

Trade provisions within the Treaty to end plastic pollution

Key takeaways and reflections on the zero draft

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CENTER for INTERNATIONAL
ENVIRONMENTAL LAW

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

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;

UNEA Resolution 5/14

Existing trade provisions in the zero draft

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

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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

- Illegal 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

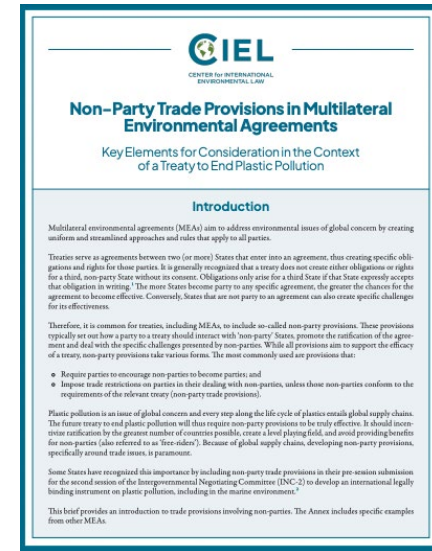
“Each party shall identify or if necessary establish a responsible national authority for regulating exports and imports of covered materials and products.”

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!

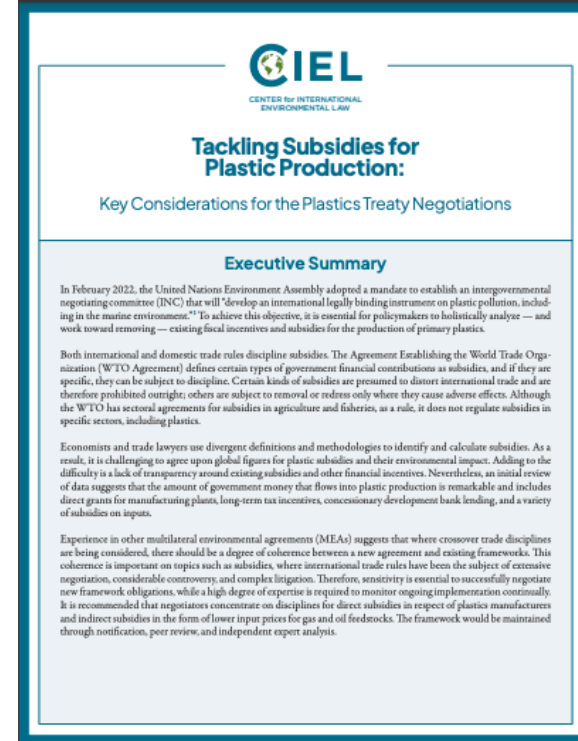
- States have already implemented (some) trade measures to fight plastic pollution
 - Lack of harmonisation,
 - Can create trading frictions and disputes
 - Need comprehensive, harmonised, non discriminatory or arbitrary trading system for plastics
- Trade measures in MEAs provide harmonization and lower 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 concern 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
- Intersessional work is key under the umbrella of intersessional work on production



Thank you

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