

Proposed response template on written submissions prior to INC-3 (part b)

Potential Areas Identified by the Contact Groups

At its second session, the intergovernmental negotiating committee (INC) requested the secretariat to invite written submissions on:

- Any potential areas for intersessional work compiled by the co-facilitators of the two contact groups¹, to inform the work of INC-3.

The template below was prepared by the secretariat, in consultation with the Chair, and is meant as a guide to assist Members and Observers in preparing their written submissions.

All written submissions must be sent to unep-incplastic.secretariat@un.org. The submissions received will be made available on the INC webpage.

Please note that not all fields in the template need to be answered in the submission.

Deadline for submissions:

- I. By **15 August 2023** for written submissions from **observer** organizations.
- II. By **15 September 2023** for written submissions from **Members** of the Committee.

¹ Contact Group 1 focused on Section A: Objective(s). Section B: Substantive Obligations; Contact Group 2 focused on Sections C: Means of Implementation. D: Implementation measures. E: Additional matters as contained in part II of the Annex to document UNEP/PP/INC.2/4.

TEMPLATE FOR SUBMISSIONS

| | |
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| Name of country (for Members of the committee) | |
| Name of organization (for observers to the committee) | Friends World Committee for Consultation (FWCC), represented by the Quaker United Nations Office (QUNO) & The International Union for Conservation of Nature (IUCN) |
| Contact person and contact information for the submission | <p>This paper was prepared by:</p> <ul style="list-style-type: none"> • Alexandra Harrington (University of Lancaster Law School and IUCN) a.harrington1@lancaster.ac.uk • Ronald Steenblik (QUNO): ronald.steenblik@gmail.com <p>with the assistance of Andrés Naranjo (QUNO), Cole Griffin (Bradford University and QUNO), and Karine Siegwart (IUCN).</p> <p>Comments on an early draft from Sirine Rached (the Global Alliance for Incinerator Alternatives) were much appreciated.</p> |
| Date of submission | 15 August 2023 |

Input on the potential areas of intersessional work to inform the work of INC-3 (following the lists compiled by the co-facilitators of the two contact groups)

This input regarding potential areas for intersessional work relates to the following points raised in:

Contact Group 1

From [Co-facilitators report on discussions in contact group 1](#):

“3. Outcomes of each segment

Part A. Objective(s)

(...) A number of members suggested references to additional aspects. The following list does not show any priority of the listed aspects including:

a. Protection of the marine environment

- b. *Just transition and protection of workers, including informal waste pickers*
- c. *Sustainable development, sustainable future for all and SDGs Agenda 2030*
- d. *Precautionary approach as captured by principle 15 of the Rio Conference and Stockholm*
- e. *Human rights approach*
- f. *Including all sources of plastic pollution including legacy plastics*
- g. *Addressing the full lifecycle*
- h. *Impact of plastic pollution on ecosystems, climate change and biodiversity*
- i. *Environmentally sound management of plastic waste*
- j. *Reduction of hazardous plastic waste*
- k. *Accelerating management and utilization of plastic*
- l. *A safe circular economy*
- m. *A non-toxic circular economy*
- n. *Reduction of production*
- o. *Considering special circumstances of countries as SIDS.*

Part B. Obligations

In their consideration of the core obligations, some delegations highlighted interlinkages including with other sections of the options paper and respective measures.

Some members provided detailed proposals orally, including additional proposals of options not yet captured in the options paper, some of which's transcriptions were sent in writing in support to the Secretariat and to inform the Chair when drafting the 0-draft.

There was a proposal to also have an overarching obligation encouraging obligation for establishing a plastic circular economy.

Proposals for intersessional work will be covered at the end of this report, not under each obligation.

Possible Obligation 1. phasing out and/or reducing the supply of, demand for and use of primary plastic polymers

Many members supported consideration of some options listed under this obligation (...) A number of members expressed support for the use of market-based measures under paragraph 10(c), with flexibility in the choice of specific measures to be adopted at the national level to account for national circumstances. It was suggested that both incentives and disincentives should be considered. Some delegations supported the removal of fiscal incentives and subsidies to the production of primary plastics. Some members highlighted the need to take binding obligations with flexibility for countries like SIDS."

Contact Group 2:

1. To consider the potential role, responsibilities and composition of a science and technical body [to support negotiation and/or implementation of the agreement]
2. To consider potential scope of and guidance for National Action Plans [including optional and/or suggested elements]
3. To identify current provisions within existing MEAs [and other instruments] on cooperation and coordination that could be considered
4. To consider how other MEAs provide for monitoring, and suggest best practice
5. To consider options to define 'technology transfer on mutually agreed terms
6. To further consider how a potential financing mechanism could work [including a new standalone mechanism, a hybrid mechanism, or an existing mechanism]
7. To identify options to mobilise and align private and innovative finance (including in relation to matters at 24(e) and the proposed Global Plastic Pollution Fee (GPPF))
8. To map current funding and finance available [to address plastic pollution] and determine the need for financial support for each Member
9. To identify capacity building and training needs for each Member.

Joint Submission to INC-3 on Plastic Subsidies

Submitted by the Friends World Committee for Consultation (FWCC) - represented by the Quaker United Nations Office (QUONO)

&

The International Union for the Conservation of Nature (IUCN)

Introduction

Several documents, both from civil society organisations (CSOs) and several INC members themselves, submitted in advance of INC-2 expressed a desire to address the issue of subsidies in the negotiations to develop an internationally binding instrument (ILBI) to address plastic pollution, especially those subsidies benefiting the primary production stages of plastics.

The "Co-facilitators report on discussions in Contact Group 1" at INC-2 itself, summarizing discussions under the heading of "Possible obligation 1: phasing out and/or reducing the supply of, demand for and use of primary plastic polymers", noted that "Some delegations supported the removal of fiscal incentives and subsidies to the production of primary plastics."²

While it is true that plastics and goods made of plastics are subject to the disciplines of the World Trade Organization's (WTO's) Agreement on Subsidies and Countervailing Measures (i.e., the rules specifying

² G. Sisior and A. Borchmann, "[Co-facilitators report on discussions in Contact Group](#)" (Nairobi: United Nations Environment Programme, June 2023), p. 3

under what conditions a subsidy may or may not be provided by a Member, and mechanisms for members to challenge those subsidies), these disciplines were developed only with the trade-distorting effects of the subsidies in mind. Thus non-prohibited government subsidies that benefit the production of plastics are “actionable” only if it can be shown that they cause adverse effects to the interests of another Member. Those CSOs and INC members that are concerned also about the effects of subsidies on the environment and human health (whether or not they cause adverse trade effects) are seeking stronger instruments.

This submission It has been prepared to inform discussions at future meetings of the INC, and any intersessional work, on the topic. It addresses specifically the question of how an eventual internationally binding instrument (ILBI) could consider including disciplines on subsidies that stimulate the production or consumption of plastics. The third meeting of the INC (INC-3), scheduled to take place in Nairobi in November 2023 will be working from a "zero draft" prepared by the INC Secretariat, and that the purpose of this paper is to help inform those discussions by exploring the various elements of text in the instrument addressing subsidies, drawing on examples of and lessons from experiences addressing subsidies — especially environmentally harmful subsidies — in other international agreements, both at the WTO and elsewhere, including in regional trade agreements (RTAs).

Background

Government support is a feature of many energy-intensive industries, including the manufacture of plastics. Support is provided to producers of crude oil, natural gas, and coal, which provide the hydrocarbon feedstocks of 99% of the plastic produced annually in the world; to the plants that refine crude oil and process natural gas, yielding plastic precursors such as naphtha, ethane, and propane; to the plants that create monomers from these chemicals; to the plants that then string the monomers into plastic polymers chains; and to plants that use these polymers to create final plastic products.

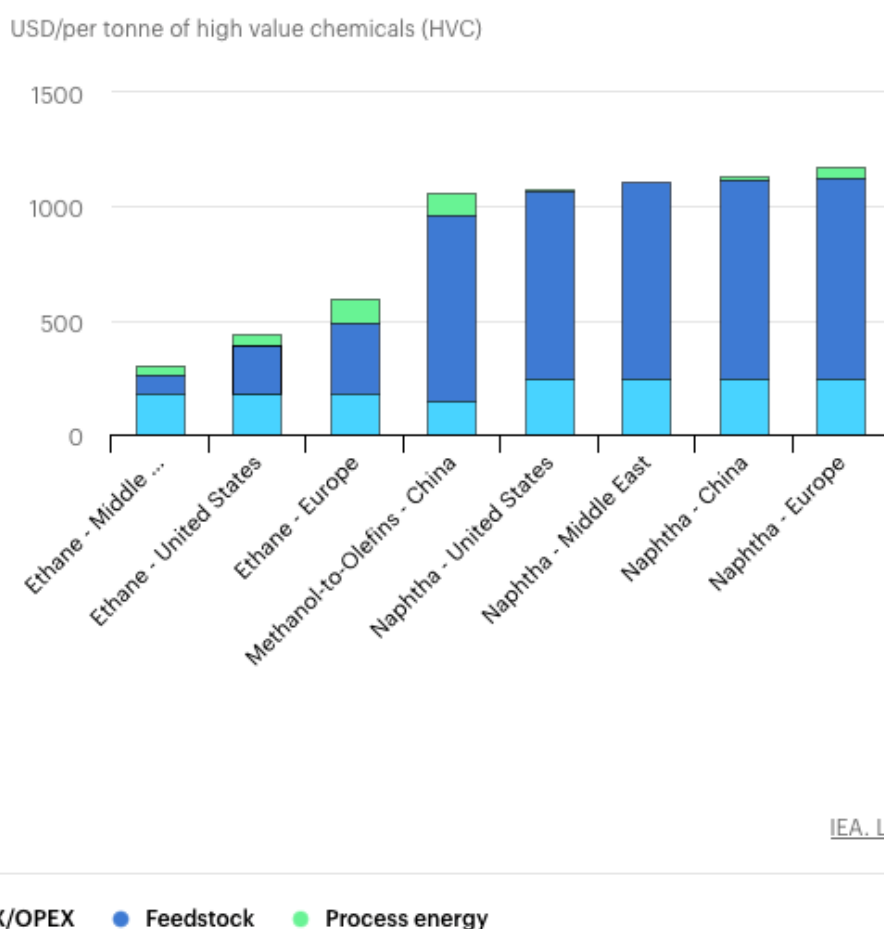
These subsidies are provided via several mechanisms, particularly grants, concessional loans, loan guarantees, and tax holidays provided to support investments in new productive capital; policies that reduce the prices of plastics precursors below their market value; and policies that reduce the prices of energy inputs into the plastics-making process. Other subsidies can include support provided in kind (e.g., free or under-priced land or water), and wage subsidies.

Credit-related subsidies provided by governments or financial institutions under their control (collectively, “public finance”) encourage investments in new manufacturing capacity, or the expansion of existing capacity. No definitive global estimate exists for the amount of public finance provided to plastics manufacturing facilities, but data reported by the organization Oil Change International (OCI) suggest that it is at least USD 2 billion a year.³ That is the principal, not its subsidy-equivalent value, which is likely to be less, depending on how much more generous are the terms of the credit compared with what the recipients could obtain from private suppliers of finance. However, as has been pointed out by many observers over the years, the value of public finance to recipient firms can be greater than just its lower-than-market terms, as the involvement of a government-backed institution also provides a

³ Analysis by Cole Griffin of public finance to petrochemical projects producing plastics listed in Oil Change International’s [“Public Finance for Energy Database.”](#) accessed in August 2023.

signaling effect that the investment is considered sound.⁴ In addition to public financing that is publicly reported, there may be assistance provided to state-owned enterprises that is not being reported. Support provided via the underpricing of chemical inputs and energy benefits mainly established firms, by lowering their production costs, though it also acts as an additional incentive to invest in those jurisdictions that provide it. Country-level data on the value of such support has not been publicly reported. However, a recent report from the International Energy Agency (IEA) on the future of petrochemicals did look at the levelized costs of petrochemicals for selected feedstocks and world regions in 2017, and found wide differences in those costs, especially the costs of high-value chemical feedstocks (Figure 1). Other information on ethane prices points to a similar degree of divergence in feedstock prices at the time.⁵

Figure 1. Simplified levelized cost of petrochemicals for selected feedstocks and regions, 2017



Source: International Energy Agency, "[The Future of Petrochemicals: Towards a More Sustainable Chemical Industry](#)", accessed on 15 August 2023.

⁴ See, for example, G.C. Hufbauer and J.S. Erb, *Subsidies in International Trade* (Washington: Inst. for Int. Economics, 1984), pp. 2-5; and J. Skovgaard et al., "Finance for fossils – The role of public financing in expanding petrochemicals", *Global Environmental Change*, Vol. 80 (May 2023), at <https://doi.org/10.1016/j.gloenvcha.2023.102657>.

⁵ See Intratec, "[Ethane Price | Current and Forecast](#)", accessed 15 August 2023.

The IEA, which estimates consumer price subsidies for fuels and electricity at the economy-wide level, does not measure consumer price subsidies for fossil-fuel-derived chemical inputs to petrochemical manufacturing, nor does it identify the subsidies accruing to individual industries. Given that global consumer price subsidies for fossil fuels and fossil-fuel-derived electricity have ranged from around USD 500 billion to over USD 1 trillion a year (depending on international energy prices)⁶, and chemical feedstocks used in plastics manufacturing account for around 4% of petroleum product consumption (and a similar share of natural gas use), the value of the underpricing of input petrochemicals and energy consumed in the manufacture of primary plastics is likely worth more several tens of U.S. billion dollars annually.

Given that an overriding objective of an eventual Global Plastics Treaty is to reduce incentives to produce or consume plastic, it is imperative that it include language that requires its Parties to end those incentives as quickly as possible — formally, “subsidy disciplines”. Logically, the scope of those disciplines should be specific to plastics and not attempt to discipline subsidies that benefit other industries. That implies concentrating on those targeted to parts of the lifecycle of plastics that are downstream of petroleum refineries, natural-gas processing plants, and coal-processing plants. As desirable as it is to phase out subsidies to fossil fuel production, and to the consumption of fossil fuels for purposes other than plastics manufacturing, it is unlikely that governments would be willing to try to discipline those via an agreement that is focused on plastics.

Common elements of international subsidies agreements

In the interest of aiding delegates to the ICN in thinking about how to approach the disciplining of subsidies in an eventual ILBI, the IUCN and QUNO have reviewed past and current supranational, bilateral, regional, plurilateral, and multilateral agreements that contain rules on subsidies, particularly those with binding rules related to subsidies benefiting a particular industry, to identify common elements contained in such agreements. The section below provides an overview of those elements and suggests which approaches seem most suitable to addressing the problem of subsidies to plastics.

To save on extensive footnotes, readers of this submission are referred to the following sources at which the actual texts of the agreements can be found:

- The 1947 and 1994 General Agreement on Tariffs and Trade (GATT):
https://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47
- The World Trade Organization (WTO) agreements that emerged out of the 1994 Final Act of the Uruguay Round of multilateral trade negotiations:
https://www.wto.org/english/docs_e/legal_e/legal_e.htm#gatt47
- The 2022 WTO Agreement on Fisheries Subsidies:
<https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/33.pdf&Open=TRUE>
- Regional Trade Agreements (RTAs) notified to the WTO:
<http://rtais.wto.org/UI/PublicMaintainRTAHome.aspx>

⁶ International Energy Agency, “[Energy subsidies: Tracking the impact of fossil-fuel subsidies](#)”, accessed 15 August 2023.

Language in the preamble

Common to most agreements is a preamble explaining the motivations for creating the agreement. For many years, the main motivation of subsidy agreements was to maintain or restore “normal competitive conditions”; in recent years, however, protection of a natural resource or the reduction of pollution has been mentioned as an explicit, even over-riding, aim of the agreement. This can be seen in recent WTO practice regarding the negotiations of and agreement for an instrument relating to fisheries subsidies. Although trade effects were an important focus at the commencement of WTO negotiations to craft a WTO Agreement on Fisheries Subsidies, the final 2022 Agreement on Fisheries Subsidies places as much stress, if not more, on the effects of subsidies on overcapacity and overfishing. While these issues have an inherent link to trade policy, their framing within the Agreement indicates that they have been included because of the harm they cause to the environment and marine ecosystems.

The scope of the agreement

Language on the scope of the agreement — i.e., what products or subsidized activities are covered by it — is also a necessary element. In recent years, product scope has often been defined with reference to commodity codes of the most recent version of the Harmonized Commodity Description and Coding System (HS). Thus the 1994 WTO Agreement on Agriculture specifies that it covers all the goods contained in Chapters 01-24 of the HS, apart from fish and fish products, plus goods described by 13 other 4-digit or 6-digit codes. By contrast, the 2022 WTO Agreement on Fisheries Subsidies covers simply “marine wild capture fishing and fishing related activities at sea”, with “fish” defined as “all species of living marine resources, whether processed or not”.

The scope of any agreement on subsidies connected to plastics, because they are manufactured, would need to delineate upstream and downstream boundaries. This is also in accord with the emphasis of UNEA and the majority of States participating in the INC process on the need for the ILBI to focus on all aspects of the plastics life-cycle as well as circularity within it. Subsidies to primary plastics would encompass government support (including that provided through subsidized prices for inputs) to:

- facilities such as steam crackers that break down saturated hydrocarbons (e.g., methane, ethane, propane, or butane) into lighter alkenes (olefins) such as ethene (or ethylene) and propene (or propylene);
- facilities that process monomers to form polymer chains (polymerisation);
- facilities that blend other substances (colorants, stabilizers, plasticizers, and other materials that modify the plastic's physical and chemical properties) with polymers to produce plastic resins.

Downstream of the production of primary plastics are:

- facilities that manufacture semi-manufactured products of plastics or synthetic rubber, including synthetic fibres (other than those that are biodegradable);
- facilities that manufacture final products of plastics or synthetic rubber, including apparel (other than those that are made of biodegradable materials).

These categories roughly correspond to the Codes of the Harmonized Commodity Description and Coding System (HS), as amended in 2022, listed in Table 1. This is only an illustrative list, and would need to be reviewed by experts in HS classification and updated in light of periodic amendments to the HS.

Table 1. A partial list of monomers, polymers, and products made from plastics and their corresponding HS (2022) codes.

| HS (2022) Headings or Subheadings | 4- or 6-digit codes | Brief description | Exclusions |
|---|---------------------|---|---|
| <i>Primary plastics and their precursor chemicals</i> | | | |
| HS Subheading | 2711.14 | (ethylene, propylene, butylene, and butadiene — in liquid form) | |
| HS Subheadings | 2901.21 – 2901.29 | (unsaturated acyclic hydrocarbons) | |
| HS Subheading | 2902.50 | (styrene) | |
| HS Subheading | 2902.60 | (ethylbenzene) | |
| HS Subheading | 2903.21 | (vinyl chloride) | |
| HS Subheading | 2903.23 | (trichloroethylene) | |
| HS Subheading | 3208.10 | (paints and varnishes based on polyesters) | |
| HS Subheading | 3208.20 | (paints and varnishes based on acrylic or vinyl polymers) | |
| HS Subheading | 3506.91 | (adhesives based on polymers of headings 39.01 to 39.13 or on rubber) | Similar products made from natural rubber |
| HS Subheading | 3812.20 | (compound plasticisers for rubber or plastics) | |
| HS Subheading | 3812.31 | (anti-oxidising preparations and other compound stabilizers for rubber or plastics) | |
| HS Headings | 39.01 – 39.14 | (polymers and copolymers in their primary forms) | |
| HS Headings | 39.16 – 39.21 | (semi-manufactured plastics) | |

| <i>Manufactured articles of plastic or synthetic rubber</i> | | | |
|---|---------------|---|---|
| HS Headings | 39.22 – 39.26 | (articles of plastics) | |
| HS Subheading | 4001.10 | (pre-vulcanized rubber) | Non-vulcanized natural rubber; organic latex |
| HS Heading | 40.02 | (synthetic rubber) | |
| HS Headings | 40.05 – 40.17 | (products of vulcanized or synthetic rubber) | |
| HS Headings | 42.01 – 42.02 | (saddlery and harnesses; trunks, handbags, etc. — of plastic or vinyl) | Similar products made only of biodegradable materials or metals |
| HS Heading | 43.04 | (artificial fur and articles thereof) | |
| HS Chapters | 54 – 63 | (textiles and textile articles) | Similar products using only biodegradable materials or metals |
| HS Chapters | 64 – 67 | (footwear; headgear; umbrellas; artificial flowers; wigs — of synthetic fibres, plastic or vinyl) | Similar products using only biodegradable materials or metals |
| HS Subheading | 9403.70 | (furniture of plastics) | |
| HS Subheading | 9404.21 | (mattresses of cellular rubber or plastics) | |

The question of subsidies related to the post-use phase of plastics — collection, recycling, repurposing, landfilling or incineration — were not directly discussed at INC-2, but could be seen as part of the discussion under the topic of incentives and disincentives.⁷

The subsidy definition

Crucial to any agreement that imposes disciplines on the use of subsidies is clarity as to what is covered by the term. That has not always been the case, however. The drafters of the 1951 Treaty Establishing the European Coal Community assumed that common understanding of what was meant by “subsidies or state assistance” was sufficient at the time. Neither did the Tokyo Round “Subsidies Code” define the term “subsidy”. However, the term was finally defined in the Article 1 of the 1994 WTO Agreement on

⁷ Of relevance to the tracing of plastics and plastic wastes, some RTAs and FTAs have begun to include express restrictions on the use of subsidies for digitalization and digital products, which can be seen as important in light of suggestions that the ILBI include digital information elements for customs enforcement and shipping activities.

Subsidies and Countervailing Measures (“the SCM Agreement), and many subsidy agreements since then, including RTAs⁸, cross-reference that definition.

The SCM Agreement defines a subsidy in terms of the transfer mechanism. Article 1 of the Agreement deems a subsidy to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as “government”), i.e. where:

- (i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);
- (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- (iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

Article 1(b) is important to understanding several of the types of measures mentioned in the definition. In particular, if a government loans money to a firm, provides an infusion of equity, guarantees one of its loans, provides it with goods or services, or purchases some of its goods, a subsidy is deemed to exist only if the recipient obtains a greater value from the transaction than it would have from an equivalent private-market transaction. Hence, if a government provides services to a company but charges a market price for those services, or buys goods produced by the company at the prevailing market price, no subsidy is involved. In the credit market, however, it is rare that the terms under which public financial instruments are offered are identical to those that a firm could receive from the private banks or investors. The whole rationale of government involvement in the credit market is to stimulate investment beyond what the private market alone would provide.

Given the widespread acceptance of the SCM definition of a subsidy — not only by the WTO’s 164 member economies, but also in many other contexts — we would recommend that the ILBI reference that definition as well.

The issue of specificity

The SCM Agreement definition of a subsidy excludes government provision of general infrastructure, and requires that for a non-prohibited subsidy to be actionable (see below) it must be “specific to an enterprise or industry or group of industries ... within the jurisdiction of the granting authority.” The WTO Agreement on Agriculture goes even further by including in the green box (i.e., allows without limit) many types of government expenditure that, while not specific to an enterprise, clearly are

⁸ It is also common for RTAs and FTAs references to subsidies to be included as part of the National Treatment and Market Access provisions, and, in some instances, targets for the elimination of unfair trade practices.

specific to the industry. Most, more recent agreements, however, simply cross-reference Article 2 of the SCM Agreement to define when a subsidy can be considered non-specific.

There are practical and economic reasons for the specificity requirement when the objective of a subsidy agreement is the trade effects of the subsidies. When the target is environmentally harmful subsidies, however, eliminating non-specific subsidies from consideration can be problematic. The bulk of subsidies to fossil fuels, for example, are non-specific, provided through general policies that depress domestic prices for the fuels (and fossil fuel based electricity) below — sometimes well below — import or export parity prices. Such policies are non-specific because they affect all consumers of those fuels. Yet the underpricing of fossil fuels, in the language of the G20 and others, “encourages wasteful consumption”, which in turn leads to higher emissions of air pollutants and climate-changing greenhouse gasses.

It is therefore significant that the penultimate draft version of the WTO Agreement on Fisheries Subsidies contained language in brackets (indicating it was disputed) that would have included non-specific subsidies within the purview of the Agreement.⁹ That language did not survive into the final Agreement, but it shows that the wall between specific and non-specific subsidies, in the context of international subsidy agreements, may be starting to crumble.

Considering that the consumer price subsidies for fossil fuels and electricity that benefit plastics production are generally non-specific — i.e., they benefit all industries that consume these forms of energy — it would be worth including those that benefit plastics production within the purview of the ILBI, even if they are non-specific. Focusing solely on specific subsidies, by contrast, would unduly limit the ability of the instrument to create a more level playing field both between producers of plastics operating in different countries and between primary plastics and more-expensive substitutes.

Subsidy disciplines

The rules that govern the use of subsidies — i.e., subsidy disciplines — form the core of any agreement on subsidies. Many proclamations have been issued by intergovernmental forums, organizations or agreements (such as APEC, the G7, the G20, the OECD, the UNFCCC) over the last three decades that contain hortatory language exhorting their member economies to limit, phase out or end various forms of subsidies, particularly of late those that are environmentally harmful, such as to agriculture, fossil fuels, or marine capture fishing. The 15th Conference of Parties of the Convention on Biological Diversity (Montreal, 17-19 December 2022), for example, set a target (No. 18) for its members to:

Identify by 2025, and eliminate, phase out or reform incentives, including subsidies harmful for biodiversity, in a proportionate, just, fair, effective and equitable way, while substantially and progressively reducing them by at least 500 billion United States dollars per year by 2030, starting with the most harmful incentives, and scale up positive incentives for the conservation and sustainable use of biodiversity.¹⁰

⁹ Article 1.2 of the “Agreement on Fisheries Subsidies — Draft Text”, WTO Document No. WT/MIN(21)/W/5 of 24 Nov. 2021, read “[1.2 Notwithstanding paragraph 1 of this Article, this Agreement also applies to fuel subsidies to fishing and fishing related activities at sea that are not specific within the meaning of Article 2 of the SCM Agreement.]”.

¹⁰ Convention on Biodiversity, “[COP15: Nations adopt four goals, 23 targets for 2030 in landmark UN Biodiversity Agreement](#)”, accessed on 12 August 2023.

While the target is only aspirational, and is not binding on its members, nor does it specify which subsidies it considers to be harmful for biodiversity, it does propose a logical sequence for progressively reducing subsidies, “starting with the most harmful incentives”.

Agreements that are binding generally establish such a hierarchy according to the degree of trade distortion they cause. Typically, these classifications use a “traffic light” formula, with some or even most having to be stopped (red-lighted), some that are allowed but subject to reductions or can only be used when exercising caution (amber-lighted), and the remaining that are allowed with few if any limits (green-lighted).

The SCM Agreement prohibits most subsidies contingent on the recipient’s export performance, and subsidies contingent on giving preference to the use of domestic over imported goods. Some RTAs and FTAs go even further and include the practice of cross-subsidisation as covered and largely prohibited conduct, though as a generic matter rather than in the industry-specific context.¹¹

For the first five years after the SCM Agreement entered into force (after which it was not renewed) it deemed certain qualifying subsidies as “non-actionable” if they were used to support research, to assist disadvantaged regions within a Member country, or to cover up to 20% of the costs of helping existing facilities adapt to new environmental requirements. All other subsidies that are also “specific” (see above) are considered “actionable” — i.e., subject to unilateral or multilateral remedies if they can be shown to be causing harm to the economic interests of another member.

The WTO Agreement on Agriculture also uses colors for different categories of subsidies, or rather “domestic support”, but refers to them as “boxes”. Domestic support classified in the “amber box” are subject to reduction commitments. Domestic support levels exceeding those reduction commitments are prohibited. Forms of domestic support that would otherwise be classified in the amber box but set limits on farmers’ production are placed in the “blue box”, to which no limits on spending apply. Domestic support that does not distort trade, or at most causes minimal trade distortions, is classified as in the “Green box”.

RTAs and FTAs tend to create exceptions for subsidies in certain government procurement practices, investment practices, and trade in services when the services are solely domestic in nature, or, as in the UK–EU FTA, for the performance of limited services in the public interest. The two areas where there has been a development of more defined subsidies provisions across many RTAs and FTAs are agricultural export subsidies and subsidies to marine capture fisheries.

Generally, agricultural export subsidy provisions in RTAs and FTAs are focused on their elimination rather than trying to carve out exceptions.¹² Fisheries subsidies elimination, including in the marine capture fishing context, tend to be linked to issues of environmental protection and development

¹¹ See the Australia–Chile FTA; the Japan–Peru FTA; the Japan–Australia FTA; the EU–Armenia FTA; the EU–Singapore FTA; the UK–Japan; and the Israel–Ukraine FTA.

¹² Core examples of this include the US–Morocco FTA, the Colombia–Costa Rica FTA, the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR), the US–Bahrain FTA; the Mexico–Bolivia FTA, the Regional Comprehensive Economic Partnership Agreement (RCEP), the Australia–Chile FTA, the Thailand–Australia FTA, the Hong Kong–Chile FTA, the United States–Mexico–Canada Agreement (USMCA), the New Zealand–Taiwan FTA, the Mexico–Uruguay FTA, the EU–Pacific States RTA, the Japan–Peru FTA, the EU–Central America RTA, the EU, Colombia, and Peru RTA, the EU–Ukraine FTA, the Iceland–China FTA, the EFTA–Central America RTA, CETA, the EFTA–Philippines RTA, the UK–CARIFORUM RTA, and the SACU–UK RTA.

assistance.¹³ An important example of an exception to these trends in fisheries subsidies terms comes from the CPTPP, which allows for some flexibility outside of expressly prohibited subsidies “taking into consideration a Party’s social and developmental priorities, including food security concerns.”¹⁴

The trend in more recent subsidy agreements has been to employ only two categories of subsidies: prohibited and permitted. The WTO Agreement on Fisheries Subsidies, for example, prohibits subsidies to a vessel or operator engaged in illegal, unreported and unregulated (IUU) fishing; fishing related activities in support of IUU fishing; fishing targeted at an overfished stock; or fishing outside an EEZ and not covered by a regional fisheries management organization. What are permitted are “subsidies or other measures implemented to rebuild a fish stock to a biologically sustainable level.”

Similarly, though not yet part of any binding agreement, the various non-binding commitments relating to fossil fuel subsidies (notably by APEC, the G7, the G20, the UNFCCC, and in the UN Sustainable Development Goal 12.c) target an undefined category of subsidies they call “inefficient”, which implies that they consider some subsidies to fossil fuels “efficient” or “not inefficient”. What the parties to these commitments may have had in mind could include help to defray “expenses of re-adaptation”, such as unemployment assistance, moving expenses, and worker retraining — types of government assistance allowed even in the otherwise stringent 1951 European Coal and Steel Community Agreement.¹⁵

The strong environmental reasons for disciplining subsidies that benefit the production of plastics, as well as trade reasons (namely, the distortion of competition both in the markets for like products and between plastics and alternatives to plastics), argues for prohibiting (i.e., “red-lighting”) most subsidies and allowing only those that facilitate the contraction of the industry, such as assistance to workers made redundant by plant closures.

There are good reasons why certain types of subsidies should be ended more quickly than others. A high priority should be ending public finance for projects that form part of the supply chain for plastics. Such public finance encourages investment in long-lived new capacity, creating the risk of stranded assets if other policies lead to a reduction in demand for their products. On the other hand, ending public financing of new plastics-making capacity has no adverse effect on existing plants. If such public financing were to be banned, however, the ban would need to be implemented quickly after it was announced, in order to avoid a surge in applications for new projects before the deadline.

What can make such a task easier is that a growing number of bilateral government institutions and multilateral financial institutions have ended or committed to ending their support for fossil fuel projects. Some 39 of them, or their governments, signed a pledge to “end new direct public support for the international unabated fossil fuel energy sector” within a year of signing the statement, thus by the end of 2022.¹⁶ However, only a few of them include petrochemical plants within their pledges.¹⁷ Petrochemical plants that produce plastic polymers or their precursor chemicals need to be added to

¹³ For direct links to the RTAs and FTAs discussed in this brief, see World Trade Organization, Regional Trade Agreements, <https://www.wto.org/english/tratop_e/region_e/region_e.htm>, accessed 13 August 2023.

¹⁴ CPTPP Art 20.16 (7)

¹⁵ See, e.g., Article 56 of the “[Treaty establishing the European Coal and Steel Community \(Paris, 18 April 1951\)](#)”, accessed 12 August 2023.

¹⁶ “[Statement on International Public Support for the Clean Energy Transition](#)” (Glasgow, 4 November 2022), accessed 12 August 2023.

¹⁷ See: Oil Change International, “[Fossil Free Policy Tracker](#)”, accessed 12 August 2023.

the list of types of projects that can no longer benefit from public finance, and more governments and institutions need to commit to ending the use of public funds to finance the production of plastics.

As suggested by Figure 1 (above), the biggest subsidies to primary plastics production are conferred through the prices of process energy and high-value chemical feedstocks. Ending those immediately would be highly disruptive for many plants, but they need to be eliminated on an aggressive schedule — e.g., within four years in the case of high-income countries, perhaps six years for developing countries. (Very little primary plastics are made in LDCs.) Rather than schedule the phase out in terms of the subsidy value, it could be specified in terms of percentage increments towards an agreed international reference price. After that transition period, price subsidies for process energy and high-value chemical feedstocks would be prohibited.

Arguably there is also a strong link to be made with existing WTO instruments, RTAs and FTAs that would allow for immediate prohibitions of agricultural and fisheries subsidies that can be linked to plastics (particularly in the context of IUU and harmful fishing practices given the connections to ghost gear). Indeed, the inclusion of these types of provisions in the ILBI can be seen as reinforcing the existing elements of WTO Agreements, RTAs and FTAs rather than potentially causing conflicts in the context of subsidies.

An additional area to consider is the potential link to and parallels with subsidies for renewable energy since there have been discussions of the nexus between renewable energy and the plastics life cycle, as well as the elimination of single-use plastics. Additional elements that could be considered in the ambit of permitted subsidies and the ILBI include potential subsidies for industries switching away from single-use plastics (as a limited, phased system), potential subsidies for industries closing loops in the plastics life-cycle to end plastic pollution (as a limited, phased system), and potential subsidies for the development of new plastics alternatives and technologies.

Notification of subsidies and other pertinent information

All international subsidy agreements to date have included requirements that the parties to the agreement notify each other of their subsidies in a timely manner. All the WTO Agreements that focus on subsidies contain specific language relating to the nature and timing of information on subsidies (or in the case of agriculture, “domestic support”), plus any additional information that would assist other members in understanding the likely trade effects of the subsidies. Those notifications are then made publicly available and are reviewed on a regular basis by the assigned standing committees.

The OECD’s two attempted plurilateral agreements — on shipbuilding and steel — would have similarly required that the subsidies covered by the agreements be notified to bodies established to administer the agreements. Though neither agreement has entered into force, OECD members have been instructed by the OECD Council Working Party on Shipbuilding (WP6) and the OECD Steel Committee to notify their subsidies supporting, respectively, shipbuilding and iron or steel manufacturing.

Bilateral FTAs in many cases do not require that subsidies be notified to the parties to the agreement but, rather, that they be notified to the WTO, as required by Article 25.8 of the SCM Agreement. The Comprehensive and Progressive Trans-Pacific Partnership (CPTPP), however, which entered into force at the end of 2018, and which prohibits the Parties to the Agreement from granting or maintaining “(a) subsidies for fishing that negatively affect fish stocks that are in an overfished condition; and (b)

subsidies provided to any fishing vessel”¹⁸ that has been identified as engaging in illegal, unreported or unregulated (IUU) fishing, requires each Party, within one year of the date of entry into force of the Agreement and every two years thereafter, to notify to the other Parties “any subsidy¹⁹ ... that the Party grants or maintains to persons engaged in fishing or fishing related activities.”

In addition to notification requirements, subsidy agreements often include procedures that allow parties to the agreements to ask questions about other countries’ subsidies during meetings of the governing body for the agreement. Any Member of the WTO Committee on Subsidies and Countervailing Duties, for example, at any time may make a request in writing seeking information on “the nature and extent of any subsidy granted or maintained by another Member, or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification”.²⁰

Current transparency on government support to plastics is poor. Even before concluding language in the ILBI on subsidies disciplines, INC Parties should be encouraged to either notify their subsidies to various parts of the supply chain of plastics to the WTO or to the INC Secretariat. They could also instruct other inter-governmental bodies, such as the OECD, to start identifying and measuring subsidies. Resources could be provided also for technical assistance to help Parties with limited capacity identify and estimate their subsidies (see next section). Once the agreement is finalized, however, a more formal process of notifications will need to be institutionalized.

Accounting for national circumstances and capabilities

The General Agreement on Tariffs and Trade (GATT) of 1947, the first multilateral instrument to contain binding language relating to subsidies, endorsed the principle that contracting parties with low standards of living and in the early stages of development “shall be free to deviate temporarily from the provisions of the other Articles of this Agreement” (GATT 1947, Article XVIII, 4(a)). This principle was more formalized as “special and differential treatment” (SDT) in the various 1994 WTO Agreements, including the SCM Agreement and the Agreement on Agriculture. The 2022 WTO Agreement on Fisheries Subsidies also includes SDT provisions.

Recognition of the need to provide special or differential treatment in connection with subsidies can also be found in a few RTAs, such as the CPTPP, which allows for some flexibility outside of expressly prohibited subsidies “taking into consideration a Party’s social and developmental priorities, including food security concerns” (CPTPP Art 20.16 (7)).

It is not uncommon for RTAs and FTAs to include recognition of these types of terms throughout their rights and obligations as well. For example, in the Peru-Australia FTA, the Parties agreed that, in the climate context, their “actions should reflect domestic circumstances and capabilities.” (Peru-Australia FTA Art. 19.4(7)). Other examples include the EU, Peru and Colombia FTA, the UK-Georgia FTA, the UK-Ghana FTA, the EFTA-Indonesia RTA, the EU-Moldova FTA, and the CARIFORUM-UK RTA.

Similar provisions are included in several UN legal instruments, such as the United Nations Framework Convention on Climate Change (UNFCCC), which embraces the principle of “common but differentiated

¹⁸ Article 20.16: Marine Capture Fisheries, paragraph 5, of the Comprehensive and Progressive Trans-Pacific Partnership.

¹⁹ “... within the meaning of Article 1.1 of the SCM Agreement that is specific within the meaning of Article 2 of the SCM Agreement ...” Article 20.16, para. 9.

²⁰ SCM Agreement, Article 25.8.

responsibilities”. The UNEA Plastic Resolution instructs the INC to take into account “among other things, the principles of the Rio Declaration on Environment and Development, as well as national circumstances and capabilities.”

Accepting slight nuances in the meanings and interpretations of these phrases, they generally imply the following.²¹

- longer time periods for implementing commitments;
- measures to increase trading opportunities for developing countries;
- provisions requiring all members or parties to safeguard the interests of developing countries;
- special provisions related to least-developed country (LDC) members or parties; and
- support to help developing countries, including LDCs, build the capacity to implement their commitments, implement technical standards, and handle disputes.

The WTO’s latest negotiated subsidy agreement, the WTO Agreement on Fisheries Subsidies, contains provision relating to the above, but in contrast with the SCM Agreement and the WTO Agreement on Agriculture it provides much shorter implementation periods, and by the end of those periods requires developing countries and LDCs to abide by the same rules prohibiting certain subsidies relating to marine capture fish or fishing as apply to developed country members.

What distinguishes government support for plastics manufacturing from fisheries subsidies is that much of the credit financing that has to end is provided by financial institutions *outside* of developing countries. Moreover, there is much less of an argument than there is for food or fish, or even steel or energy, that developing countries have a compelling need for a degree of self sufficiency in plastics.

Technical and financial assistance

UNEA Resolution 5/14 instructs the INC to consider whether there would be a need for “a financial mechanism to support the implementation of the instrument, including the option of a dedicated multilateral fund”. There is precedent for such financial instruments in funds in other international agreements, including those that discipline subsidies.

Throughout INC-1 and INC-2, repeated calls for a financial mechanism were made by States across all levels of development. These calls stressed the need for a dedicated financial mechanism that assists in capacity-building and technology transfer as well as in meeting reporting and national action plan requirements and beyond. Many RTAs and FTAs make provisions for technical and financial assistance for the implementation of their terms, and that this is a common method of facilitating assistance in the WTO, for example through elements of Aid for Trade. Thus, the inclusion of these provisions in the ILBI would be in keeping with trade law practice at the international, regional and bilateral levels.

In order to assist developing countries implement the various agreements that emerged from the Uruguay Round of multilateral trade negotiations, including the SCM Agreement and the Agreement on Agriculture, the WTO created an Institute for Training and Technical Cooperation (ITTC), which coordinates all the WTO’s technical assistance and training activities. It is funded in part from the WTO’s

²¹ Adapted from WTO, “[Development — Special and Differential Treatment](#)”, accessed on 10 August 2023.

general budget, augmented by voluntary contributions by several Members. The ITTC's main objectives are to assist beneficiary countries in:²²

- enhancing trade capacity
- addressing trade policy issues
- integrating more fully into the multilateral trading system
- exercising the rights of WTO membership
- fully participating in multilateral trade negotiations

The more recently negotiated WTO Agreement on Fisheries Subsidies (Article 7) created a separate “Fisheries Funding Mechanism” that is to be funded exclusively by voluntary contributions from other WTO Members. The funding mechanism is intended to support “targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, ... for the purpose of implementation of the disciplines under [the] Agreement, “in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development”.

There is ample evidence to assume that at least some developing country members would need technical assistance to implement any subsidy provisions included in the ILBI. Whether such a funding mechanism is funded out of a general budget or voluntary contributions from individual Parties is less important than that it be adequately funded full stop.²³

Remedies, dispute settlement and appeals

WTO agreements that address subsidies benefit from access to its dispute-settlement mechanism and rules governing the use of countervailing duties, a form of unilateral instrument. Technically, a plurilateral agreement negotiated outside of the WTO can request after the fact to be accepted as an official WTO agreement. To date, however, that has never happened. Rather, other agreements, be they plurilateral agreements or RTAs, have had to create their own dispute-settlement mechanisms. That would be the case for a multilateral agreement negotiated under the auspices of the United Nations with binding rules in any area (e.g., the United Nations Convention on the Law of the Sea²⁴).

The practice in RTAs is typically to provide for dispute settlement mechanisms separate from the WTO system yet based on it to the extent that it is used as a floor for procedural and substantive measures. In this form of system, the RTAs can set a higher standard if the applicable State Parties agree but will not derogate from the basic WTO requirements if at least one State is a member of the WTO. These rules apply to many standard trade provisions, such as countervailing duties, which are charges levied on imported goods (in addition to normal tariffs) to offset subsidies provided to producers of those goods by the exporting country.

Regarding remedies, in the context of RTAs and bilateral FTAs, there is a notable gap in most regimes and a tendency to link many aspects of their terms with references to the WTO SCM Agreement and limited aspects of the WTO Agreement on Agriculture. This includes the use of countervailing duties

²² WTO, “[Institute for Training and Technical Cooperation \(ITTC\)](#)”, accessed on 11 August 2023.

²³ As a way to control expenses, the INC could consider using a sliding-scale timeline based on a Party’s development status.

²⁴ See Section 5 of the [United Nations Convention on the Law of the Sea](#).

(duties imposed in response to an injury to a domestic industry caused by subsidized imports in the territory of the complaining Member) as an element that is typically loosely defined and placed in the parameters of implementing the SCM Agreement. Some RTAs and FTAs provide methods through which State Parties can request consultations regarding the use or alleged use of subsidies. And some expressly create Committees with jurisdiction over subsidies, countervailing duties and related issues to serve as a dedicated governance system for issues. Many of these Committees are generally focused, while some are more specifically focused on topics such as agriculture.

In connection with the countervailing and anti-dumping measures elements of WTO law and RTA and FTA provisions, a number of RTAs and FTAs contain the lesser duty rule relating to balancing against subsidies. Examples include the RTA between EU, Colombia and Peru, and the FTAs between the EU and Moldova, the EU and Ukraine, the EU and Georgia, the EU and Canada (CETA), the EU and Singapore FTA, and the FTAs between UK and Moldova and the UK and Japan).

In this context, it should be highlighted that under current international trade practice, especially at the WTO level, remedies in cases of environmental harm are handled differently. It is perhaps unsurprising that countervailing duties are not used to encourage equal environmental harms, and that the idea in this context seems to be more on urging an end to the problematic subsidies than on finding acceptable forms of countervailing duties. However, this should be considered as an area of potential innovation for trade in products such as plastic, where the development of safe and sustainable alternatives and substitutes could open a door to a positive form of countervailing duty scheme.

Summary and recommendations

The evolution of subsidies in the context of international trade law and regulations has been a nuanced process in which multiple considerations have been, and continue to be, balanced. Subsidies have been included in measures to address evolving international issues of concern and this trend could offer valuable options for the design and implementation of the ILBI in a way that ensures compliance with WTO law, RTAs and FTAs, and the particular needs involved in ending plastic pollution.

As this brief has highlighted, it is possible to build upon existing laws and practices to design subsidies provisions for the ILBI that are substantive and also flexible enough to accommodate evolutions in the science and technology of the plastics life-cycle. This is also true of potential substitutes and alternatives to plastics and plastic-containing products. To facilitate this level of depth and breadth of subsidies as part of the ILBI, essential areas for discussion and treaty terms will include designation of the types of covered support measures as well as timelines for the phasing out of a number of existing subsidies.

There will be some subsidies necessitating a designation of being immediately prohibited upon or soon after the effective date of the ILBI, while others will require a phased reduction that ultimately results in prohibition on an agreed timeline. The ILBI should also address the forms of permitted subsidies as well as special and differential treatment. At the enforcement and governance level, the ILBI should contain measures to facilitate technical and financial assistance to least developed and lower middle income countries in the subsidies context as well as measures relating to dispute settlement. At this pivotal moment in the INC process, where the focus will shift to the forthcoming Zero Draft and definition of concrete terms for inclusion in the ILBI, it is imperative that discussions include subsidies as part of the path forward.