Plastics Federation of South Africa (T/A) Plastics|SA and Chemical and Allied Industries’ Association (CAIA) Response to the draft text of the internationally legal binding instrument on plastic pollution, including in the marine environment

Plastics|SA and CAIA represent members in the plastics and chemical industry. Plastics pollution in the environment and its associated impacts are of concern to the industry that is supportive of a coordinated and globally aligned response and collective action.

Plastic materials are integral to all industry sectors, the consumer and the economy. Over the last two decades, the plastics industry has responded to the need for materials that are more sustainable, affordable and that offer improvements from the perspectives of safety, health, and the environment.

To effectively combat plastic pollution in the environment, industry strongly advocates for an agreement that promotes circularity of plastics and combats plastic leakage though well-functioning and sustainable waste management systems. This can only be achieved through collaboration between the public and private sectors and civil society to ensure an agreement that delivers equitable benefits to all, while considering countries specific needs and circumstances and allowing flexibility in their decision-making. To strengthen achievement of the objectives, alignment with existing agreements is essential to avoid duplication.

With regard to the various options included in the draft text, Plastics|SA and CAIA propose the following input on preferred options and text for consideration.

**Objective and Scope**

*Option 1: The objective of this instrument* is to end plastic pollution, including in the marine environment in order to protect human health and the environment.

Resolution UNEP/EA.5/Res.14 is reaffirmed to avoid detriment from plastic pollution to ecosystems and human activities dependent on them. The urgent need to strengthen global coordination, cooperation, and governance to take immediate action towards the long-term elimination of plastics pollution in marine and other environments is affirmed.

**Primary Plastic Polymers**

*Option 1. Parties, taking into consideration their respective capabilities and national circumstances, shall take the necessary measures to prevent and mitigate the potential for adverse impacts on human health and the environment from the production of primary plastic polymers, including their feedstocks and precursors to manage sustainable production and consumption of plastics, including through resource efficiency and circular economy approaches.*
The focus of the agreement should be on ending plastic pollution and not plastic production. Production caps will restrict the availability of plastics for various industries and will likely result in unintended consequences, such as non-availability of feedstock into other economic sectors, price increases, increased food waste and increased greenhouse gas emissions. A more effective way to address plastic pollution is to increase circularity.

**Hazardous Chemicals of Concern**

*Option 5, 1: Parties shall decide at the governing body*, that includes representatives of the government, industry, and NGOs, on chemicals of concern used in the plastics industry, based on criteria in international Conventions, that should be regulated by the Basel, Stockholm or Rotterdam Conventions, according to their objectives.

Including chemicals in the agreement will be a duplication of chemicals management that is currently regulated by various international and national frameworks. The recently adopted Global Framework on Chemicals is a critical global tool that provides a comprehensive risk-based framework for management of chemicals. The Framework provides mechanisms to address chemicals of concern together with international legal conventions and the Globally Harmonized System of Classification and Labelling of Chemicals.

**Problematic and Avoidable Plastic Products including Short-Lived and Single-Use Plastic Products**

*Option 2, OP1 Alt 2: Subject to its national action plan and based upon national circumstances and capabilities, each Party should take the measures to manage the safe and sustainable production, sale, distribution, of problematic and avoidable plastic products, including short-lived and single-used plastic products, identified based on the science-based criteria with an application-based approach. The measures taken to implement this provision shall be reflected in the national plan communicated pursuant to Part IV.1 on national plans.*

Clear definitions are needed for problematic and avoidable plastic products and short-lived and single-use plastic products. Governments should be enabled to evaluate risk and address plastic products that have a high leakage into the environment at a national level. Alternative substitute materials should be fit for purpose and be evaluated using the same criteria to prevent unintended consequences.

**Intentionally Added Microplastics**

*Option 2, 1: Each Party shall identify products containing intentionally added microplastics in accordance with the application based criteria, and take the necessary measures to manage, where applicable restrict and, where appropriate, not allow, the production, use in manufacturing, sale, distribution, taking into consideration technical feasibility, availability and accessibility of alternative plastics and plastic products, and socio-economic impacts.*
Intentionally added microplastics should be regulated at the national level using a risk-based approach. Secondary microplastics that result from the degradation of plastic products should be mitigated by implementation of waste management systems that prevent leakage of plastics into the environment.

**Exemptions Available to a Party Upon Request**

Option 1,1: Any Party may register an exemption in accordance with the provisions of [Part II.1, Part II.2] and [part II.3] on problematic and avoidable plastic products, including short-lived and single-use plastic products and intentionally added microplastics.

Option 1, OP4 bis 2: Clear procedures on granting of exemptions must be further discussed and clearly outlined under this provision. The exemption may be granted by the governing body*. The decision must be transparent, unbiased, and backed by scientific evidence, taking into account a country’s unique circumstances.

The agreement should allow exemptions where a risk-based approach has clearly demonstrated that plastic leakage into the environment can be managed.

**Product Design, Composition and Performance**

Consistency of product design and performance is key to circularity and should draw on existing international standards. Design principles should consider an application-based approach across the value chain that references the waste hierarchy and life cycle assessment. Implementation should consider national capability and infrastructure to reduce, reuse, refill and repair plastic products and supported by enabling tools, such as extended producer responsibility.

**Product Design and Performance**

Option 1: Subject to its national plan and based upon national circumstances and capabilities, each Party shall take measures to enhance the design of plastic products, including packaging, and improve the composition of plastics and plastic products.

Option 1, 1b: Each Party should take measures to: increase the safety, durability, reusability, refillability, repairability and refurbishability and recyclability of plastics and plastic products, as relevant, taking into account relevant international standards, including any relevant sector- or product-specific standards and guidelines. The measures adopted pursuant to this provision shall be reflected in the national action plan communicated pursuant to [part IV.1 on national plans].

**Circularity Approaches for Plastic Product**

Option 4, 1. Subject to its national plan and based upon national circumstances and capabilities, each Party shall take effective measures to promote the reuse, refill, repair, repurposing and refurbishment, as relevant, of plastics and plastic products
produced within its territory and those available on its market, in particular through the implementation of reuse, refill and repair systems.

Option 4, 2 Subject to its national plan and based upon national circumstances and capabilities, each Party should take measures as deemed appropriate to support this objective.

**Use of Recycled Plastic Contents**

Option 4: Each Party should take the necessary measures for plastic products produced within its territory and those introduced to its market to achieve minimum percentages of safe and environmentally sound post-consumer recycled plastic contents, as appropriate taking into account national circumstances and capabilities. The measures taken to implement this provision may be reflected in the national plan communicated pursuant to [Part IV.1 on national plans].

**Alternative Plastics and Plastic Products**

Option 4: Merge with II.6 (“Non-plastic substitutes”).

**Non-plastic Substitutes**

Option 5: Parties shall ensure that non-plastic substitutes are safe, environmentally sound and sustainable, taking into account their potential for environmental, economic, social and human health impacts, including food and water security, and land loss. Based on full life cycle analysis. Plastics and non-plastics alternatives should be measured with the same criteria as the original plastic product.

**Extended Producer Responsibility**

Option 1: Each Party shall establish, regulate an industry operated national Extended Producer Responsibility (EPR) scheme, taking into account national circumstances and capabilities.

Effective and inclusive implementation of EPR is a key element of accelerating circularity and promoting safe and environmentally sound management of plastic products throughout their lifecycle. It is essential that a sustainable funding mechanism is implemented and collected funds are solely used for operating and maintaining EPR, including financing new recycling infrastructure. Incorporating recycled plastic mandates will increase demand for materials. The agreement should consider regional approaches where appropriate to increase the effectiveness of EPR.

**Waste Management**

Option 3, 1: Each Party should take effective measures to meet best available practices, for minimum safe and environmentally sound collection, recycling, recovery and disposal, taking into account relevant guidelines, available and to be developed waste management
infrastructure, and national priorities. The measures taken to implement this provision shall be reflected in the national plans.

(5)(4): Each Party shall take the necessary measures to prevent open dumping, ocean dumping, littering and open burning.

**Fishing Gear**

Option 1 ter: Each Party shall take effective measures towards collection and environmentally sound waste management of fishing gear. This includes:

a. promote education and raise awareness with fishing industries and practitioners on best practices and methods to reduce the risk of losing fishing gear and other plastics during fishing operations, and for the environmentally sound disposal of end-of-life gear; and

b. promote collaboration between Parties and relevant industry sectors and stakeholders, including fisheries, port reception facilities, waste management, and recycling.

**Trade in Plastics and Plastic Waste**

Polymers and chemicals, including additives, are already regulated under existing global or national/regional chemicals management frameworks and should not be duplicated in the agreement. Enhancing the implementation of the Basel Convention would facilitate the acceleration of plastics circularity. Any provisions for trade in the agreement should be in accordance with the World Trade Organisation principles.

The agreement should promote trade as a constructive tool to enable plastics circularity, especially in developing countries, through facilitation of investment, technical assistance and capacity building, as well as raising the value of plastics waste as a valuable export material.

**Trade in Chemicals, Polymers and Products**

Sub-option 2: Each Party shall cooperate to promote a supportive and open international economic system that would lead to sustainable economic growth and development in all Parties, particularly developing country Parties, thus enabling them better to address the problems of plastic pollution. Measures taken to deal with plastic under this instrument*, including unilateral ones, should not constitute a means of arbitrary or unjustifiable discrimination or a disguised restriction on international trade, specially developing countries’ exports.

**Transboundary Movement of Plastic Waste**

Sub-Option 2: Each Party shall take appropriate measures to ensure that transboundary movements of plastic waste, as defined by the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal, is
only allowed for the purpose of environmentally sound disposal. A Party that is also a Party to the Basel Convention shall take appropriate measures to ensure that transboundary movement of plastic waste is done in accordance with the obligations of that Convention. In circumstances where the Basel Convention does not apply, a Party shall take appropriate measures to ensure that transboundary movements of plastic take into account relevant domestic and international rules, standards, and guidelines.

Sub-Option 3: Each Party shall take effective measures to address illegal trade and illegal dumping of plastic waste, including by promoting cooperation and coordination with relevant regional and international agreements.

**Existing Plastic Pollution, including in the Marine Environment**

1. Parties shall take actions and shall cooperate in accordance with the common but differentiated responsibility to respective capabilities to mobilize resources from multi-stakeholders.
   
   b. Take effective mitigation and remediation measures, including clean-up activities for the identified accumulation zones, and hotspots.

OP 1.c. Alt: Promote safe and environmentally sound remediation activities. Identify critical hotspots where it impacts on health.

OP 1.c. bis: Conducting investigations and distribution research on the current state of plastic pollution, including the marine environment, as well as developing technologies and establishing international guidelines for impact assessments, pollution removal and restoration.

**Just Transition**

Option 1, 1: Each Party shall promote and facilitate, as per national circumstances and capabilities and relevant national regulation, a fair, equitable and inclusive transition for affected populations, with special consideration for Indigenous Peoples and local communities, waste pickers, workers and companies in the plastic value chains, women and vulnerable groups, including impacted communities, children and youth, in the implementation of this instrument* in line with the International Labour Organization Just Transition guidelines according to national social policies and circumstances in the implementation of this instrument*, provided that means of implementation are available for developing countries.

Option 1, 2: The measures taken to implement this provision shall be reflected in the national plan.
Transparency, Tracking, Monitoring and Labelling

Option 0: No text on this matter.

These provisions are already addressed through other international tools.

Financing Mechanism and Resources

1. Parties shall provide the necessary resources within their capabilities for national activities intended to implement this instrument* in accordance with its national policies, priorities, plans and programmes such as EPR; material and resource management; waste management and waste to resource initiatives; clean-up, recycling / recovery projects; community- and entrepreneur based initiatives; capacity building initiatives; awareness programmes; baseline and related studies and other support mechanisms. Such resources may include domestic funding through relevant policies, development strategies and national budgets, and bilateral, multilateral, regional and international funding, as well as facilitation of private sector financing, including voluntary contributions.

2. Parties, multilateral, regional and bilateral entities should provide within their capacities finance, capacity-building, technical assistance and technology and skills transfer for the implementation of this instrument*.

OP4 Alt2. The Parties establish a mechanism for the purposes of providing financial and technical assistance, including technology and skills transfer and development and capacity-building and training.

OP5 Alt. For purposes of the Multilateral Fund, the governing body* shall establish an Executive Committee to develop and monitor the implementation of operational policies, guidelines and administrative arrangements, including the disbursement of resources. The Executive Committee shall discharge its tasks and responsibilities, specified in its terms of reference as agreed by the governing body*. The members of the Executive Committee, which shall be selected on the basis of a balanced representation of the Parties, shall be endorsed by the governing body*. Decisions under this paragraph shall be taken by consensus whenever possible. If reasonable efforts at consensus have been exhausted and no agreement reached, decisions shall be adopted by a two-thirds majority vote of the members of the Executive Committee present and voting.

Option 2, OP6 Alt2. The financial mechanism shall include:

- an existing fund e.g., the Global Environment Facility Trust Fund.

- A Plastics Implementation Fund to support the implementation of national action plans and other activities to be defined by the Parties (access to technology, royalties, capacity building etc.); and

Option 2, OP7 quinquies. In providing resources for an activity, the mechanism should take into account the potential for the proposed activity to reduce releases of plastic to the
environment, relative to its costs, and the need to prioritise financial assistance towards Parties with limited domestic resources and significant capacity challenges.

8. The governing body* shall review on a regular basis the level of financial resources and mechanisms in furtherance of the instrument*'s objectives. The guidance provided by the governing body* to operationalise the Mechanism established under this article and its effectiveness, shall be based on such review, to improve the effectiveness of the mechanism.

OP9 Alt. No text.

10. Each Party shall take measures to make financial resources and mechanisms consistent with the goals of this instrument*, and related risks to human health and the environment.

Effective financial resources, together with capacity building, skills and technology transfer, are key to the successful implementation of the agreement. Mechanisms should take into account the local needs and priorities of developing countries and build on existing systems. Resources should aim to incentivise circularity and sustainability to meet the objectives of reducing plastics pollution in the environment. Current contributions from the private sector need to be recognised. Partnerships between the public and private sector should be encouraged with clear and appropriate polices to encourage private sector investment, innovation and technology development. Financial mechanisms should be determined through the national action plan based on a local socio-economic analysis to ensure no negative consequences on the economy.

Capacity-building, Technical Assistance and Technology Transfer

OP2 bis: Technical assistance and capacity building and provisions on compliance may be delivered through international, regional, subregional and national arrangements, including existing international, regional and subregional centres, through other multilateral and bilateral means, and through partnerships, including those involving the private sector and/or other stakeholders. Cooperation and coordination with relevant other multilateral environmental agreements, as appropriate, should be sought to increase the effectiveness of technical assistance and its delivery.

OP3 Alt No text.

Technology Transfer

1. Developed country Parties should cooperate to facilitate and enhance technology transfer for developing country Parties to implement this instrument*.

2. Parties shall promote and facilitate the development, transfer diffusion of and access to up to date technologies addressing plastic pollution in implementing this provision. Parties shall promote and facilitate innovation and investment in pursuit of new technologies and innovative solutions, and shall facilitate access to essential technologies.
OP3 ter: Developed country Parties should cooperate to enhance the capacity of developing country Parties to implement this instrument, and guarantee sustainability and capacities developed.