

Plastics and Trade

Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution

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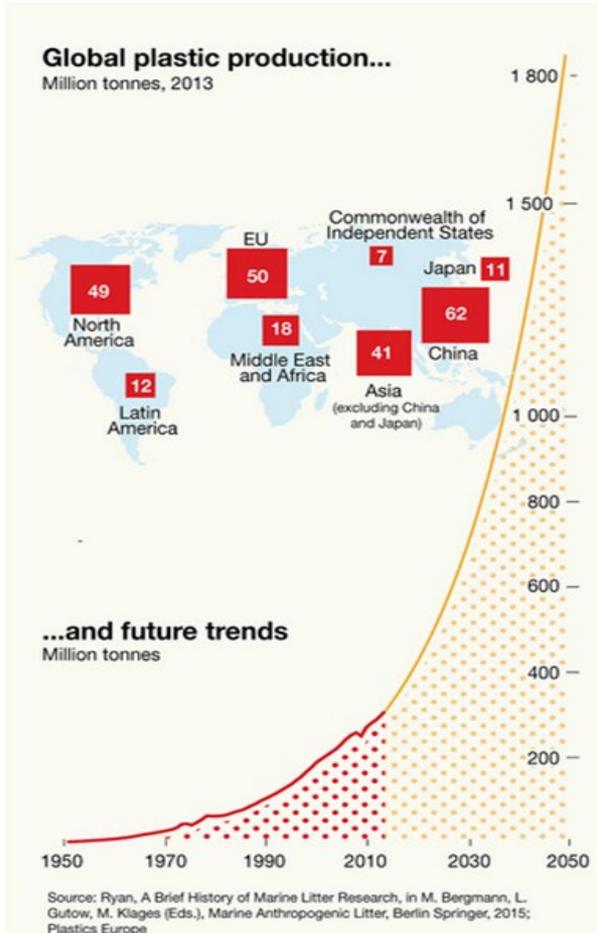
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ENVIRONMENTAL LAW

**'Most significant environmental deal since Paris':
UN agrees on landmark plastic pollution treaty**



Delegates hug at the Fifth session of the United Nations Environment Assembly (UNEA 5) after negotiating a global plastic treaty. Copyright AFP

Close the Tap on Plastic Production



- To end plastic pollution, the treaty will need to effectively address plastic production, including through **production bans, prohibitions or restrictions**
 - This is very important because **science has shown that simply recycling doesn't solve plastic pollution**
 - Production is still going up: the tap must be turned off
 - Plastics Recycling has huge health and environmental impacts
 - Many States actually have mentioned the need to implement upstream restrictions in their submissions
- It appears through **5 out of the 12 core obligations** proposed by UNEP in its option paper

Trade Restrictions, Prohibitions or Bans Are Needed to Close the Tap

Figure 3. World Exports of Plastics by Value (\$bn) and Volume (Mmt) (2000–21)



Source: Authors' elaboration based on UNCTADSTAT (n.d.).

1. Plastic Feedstocks, Precursors, Additives, and Primary Plastics (e.g. resins pellets and fibres) are not only largely produced, but also largely traded

1. include trade bans, prohibitions, restrictions or controls that mirror production and use core obligations to create cohesion and eliminate legal gaps

Many MEAs include trade bans or restrictions: e.g. Basel Convention, CITES, Minamata, Montreal Protocol etc. There are many precedents and previous successful experiences

1. Trade bans, restrictions, prohibitions and controls of plastics are currently very fragmented at the international level

Trade provisions in MEAs harmonise the rules applicable, lower the risks of WTO disputes, and are essential to ensure the effectiveness of the treaty

Many Treaties Have Done So

(Including, the Basel Convention, Rotterdam Convention, Stockholm Convention, Minamata Convention, CITES, Montreal Protocol)

In
Preamble
(example)

Basel Convention

"Fully recognizing that any State has the sovereign right to ban the entry or disposal of foreign hazardous wastes and other wastes in its territory,"

"Aware also of the growing international concern about the need for stringent control of transboundary movement of hazardous wastes and other wastes, and of the need as far as possible to reduce such movement to a minimum"

As core
obligations
(examples)

Basel Convention, Article 4 (1) (b), (c)

"1. (b) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes to the Parties which have prohibited the import of such wastes, when notified pursuant to subparagraph (a) above.

(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

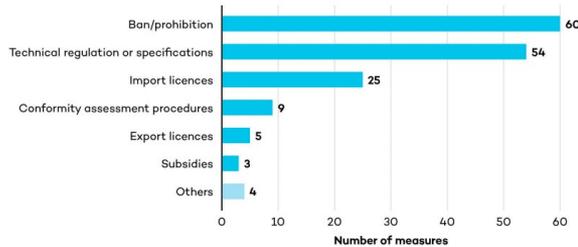
Minamata Convention, Article 4 (1)

"1. Each Party **shall not allow**, by taking appropriate measures, **the manufacture, import or export of mercury-added products listed in Part I of Annex A after the phase-out date specified for those products**, except where an exclusion is specified in Annex A or the Party has a registered exemption pursuant to Article 6."

WTO Rules are not an obstacle!

1. WTO rules have sufficient scope to accommodate trade-related measures pursuant to MEA
2. As of May 2023, no actions of a WTO member to comply with the trade measures of an MEAs has ever been challenged by another WTO member.
3. States have already implemented trade restrictions to fight plastics pollution
4. The need to address the trade-related aspects of plastic pollution has been recognised by WTO members of the Dialogue on Plastic Pollution at the WTO - which has even incorporated a “reduction workstream”

Types of measures notified:



See IISD presentation, [Trade-related measures employed in the fight against plastic pollution: What Do We Know? \(19 April 2023\)](#)

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INFORMAL DIALOGUE ON PLASTIC POLLUTION AND ENVIRONMENTALLY SUSTAINABLE PLASTICS TRADE (IDP)

MINISTERIAL STATEMENT ON PLASTIC POLLUTION AND ENVIRONMENTALLY SUSTAINABLE PLASTICS TRADE

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Workstream Plan

- **Workstream – Crosscutting issues**

6. Topics include capacity building and technical assistance; fostering international cooperation on transparency and data; cooperation and collaboration with other international organizations and processes; and collective approaches.

- **Workstream – Promoting Trade to Tackle Plastic Pollution**

7. Topics include environmentally sustainable waste management technologies; environmentally sustainable and effective substitutes and alternatives; reused and recycled plastics, including by incentivizing increased reuse and recycling of plastics (considering evidence of their long-term impacts); and technologies for environmentally sustainable and effective substitutes and alternatives of interest to developing members and least developed members including SIDS which are especially vulnerable to marine litter and plastic pollution, and opportunities for their MSMEs.

- **Workstream – Circularity and Reduction to Tackle Plastic Pollution**

8. Topics include how trade-related cooperation could help to support efforts to reduce unnecessary or harmful plastics and plastic products, including single-use plastics and plastic packaging associated with international trade; and sharing experiences of effective approaches to move towards more circular resource efficient and environmentally sustainable plastic trade.

WTO Rules and Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution

Ahead of the second session of the Intergovernmental Negotiating Committee (INC-2) to develop an international legally binding instrument on plastic pollution, including in the marine environment (plastics treaty), there are clear indications that trade restrictions and requirements are to be part of the discussions, as indicated by many pre-INC-2 State submissions, including non-party trade provisions (see CIEL's brief on [non-party trade provisions](#)).

Concurrently, some States have raised the question of compatibility between possible provisions of the future plastics treaty and World Trade Organization (WTO) rules. Since the inception of the WTO, a number of principles have become part of the core of international trade law under its jurisdiction. Critical elements of these rules include: (i) the non-discrimination principle; (ii) the most-favored-nation (MFN) principle and (iii) the national treatment principle. However, those principles do not preclude or impede States from prohibiting, restricting, or conditioning trade within the plastics treaty. Many multilateral environmental agreements (MEAs) have included trade and trade-related provisions, including trade restrictions, and none have triggered WTO disputes. In fact, MEAs that contain trade provisions harmonize the approach to an environmental problem, avoiding legal fragmentation and plausible WTO challenges.

Trade is an essential aspect of the plastic crisis that led to the adoption of a mandate to develop an international legally binding instrument to end plastic pollution. Plastic feedstocks, polymers, additives, plastic pellets, plastic products, and waste are largely traded internationally and the liberalization of trade in those products supports the rise in production and consumption of plastics, accelerating the plastic crisis. Additionally, trade in plastics acts as a conveyor belt for plastic pollution, including micro- and nanoplastic pollution around the world. The need to address the trade-related aspects of plastic pollution has been recognized by WTO members of the Dialogue on Plastic Pollution at the WTO. The Dialogue on Plastic Pollution has incorporated the reduction of plastic trade as one of its main work streams.

This brief examines the question of consistency or compatibility of the incoming plastics treaty with WTO rules, with the understanding that the treaty negotiation process is still very much ongoing. It also provides key recommendations for future framing of the plastic treaty's terms to address the essential interlinkages between plastic pollution and international trade in advance of INC-2.

UNEP's report on options and elements for the Plastics Treaty

➔ Control Measures: Trade prohibitions, restrictions and control

- Upstream**
- Phase out and/or reduce the supply of, demand for and use of primary plastic polymers (para. 10)
 - Impose a moratorium on primary production of plastic polymers or **ban, limit or reduce the manufacture, export and import of virgin plastic polymers**
 - Apply **import and export requirement to parties and non-parties on a non-discriminatory basis**
 - **Track types of volumes of plastic polymers, precursors and feedstocks manufactured, imported and exported**, as well as the quantities and type of chemicals applied in production through transparency and reporting requirements
 - **Establish licensing schemes for production, import and export of virgin and secondary plastic polymers**
 - Bans, phase outs or reductions of the production, consumption and use of chemicals and polymers of concern (para. 12)
 - Apply **import and export requirement for listed polymers and chemicals** to parties and non-parties on a non-discriminatory basis
- Midstream**
- Reduce microplastics (para. 13)
 - **Ban, phase out, reduce or control the production, sale, distribution, trade and use of microplastics and products containing intentionally added microplastics**
 - Bans, phase outs or reductions of problematic and avoidable plastic products (para. 11)
 - **Ban, phase out, reduce or control the production, sale, distribution, trade and use of specific problematic and avoidable plastic products by identified dates**
 - **Apply import and export requirement for listed products** to parties and non-parties on a non-discriminatory basis
- Downstream**
- Strengthen waste management
 - Establishment of **surveillance systems** and **quotas for export of plastic waste** (para. 14)
 - **Prohibit or control transboundary movement of plastic waste**, except where this ensures circularity
 - Develop a streamlined **permit process for transboundary movement of plastic waste**
 - Establishment of a **timetable for control measures on transboundary movements of plastic waste**

Non-Party Trade Provisions are Very Important For Implementation

Key questions:

- How to create incentives for non-parties to join the treaty?
- How to ensure that the import of products from non Parties states comply with the treaty?
- How to prevent non-parties from benefiting from not being parties to the treaty, or enjoying environmental gains achieved through other parties' commitments without making similar efforts themselves?

The answer: non-party trade measures

- Trade bans or restrictions with non-parties prevent parties from circumventing treaty obligations through import and export with non-parties, incentivizing non-parties to implement the treaty regime *in practice*
- When a non-party trade provision is established, a treaty can allow trade with non-parties of those materials or products under very strict circumstances, **if non-parties can demonstrate that the non-party can apply and enforce standards equivalent to those established by a treaty to ensure the same level of protection of human health and the environment established by the treaty**



Once We Know What to Avoid, Trade Can Help Promote Alternatives/Substitutes to Plastics and Technologies

- UNEP's option document, core obligation No. 8: Promoting the use of safe, sustainable alternatives and substitutes
 - ◆ **Definition** of an alternative and substitute to plastics (Appendix IB (j)) **No internationally agreed definition** yet of what constitutes an alternative or a substitute **in the context of plastics**.
 - ◆ Proposal to establish in an annex list, **criteria** for determining the availability of safe alternatives and substitutes (para.41).
 - ◆ **Technical assistance and research** for the development of alternative materials and technologies (paras.26 and 38)
- Some principles of international environmental law need to be taken into consideration :
 - ◆ **The precautionary principle** (Principle 15): dictates the adoption of a cautious approach in matters relating to the environment when there is scientific uncertainty about possible negative impacts
 - ◆ **The principle of self-sufficiency** (e.g. Basel Convention, also under EU Waste Framework Directive (2008/98/EC) and EU Landfill of waste Directive (1999/31/EC)): requires that most waste should be treated or disposed of within the region in which it is produced.
 - ◆ **Principle of prevention** (linked to precautionary principle + mentioned Stockholm Declaration Principle 6):
 - “States should enact measures to achieve zero pollution and zero waste. States should eliminate the production, use and release of toxic substances, except for essential uses. States must prevent exposure, by regulating industries, emissions, chemicals and waste, and promote innovation of safe substitutes” (SR on Human Rights and the Environment, David Boyd (A/HRC/49/53).
 - ◆ **The no harm principle** : States should aim to create a solution by which no transboundary harm can occur.

Thank you

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