

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



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Introduction

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

1. 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 plastic, 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.”⁴ 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.⁶

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.⁷

¹ Diana Barrowclough, Carolyn Deere Birkbeck, Julien Christen, *Global trade in plastics: insights from the first life-cycle trade database*, (UNCTAD Research Paper No. 53 UNCTAD/SER.RP/2020/12), pp. 19-23, accessible [here](#).

² Trade liberalization refers to eliminating or easing trade barriers between countries to promote free trade of goods and services. Examples of trade barriers are tariffs, import quotas, embargoes, and non-tariff barriers.

³ Diana Barrowclough, Carolyn Deere Birkbeck, Julien Christen, *Global trade in plastics: insights from the first life-cycle trade database*, pp. 5-6.

⁴ Diana Barrowclough, Carolyn Deere Birkbeck, Julien Christen, *Global trade in plastics: insights from the first life-cycle trade database*, p. 1. When the rising trade in plastic feedstocks, precursors, and ‘hidden plastics’ is taken into account, the scale of the trade grows even larger.

⁵ UNEP/PP/INC.1/7, “95. In view of the trade dimension, many solutions across the plastics life cycle require an international approach. Appendices II to VI highlight policies and policy elements whose efficacy would be enhanced by an international approach that ensures a globally level playing field”.

⁶ UNEP/PP/INC.1/7, Appendix VI.

⁷ As noted by the delegation of Switzerland 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 Trade and Environment, *The relationship between the provisions of the multilateral trading system and multilateral environmental agreements*, 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 of MEAs may even in certain circumstances be the most effective way to ensure that environmental objectives are achieved. Therefore, adopting measures that affect trade within the environmental framework is not only understandable but sometimes also desirable”, accessible [here](#).

TRADE-RELATED MEASURES IN PREVIOUS MULTILATERAL ENVIRONMENTAL AGREEMENTS

A. Why do States include trade-related measures in Multilateral Environmental Agreements

Including trade provisions in Multilateral Environmental Agreements (MEAs) is not new and has proven to be an effective tool to operationalize and ensure the realization of environmental agreements. MEAs often include specific substantive or procedural provisions that may require or encourage Parties to **restrict, regulate, or otherwise condition international trade** as part of the package of instruments to achieve their objectives. The Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (Basel Convention), the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES Convention), the Montreal Protocol to the Vienna Convention (Montreal Protocol), and the Minamata Convention on Mercury (Minamata Convention) are some examples of environmental instruments with trade mechanisms.

Both developed and developing countries have long asked for the inclusion of trade-related measures in MEAs.⁸ For instance, during the negotiation of the Montreal Protocol, a number of developed countries supported trade-related measures as a necessary way to achieve the goals of the agreement.⁹ In fact, during the negotiation of the Cartagena Protocol on Biosafety to the Convention on Biological Diversity (Cartagena Protocol), developing countries viewed trade-related measures as the “teeth” that would guarantee a strong instrument to meet their needs and concerns.¹⁰

The inclusion of trade measures is **also considered to offer a major incentive for non-signatory States to sign the agreement** or, at minimum, implement measures that achieve substantially the same objectives.¹¹ Without trade measures, there would be economic incentives for non-Parties to increase production, damaging the competitiveness of the industries in the signatory States as well as decreasing the search for less damaging alternatives.¹² Additionally, Import and export bans with non-Parties increase the effectiveness of the treaty, and close the door to the possibility for Parties to circumvent treaty obligations through import and export with non-Parties (i.e. avoid “leakage”).

Trade-related measures also often play an important role in supporting other MEA provisions, including the phase-out of certain substances, and ensuring the effectiveness of MEAs, for example, by assisting in compliance and enforcement.¹³

⁸ United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, (Economic and Trade Branch, Division of Technology, Industry and Economics, United Nations Environmental Programme, 2007), p. 27, accessible [here](#).

⁹ United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, p. 27.

¹⁰ United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, p. 27.

¹¹ United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, p. 27.

¹² United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, p. 27.

¹³ United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, p. 29.



B. Which trade provisions have been adopted in Multilateral Environmental Agreements

Trade measures in MEAs take a number of forms and often include the following:

1. **Export and/or import trade restrictions between Parties and between parties and non-Parties** (e.g., CITES; Montreal Protocol; Basel Convention; Minamata Convention);¹⁴
2. **Import and export permits, licensing, notification, and consent procedures** (e.g., CITES, Basel Convention, Montreal Protocol; Rotterdam Convention),¹⁵ which not only serve the purpose of “empowering” the importing State to reject the transport or imports of unwanted products,¹⁶ but also contributes to an effective compliance monitoring as well as data collection, monitoring, and exchange of information; and
3. **The possibility to take additional measures** (e.g., CITES; Basel Convention; Convention on the Conservation of Migratory Species of Wild Animals; and the Convention on the Conservation of European Wildlife and Natural Habitats).¹⁷

Often, MEAs do not include express references to “trade measures” or “trade-related measures”, though they may include trade measures, and there may be informal references to these terms in discussions surrounding MEAs and their implementation.¹⁸

Trade measures are usually part of a package of measures that also include non-trade measures (such as production/consumption quotas or information requirements) and supportive measures¹⁹ – often also called positive or compliance assistance measures – to mitigate their implementation and economic adjustment costs in developing countries (such as standards and labels, financial and technical support, training and technology transfer). In the end, it is the effectiveness and the efficiency of the full package, rather than one single measure (for instance, the trade measure), that are important.²⁰

¹⁴ CITES, Arts. 2, 3, 4, 5, 10; Montreal Protocol, Arts. 4 and 4 A; Basel Convention, Preamble, Arts. 4 and 4 A; Minamata Convention, Art. 3.

¹⁵ CITES, Arts. 3, 4, 5, 6, 8; Basel Convention Art. 4, Art. 6; Montreal Protocol, Art. 4B; Rotterdam Convention, Art. 5.

¹⁶ For developed-developing State shipments, a default import ban can provide safety and leverage.

¹⁷ CITES, Art. 14 (1); Basel Convention, Art. 4 (11); Convention on the conservation of Migratory Species of Wild Animals, Art. 12 (3); Convention on the Conservation of European Wildlife and Natural Habitats, Art. 12.

¹⁸ United Nations Environment Programme, *Trade-related measures and Multilateral Environmental Agreements*, p. 27, FN. 114.

¹⁹ Supportive measures recognize the fact that the non-compliance of developing countries is often the result of a lack of capacity (i.e., weak institutional, technical, and managerial capacities) rather than a lack of political will. See Ulrich Hoffman, *Specific Trade Obligations in Multilateral Environmental Agreements and Their Relationship with the Rules of the Multilateral Trading System*, (Trade and Environment Review 2003, UNCTAD, 2004), p. 4.

²⁰ Ulrich Hoffman, *Specific Trade Obligations in Multilateral Environmental Agreements and Their Relationship with the Rules of the Multilateral Trading System*, (Trade and Environment Review 2003, UNCTAD, 2004), p. 4.



TRADE-MEASURES THAT SHOULD BE CONSIDERED FOR INCLUSION IN THE PLASTICS TREATY AND DISCUSSED DURING INC 2

The following specific measures, among others, should be considered in the context of the plastics treaty negotiations:

- 1. Trade restrictions and bans for certain types of plastic feedstocks, polymers, additives, and plastic products between Parties, and between Parties and non-Parties:** It is expected that the plastic treaty will include restrictions on the production and use of certain plastic feedstocks, polymers, additives, or products. To support the efficacy of such measures, trade restrictions and bans **on imports and exports** of products subject to such phaseouts will be essential. To avoid the possibility to circumvent treaty obligations through imports or export with non-Parties, the same types of trade restrictions should be applied between Parties and non-Parties. This type of measure also **offers a major incentive for non-signatory States to sign the agreement.**
- 2. Permit requirements:** Import and export permits allows States to say no and retain control over what is imported, while export permits place some responsibility on the exporting State to ensure that (i) the shipment is correctly classified, (ii) meets any requirements, (iii) is in conformity with their supply and demand reduction commitments, and (iv) that the importing State is able to manage plastic feedstocks, polymers, additives, or the plastic product in an environmentally-sound manner. This would allow a certain level of control while still permitting trade in certain types of polymers, additives, and plastic products that are not restricted or banned.
- 3. Declaration of imports and exports of plastic feedstocks, polymers, additives, and plastic products in addition to monitoring and reporting:** All imports and exports of plastic feedstocks, polymers, plastics products, and additives covered by the plastics treaty should be reported at prescribed intervals, in accordance with the data reporting system established for that purpose, for instance by sending the data to the plastic treaty secretariat [or Parties]. As a minimum, Parties must declare the type of feedstock or plastics, the States of import, export, and transport, in addition to the amount. Reports should be made easily available by the secretariat. In addition to addressing the general lack of data on plastics and trade, this transparency measure would contribute to ensuring compliance with the treaty's provisions and requirements, and allow other Parties, citizens, and civil society to participate in its enforcement while fulfilling the right of citizens to access environmental information, recognized in parts of the world.²¹
- 4. Possibility for States to take stricter domestic measures:** to strengthen the implementation of the convention, or to allow the implementation of national restrictions of certain types of plastic feedstocks, plastics, or plastics products that are not banned by the treaty. The possibility to allow States to take stricter domestic measures can also be used as a mechanism to ensure compliance (e.g., through the adoption of trade bans against Parties that are in breach of the treaty).

²¹ See for e.g., Aarhus Convention, Arts. 1, 4, 5, 8; Escazú Agreement, Arts.1, 3(h), 5, 6; Rio Principles, Principe 10.



- 5. Provision on the interaction with other regimes:** The treaty needs to address the interactions with other trade-related instruments regulating aspects of the plastics life cycle — in particular, the Basel Convention and the Stockholm Convention. Since 2020, the Basel Convention has regulated the transboundary movements of certain types of plastic waste and, *inter alia*, subjected it to prior informed consent procedures. The Stockholm Convention also regulates certain persistent organic pollutants and chemicals used in plastic, including plastic stabilizers, subjecting their use, trade, storage, and production to various requirements. As recognized in the UNEA mandate, it is essential to ensure cooperation and mutual reinforcement of these instruments and to closely coordinate the provisions of the plastics treaty to avoid overlaps with existing MEAs and agreements, aligning and simplifying procedures where and if possible (in terms of permits and forms). This should happen both during the negotiation and drafting phase, as well as after the entry into force.

Other measures should be considered in order to promote the development of alternative systems to plastic (i.e., reuse and refill systems).²² Technologies or alternatives to plastics that are harmful to human health and the environment²³ should not be promoted through international trade.

Additional and complementary briefings will be published on topics related to trade and plastics in the context of the plastics treaty.

²² ZeroWasteEurope, *Reusable VS single-use packaging: a review of environmental impact*, accessible [here](#).

²³ See for e.g. the human health and environmental impact of bioplastics, biodegradable plastics or compostable plastics at Fauna and Flora International, *Alternative plastic: Is it the answer to ending marine plastic pollution?*, accessible [here](#); OCEANA, *Bioplastics remains plastic: Bio-based, biodegradable and compostable plastics, False solutions to the plastic crisis in the ocean*, accessible [here](#); UNEP, *Biodegradable Plastics & Marine Litter*, accessible [here](#).



