of primary plastics.
Both international and domestic trade rules discipline subsidies. The Agreement Establishing the World Trade Orga- nization (WTO Agreement) defines certain types of government financial contributions as subsidies, and if they are pecific, they can be subject to discipline. Certain kinds of subsidies are presented to distort international trade and are therefore prohibited outright, others are subject to removal or redress only where they cause adverse effects. Although the WTO has sectoral agreements for subsidies in agriculture and fisherise, as a rule, it does not regulate subsidies in specific sectors, including plants:
Economists and trade lawyers use divergent definitions and methodologist to identify and calculate subsidies. As a result, it is challenging to agree upon global figures for plastic subsidies and their environmental impact. Adding to the difficulty is a law of transparency resund catisting availation and neft financial is environ. Nevertheles, an initial review of data suggests that the amount of government money that flows into plastic production is remarkable and includes direct grants for manufacturing plants, long-term tax incentives, concessionary development bank lending, and a variety of subsidies on inputs.
Experience in other multilateral environmental agreements (MEAs) suggests that where crossover trade disciplines are being considered, there should be a degree of coherence between a new agreement and ensing frameworks. This observes it important on topics such as subsidies, where interanzional rated rules have been the subject of extensive negotiation, considerable controversy, and complex higherios. Therefore, sentistivity is sential to successfully negotiate serve framework obligations, which angle degree of agreements is required to noniron conguing/importantation as framework obligations, which angle degree of agreements is required to noniron conguing/importantation constrainty is incommended that negotiaters concentrate on disciplines for direct subsidies in respect of plastics munifortures and indirect subsidiation is the form of former standard constraints and the subject of the constraints and the subject of the subsidies of the second standard control. The former source multiple degree of agreement and the subject of the subject

through notification, peer review, and independent expert analysi

# Thank you

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