Plastics and Trade

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

Helionor de Anzizu

Staff Attorney, International Trade and Investment

'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



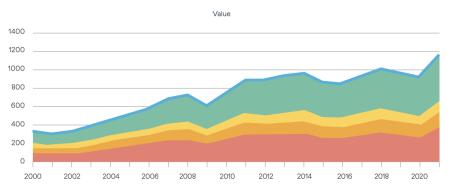
Source: Ryan, A Brief History of Marine Litter Research, in M. Bergmann, L. Gutow, M. Klages (Eds.), Marine Anthropogenic Litter, Berlin Springer, 2015; Plastics Europe

- 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)



Volume

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

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



📕 Final manufactured plastic goods 🛛 🗧 Plastic waste

Many Treaties Have Done So

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

	Basel Convention	
In .	"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,"	
Preamble (exemple)	"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"	

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

As core

obligations

(exemples)

"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.

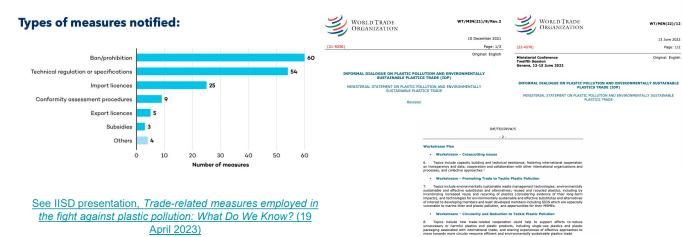
(c) Parties shall prohibit or shall not permit the export of hazardous wastes and other wastes if the State of import does not consent in writing to the specific import, in the case where that State of import has not prohibited the import of such wastes.

Minamata Convention, Article 4 (1)

"1. Each Partyshall 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"





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 rade provisions (see CIELS brief on <u>non-party trade provisions</u>).

Concurrently, some Starts have raised the question of compatibility between possible provisions of the frame plastice treary and World Trade Organization (WTO) rules. Since the inception of the WTO, a number of plantiphe 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 (MTN) principle and (iii) the national treatment principle. However, those principles do not preclude or impeds Starts Form prohibiting, restricting, or conditioning trade within the plastic treaty. Many multilateral environmental agreements (MEAs) have included trade and trade-related provisions, including rade trestrictions, and none have reigneed 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 plettes, plastic products, and waste are largely raded internationally and the liberalization of rade in those products supports the rise in production and consumption of plastics, accelerating the plastic crisis. Additionally, rate in plastics areas a converyor belt for plastic pollution, including micro- and nanoplastic pollution around the world. The need to address the trade-rateral 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 plastics trade as one of for 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 intermational trade in advance of INC-2.

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

Control Measures: Trade prohibitions, restrictions and control

	• 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 orban, 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
Upstream Midstream	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
	• 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
	(\circ) Strengthen waste management
```	Establishment of surveillance systems and quotas for export of plastic waste (para. 14)
	Prohibit or control transboundary movement of plastic waste, expect where this ensures circularity
Downsti	ream Develop a streamlined permit process for transboundary movement of plastic waste
	Establishment of a timetable for control measures on transboundary movements of plastic waste

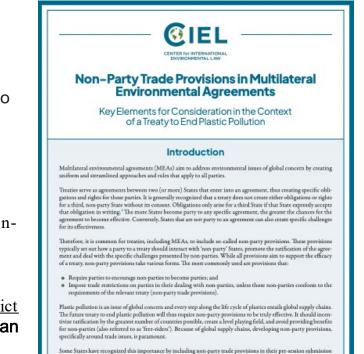
### Non-Party Trade Provisions are Very Important For Implementation

#### 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, <u>a treaty can allow</u> <u>trade with non-parties of those materials or products under very strict</u> <u>circumstances</u>, 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



Some States nave recognized this improvements by including non-party track provisions in their pre-season submission. For the second session of the Intergovernmental Negotizing Committee (IDN-2) to develop an international legally binding instrument on plastic pollution, including in the marine environment.⁴

This beief provides an introduction to trade provisions involving non-parties. The Annex includes specific examples from other MEAs.

### 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, sustainablealternatives 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)
- → Someprinciples 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.

### Some Resources

#### (not comprehensive)



#### Trade Provisions in Multilateral Environmental Agreements: Key Elements for Consideration in the Context of a Treaty to End Plastic Pollution

#### POLICY BRIEF

Plastics trade is an essential component of discussions to develop an international legally binding instrument to end plastic pollution, for three reasons

- Plastic feedstocks, polymers, additives, plastic pellets, plastic products, and waste are largely traded internationally¹ and the liberalization² of trade in plastics and their feedstocks supports the rise in production and consumption of plastics, accelerating the plastic crisis;
- 2. Trade in plastics acts as a conveyor belt for the spread of products, packing and packaging responsible for plastic pollution, including micro- and nanoplastics around the world;3 and
- 3. Trade in plastics products and products packaged in plastic adds to the waste management burden that importing countries face.

Additionally, Global trade in plastic is immense. Plastics imports and exports in "primary, intermediate and final forms of plastics [represent] up to more than US\$1 trillion in 2018 or 5% of the total value of global trade.⁴⁴ In 2020, there were 369 million tons of plastics traded - \$1,2 trillion in value -, a significant increase from the previous years (UNCTAD, 2022d).

UNEP also identified trade as one of the key elements to address (through the full life cycle of plastics) in its Plastics Science document published in preparation of the first Intergovernmental Negotiating Committee (INC1) (UNEP/PP/INC.1/7).5 As measures for achieving the strategic goals for systems change, UNEP proposed among others to include (i) bans of specific final goods as well as problematic and unnecessary polymers and additives; as well as restrictions and phase out of harmful substances, (ii) taxes/tariffs related to upstream, and midstream activities and products: (iii) removal of fossil fuel subsidies: and (iv) customs duties.

Given this importance, and to ensure that the goal of ending plastic pollution is successfully achieved, it will be essential (i) to recognize the contribution and role of trade in plastic pollution and (ii) ensure that the plastics treaty includes trade-related measures as core obligations?

1 Diana Barrowclough, Carolyn Deere Birkbeck, Julien Christen, Global trade in plastics: insights from the first life cycle trade database Data barrowcougo, Carown Deete birkoeck, Julier Cirinteri, uroda inder in positisk iniginis from the init inercipie bade aduados, (UNCTAD Research Paper No. 53 UNCTAD/SER.RP/2020/12), pp. 19-23, accessible <u>hero.</u>
 Trade liberalization refers to eliminating or easing trade barriers between countries to promote free trade of goods and services.

Examples of trade barriers are tarlift, import quotas, embargoes, and non-tarlift barriers. ³ Diana Barrowclough, Carolyn Deere Birkbeck, Julien Christen, Global trade in plastics: insights from the first life-cycle trade database, pp.

ough, Carolyn Deere Birkbeck, Julien Christen, Giobal trade in plastics: insights from the first life-cycle trade database, p. 1. When the rising trade in plastic feechtocks, precursors, and 'hidden plastics' is taken into account, the scale of the trade grows even

Then use range used in passion receivables, prevanions, and insuren passions to instem must account, use scale or use age over even larger. ¹ ONEPPPVINC.1/7, *5. In view of the trade dimension, many solutions across the plastics life or quive an international approach. Appendices III to Highlight policies and policy elements whose efficacy would be enhanced by an international approach that ensures a globally level playing field

* UNESPONIEC_L/J_Appendix U. * A noted by the design of Sharterland to the WTO, the use of trade-related measures within the framework of an MEA may even be the most effective way to ensure that an environmental objective is achieved, see Submission by Switzerland to the Committee on Table and Environmental Tablescription of the multitude Industry of an administration of a devision end a quadragements, Table and Environmental Tablescription of the multitude Industry of an administration of a devision end a quadragements, Table and Environmental Tablescription of the multitude Industry of a main of the multitude Industry of an administration of the multitude Industry of the administration of the a WT/CTE/W/139 (8 June 2000), para. 1: 'In fact, it must be acknowledged that trade-related measures can play an important role in promoting the objectives of a Multilateral Environmental Agreement (MEA). The use of trade-related measures within the framework

POLICY BRIEFING: TRADE PROVISIONS IN MULTILATERAL ENVIRONMENTAL AGREEMENTS: KEY ELEMENTS FOR CONSIDERATION IN THE CONTEXT OF A TREATY TO END PLASTIC POLLUTION

#### **Reporting from the Plastics Treaty Negotiations**

#### INC2 Pre-session submissions - 16 Feb 2023

#### Helionor de Anzizu

Staff Attorney, International trade and investment



Most significant environmental deal since Paris

- <b>©</b> IEL	
CENTER For INTERNATIONAL ENVIRONMENTAL LAW	

#### Non-Party Trade Provisions in Multilateral Environmental Agreements

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

#### Introduction

Multilateral environmental agreements (MEAs) aim to address environmental issues of global concern by creating uniform and streamlined approaches and rules that apply to all parties.

nents between two (or more) States that enter into an agreement, thus creating specific obligations and rights for those parties. It is generally recognized that a treasy does not create either obligations or rights for a third, non-party State without its consent. Obligations only arise for a third State if that State expressly accepts that obligation in writing. The more States become party to any specific agreement, the greater the chances for the nt to become effective. Conversely, States that are not party to an agreement can also create specific challenges for its officeringman.

Therefore, it is common for treaties, including MEAs, to include so-called non-party provisions. These provision typically set out how a party to a treary should interact with 'non-party' States, promote the ratification of the agree-ment and deal with the specific challenges presented by non-parties. While all provisions aim to support the efficacy of a treaty, non-party provisions take various forms. The most com only used are provisions that

· Require parties to encourage non-parties to become parties; and

 Impose trade restrictions on parties in their dealing with non-parties, unless those non-parties conform to the requirements of the relevant treaty (non-party trade provisions)

Plastic pollution is an issue of global concern and every step along the life cycle of plastics entails global supply chains. The furner reserves to end plastic collusion will thus require non-party provisions to be muly effective. It should incen-tivite radioation by the greatest number of councrise possible, crease a level plasma field, and avoid providing benefities for non-partice (also referred to as in free-rider). Because of plobal supply chains, developing non-party provisions, specifically around trade issues, is paramount.

Some States have recognized this importance by including non-party trade provisions in their pre-session submission for the second session of the Intergovernmental Negotiating Committee (INC-2) to develop an international legally binding instrument on plastic politicon, including in the marine environment.⁴

This brief provides an introduction to trade provisions involving non-parties. The Annex includes specific examples rom other MEAs

UNCTAD Research Paper No. 53 UNCTAD/SER RP/2020/12

#### Global trade in plastics: insights from the first life-cvcle trade database

#### Division or Globalisation and

Abstract

Diana

Barrowclough

Carolyn Deere

Birkbeck

Senior Researche

Graduate Institute

Julien Christen

Research Associate Graduate Institute

This paper presents the first attempt to quantify and map global trade flows across the entire life cycle of plastics - from raw inputs to final plastic products as well as waste. It draws on a new prototype database created by UNCTAD and the Graduate Institute, which draws on a granular examination of official and the chabuate instrute, which draws on a granular examination or omcail trade classifications and complete data on a far broader set of plastics-related inputs and products than those commonly used. This paper finds that trade is immense, with exports of primary, intermediate and final forms of plastics summing up to more than US\$1 trillion in 2018 or 5% of the total value of global trade - almost 40% higher than previous estimates. This paper also finds that plastics trade is multifaceted and complex. While some key countries dominate trade across the plastics value chain, a wide diversity of countries are active as both importers of plastic products and exporters, using plastic as a means to participate in global value chains and to add value to

At the same time, while this original database captures a range of neglected trade flows across the plastics life cycle, it is a prototype and still provides an incomplete picture, in part due to the methodological challenges of quantifying the value and volume of plastics 'hidden' in millions of products traded internationally (e.g., plastics embedded in products or used in pre-packaged products). The paper makes an original contribution to understanding of the dynamics of the global plastics economy, through the lens of trade. The findings can help governments and stakeholders to reduce plastics pollution and CO₂ emissions through more effective use of trade policy in addition to other policy levers.

#### Key words: Plastic, Trade, Development, Green Economy,

The findings, interpretations, and conclusions expressed herein are those of the authors and do not necessarily reflect the views of the United Nations or its officials Mariner Blanes. The designations employed and the presentation of investment on any map in the work do not singly the expression of and cargo interventement on the part of the United Nations occurring the legal status of any country, tentory, dip, or ones or of its authorities, or conserving the destination of its Nations and Council a This paper important to be periodial views of the saffords only, not the views of the URICTAD eccentration or memory States. The authority accept safe responsibility for any errors. Any clastice should refer to the authority and not the authorities. This accept main of lakes internals reflects.

Co 1993 Linded Nations

TFSS Forum on Trad

Review

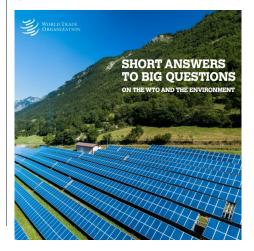


#### Home About WTO News and events Trade topics WTO membership Documents, data and resources WTO and you

#### DIALOGUE

#### Plastics pollution and environmentally sustainable plastics trade

A group of WTO members launched in November 2020 an initiative to explore how the WTO could contribute to efforts to reduce plastics pollution and promote the transition to more environmentally sustainable trade in plastics. The Dialogue on Plastics Pollution and Environmentally Sustainable Plastics Trade is open to all WTO members and seeks to complement discussions in the Committee on Trade and Environment (CTE) and other fora







Trends in Trade Flows Across the Life Cycle of Plastics: Preliminary

Briefing Note May 2023

## Thank you

### Helionor de Anzizu

Staff Attorney, Center for International Environmental Law hdeanzizu@ciel.org

