**Theme of the side event:** The role of trade measures in the future instrument: Key messages for negotiators

**Date:** November 15th, 2023

**Number of participants and breakdown of types of participants:**

Total number of participants: 90 (88 signed the sheets)
Number of female participants: 47 (53%)
Number of male participants: 37 (42%)
Number of participants that did not specify gender: 4 (5%)

**Key messages from the event / Summary of discussions:**

Remarks from the World Trade Organization (WTO)

WTO hosts the Dialogue on plastics pollution and environmentally sustainable plastics trade, which is structured in 3 informal workstreams. The first is on cross cutting issues. The second is on reduction of plastic pollution and the third on trade promotion efforts to support addressing plastic pollution.

After two years of work, the Dialogue is preparing the “concrete, effective and pragmatic” outcomes called for by the trade ministers of its 76 co-sponsors (representing 85% of global plastics trade) which should be adopted by the WTO’s next Ministerial Conference (MC13) taking place in February 2024. The presentation offered some examples of the concrete work developed under each of the workstreams and which will inform the outcomes potentially adopted by MC13.

On cross cutting issues, WTO Dialogue has sent submissions to the World Customs Organization to put up a technical proposal for potential HS amendments to better identify plastics in trade. Those include suggestions on identifying single-use plastics (SUPs), embedded plastic content and fishing goods.

The WTO Dialogue also launched 2 surveys among delegations. The first sought to identify technical assistance and capacity needs for developing members, SIDS and LDCS. The survey report published showed results for the priority goals identified by aid recipients pursuing plastic pollution objectives through trade measures, with results showing they should focus on environmentally sound management and move towards circularity. The survey also identified specific needs (access to technology, private sector engagement, policy development)

On reduction, the Dialogue has been discussing which are the trade-related plastic measures already being adopted by WTO members to address plastic pollution, including sustainability requirements; Taxes and other market tools (EPR, DRS); and support measures (such as preferential tax treatments and direct grants). The presenter noted these measures were reflected throughout the INC Zero Draft, showing a clear interlinkage between the processes and how trade officials were already familiar with the types of potential actions being discussed in the INC.

Overall, 223 trade-related plastic measures (TrPMs) had been mapped. Most were applied midstream in the value chains (focusing on products). Further, most measures on plastics notified to the WTO and included in the Survey focused on reduction of certain plastic products (primarily SUPs, packaging, waste,
carrier bags). The Survey reports contained much more information on such TrPMs and needs of developing countries and participants were invited to visit the WTO website dedicated to the Dialogue.

The WTO Dialogue work on promotion sought to understand positive examples of trade in plastic pollution-related services (e.g. refill, re-use, recycle), non-plastic substitutes and plastic alternatives and how promoting them could support global, regional and domestic efforts. For example, services mentioned by TrPMs and raised in dialogue were refill, reusables, returnables, tracking segregations, traceability, ecodesign, upcycling, labeling, post consumer sorting and collection, and non-plastic substitutes. Specific measures were being adopted to reduce plastic pollution, but when bans are adopted in some sectors, it almost inevitably promoted the use of something else.

WTO Dialogue is finalizing the MC13 statement and compilations, to take place at the same time as UNEA 6. This will be an important opportunity for the trade community to show its ambition and commitment to helping address the plastic crisis.

**Intervention by UNCTAD on trade-related notifications on non-plastic substitutes**

UNCTAD has intervened in trade-related notifications focused on non-plastic substitutes, particularly focusing on two distinct clusters of products. The first cluster encompasses plastic substitutes, characterized by non-plastic materials that perform similar functions to their plastic counterparts. The second cluster involves plastic alternatives, comprising various types of plastics with potentially enhanced characteristics such as biodegradability and compostability.

A significant proportion of non-plastic substances serve as raw materials, with UNCTAD identifying 282 products capable of performing functions similar to plastics. Notably, one-third of these are products, primarily composed of natural fibers, followed by minerals like metal and glass. However, despite their potential, non-plastic substitutes often face higher tariffs at the border compared to certain plastic counterparts, posing challenges for their competitiveness in national markets.

UNCTAD is conducting further analysis on notifications related to non-plastic substitutes, with a specific focus on materials like paper. Non-plastic substitutes are receiving an increasing number of notifications, indicative of a growing trend in their regulation. There is a rising global trend in regulating both plastics and non-plastic substitutes, with trade measures having environmental impacts growing at an annual rate of 30%. The majority of these regulations are concentrated in products such as paper, cotton/jute, wood, and minerals. Measures were also noted for novel areas, such as seaweed-based materials (constituting 3%).

Notably, the incremental use of natural materials is becoming more prevalent. Least Developed Countries (LDCs) are leading the way in terms of regulatory initiatives, expressing significant concern, taking action, and showing interest. This approach is distinct from other regulatory areas, which often follow a top-down approach from the North. The second group actively involved in regulation consists of Developing countries.

The regulations are primarily technical in nature and are expected to impact trade, but their underlying purpose is environmental. The key objectives of these measures include achieving convergence between environmental and health objectives, promoting environmental sustainability independently, and addressing human health concerns (with 98% of regulations focusing on human health, with minimal attention to animal and plant health).
A substantial portion of plastic pollution, estimated at around 17%, could be mitigated through substitution, according to research by PEW. Importantly, many of these substitute materials are abundant in developing countries. The non-plastic substitutes trade represents a significant economic value, amounting to $400 million at present.

**Center for International Environmental Law (CIEL)**

The UNEA mandate does not prescribe specific means for achieving the treaty, creating an opportunity to address international trade within its framework. This aligns with common practice among Multilateral Environmental Agreements (MEAs), where many incorporate provisions on trade, as exemplified by the Montreal Protocol.

In the zero draft, trade is explicitly addressed in several key provisions. Notably, a standalone provision in point 10 of Part 2 emphasizes the importance of a comprehensive trade system. This involves addressing subsidies for plastic production in Part 2/1, aiming to cover all polymers, products, chemicals, and waste streams governed by the treaty. The objective is to establish international agreements on how these materials move across borders, ensuring a level playing field for all parties involved.

A critical aspect of the comprehensive trade system involves the establishment of permit systems. Parties exporting goods must confirm that products comply with the treaty, and on the importing side, similar infrastructure is needed. This practice, common even in highly complex sectors, helps prevent frictions and disputes by harmonizing compliance measures.

The treaty should also address compliance as both a national and international matter. Parties need assurance that their exporters and importers comply with the treaty, and similar compliance in other countries is equally crucial. National authorities, often represented by environmental agencies, play a pivotal role in regulating exports and imports.

To enhance the treaty's effectiveness, explicit and comprehensive non-party trade provisions are essential. These provisions make it clear to states outside the agreement that they are welcome to opt out but cannot engage in trade with parties in the agreement without meeting specified requirements. This approach fosters a transparent and level playing field.

Concerns have been raised about compliance with World Trade Organization (WTO) rules, prompting the need for a harmonized approach. While some countries have already implemented trade-related measures at the national level to combat plastic pollution, the lack of harmonization has led to disputes. Including trade in the treaty is seen as a solution to minimize risks associated with WTO rules and trade frictions. Importantly, WTO rules have the scope to accommodate trade-related measures under MEAs, and such measures have never been challenged at the WTO.

The zero draft mentions the removal of subsidies for plastic production, but there is a need to expand on this aspect for comprehensive coverage. Areas such as timeframes, national plans, and compliance should be explicitly addressed to ensure a more robust and effective approach, as advocated by organizations like CIEL.

**Remarks by Barbados**
Small Island Developing States (SIDs) grapple with pervasive plastic pollution, primarily stemming from ocean currents and imports. The negotiators representing SIDs consistently emphasize the unique challenges they face, coupled with their limited fiscal and physical capabilities to address the plastic crisis effectively.

The economic impact on SIDs is substantial, negatively affecting marine ecosystems, biodiversity, and the food system. The intricate connection between plastics and these critical aspects of island life underscores the urgency of finding comprehensive solutions.

The negotiators from SIDs underscore the importance of multilateralism in addressing plastic pollution. They caution that without a robust multilateral approach, any resulting instrument may fall short of effectively addressing the challenges posed by plastic pollution.

Key interests of SIDs in the treaty negotiations include strategies to dampen demand for plastics. This involves regulating the sourcing and extraction of plastics and phasing out subsidies that contribute to their production. Circular economy promotion is another crucial aspect, aiming to minimize waste and encourage recycling.

Control over exports is a priority for SIDs, particularly concerning shipments from developed to developing countries. This includes addressing plastics banned in domestic markets and ensuring that SIDs have the means to export their plastic waste to markets that can handle it. Transparency and accountability are paramount, reflecting a commitment to responsible plastic management.

SIDs also emphasize the need for adequate and sustainable financing to support their efforts in tackling plastic pollution. Recognizing the magnitude of the challenge, SIDs stress that partnerships play a pivotal role in enabling an ambitious treaty. These key interests and priorities put forward by SIDs surpass the current state of treaty negotiations, underscoring the urgency and depth of the plastic pollution crisis.

Remarks by the Ocean Recovery Alliance

Remediation stands out as a significant missing piece in the current treaty discussions, highlighting the need to address the recovery and remediation of existing plastic and that which will continue to be produced. The global response was catalyzed by China's ban on plastic imports, which prompted widespread action to reassess and revamp plastic waste management practices.

The Basel Convention has played a pivotal role in focusing on the recovery and remediation of plastic. An amendment in 2021 aimed to curtail the movement of challenging-to-recycle materials, contributing to a reduction in illegal trade. However, the use of the term ‘waste’ has unintended consequences, leading to border closures and hindering small countries’ ability to ship waste for proper treatment. The treaty presents a significant opportunity to rectify these Basel restrictions and provide brands with access to high-quality materials at scale.

There is a consensus on the importance of a circular economy, but questions arise regarding its implementation. Should every state have its own circular economy, or should there be a global standard
with clear rules and trusted mandates? The need for substantial investments in waste and infrastructure is evident, but challenges arise when the material cannot flow efficiently to these facilities.

A key concern is material remediation, which the current circular economy framework does not adequately address. While recycling has faced skepticism, proponents argue that a genuine effort to explore its potential has not been made. The OECD report outlining the goal of achieving plastic waste reduction by 2040 underscores the importance of effective Extended Producer Responsibility (EPR) frameworks.

Point 10 in the draft treaty, focusing on trade in plastic feedstock, emphasizes that each party should not allow the transboundary shipment of waste. However, there are reservations about this approach, as it may not be the most effective. The Basel Convention's application to materials that are not waste has created confusion within the agreement. While Basel encourages every economy to have its circular systems, this may prove inefficient for plastic feedstock, especially in countries lacking the capacity for recycling. The treaty presents an opportunity to address these challenges and enhance the limitations of the Basel Convention.

It is crucial not to approach the treaty with the misconception that Basel's existence renders further action on trade unnecessary. Basel has acknowledged flaws and limitations, and the treaty offers a platform to rectify these issues. The Prior Informed Consent (PIC) process, deemed cumbersome and slow, could be complemented by an alternative approach—an insurance policy for qualified importers. This approach would ensure the quality of shipped products, potentially reducing liability for governments involved in importing. However, implementing such a policy would require significant work.

Questions and comments raised

The International Finance Corporation (IFC) has identified a crucial concern: recyclers hesitate to invest without confidence in a stable market. The need for a certification system or an easily identifiable product is emphasized to instill confidence among recyclers regarding market availability.

The Basel Action Network points out a critical issue with so-called "legitimate" materials. Even if Basel deems them non-hazardous, it overlooks the additives, prompting a call for a review of this aspect. The example of Malaysia highlights challenges in managing partial-quality materials, resulting in tons of discard dumped into the environment. Addressing such failures of Basel is imperative, particularly in dealing with party-non-party trade. The creation of weak agreements, as observed in the EU, US, and Canada, requires scrutiny by the treaty.

Initiatives by big ocean states are focusing on plastics substitutes, prompting questions about the infrastructure to manage these alternatives, especially for Small Island Developing States (SIDs). Data on embedded plastics flows for traded goods is a crucial consideration. The US Department of Agriculture, through Andrew Stephens, advocates for harmonized standards for reusable packaging, with a focus on rPET (recycled polyethylene terephthalate). The need for global standards in reuse, along with trade data, is underscored, particularly concerning food contact materials.

A recent review of the landscape of plastic pollution challenges, published by TESS and ISO, offers valuable insights. The alliance for Mission-Based Recyclers highlights the need for controls on mixed wastes to prevent harm in gray markets. He raises concerns about the characterization of "advanced recycling" and
emphasizes the importance of consistent standards for depolymerized plastics. The discussion also touches on the issues of calling mixed-grade plastics waste and the challenges of polluted water, with a consensus on the importance of verified buyers.

Addressing the non-party gap in Basel is crucial, as highlighted by CIEL. The inclusion of non-parties in the treaty's regulatory framework is a source of concern. Industry stakeholders are already present, reinforcing the need to explicitly address the risk of allowing trade with non-parties without alignment with treaty requirements. Drawing lessons from Basel, provisions need to be built into the instrument to mitigate this genuine risk and ensure effective regulation of global trade in plastics.

Concluding remarks

Speakers and Expertise: The discussions involved a diverse set of speakers representing countries and organizations engaged in trade-related aspects of the plastics challenge. The focus included trade measures and materials substitutions.

Trade's Crucial Role: The discussions emphasized the pivotal role of trade and trade policies in shaping the future of a plastics instrument, considering their impact on production, distribution, and consumption of plastics.

Global Significance: The global nature of trade in plastics is underscored by the staggering value of $1.2 trillion and 369 million tonnes in 2021, indicating the pervasive influence of trade across the entire life cycle of the plastics economy. Non-plastic substitutes also contribute to a significant market in 2021, amounting to USD 388 billion in legal, formalized trade which offers options away from plastics.

Sustainability Imperative: Acknowledging the relevance of trade and investment in advancing sustainable production and consumption of plastics, discussions highlighted their potential contribution to reduction, reuse, substitution, and effective and trusted waste management throughout the product life cycle. Investments in trust mechanisms and de-risk tools (such as insurance) seem to be necessary.

Trade's Scale: A notable statistic reveals that 60% of primary plastics produced are traded, underscoring the scale and interconnectedness of global trade in plastics.

Challenge and Opportunity: The plastics treaty faces the challenge and opportunity of expanding cooperation on trade, with the potential to strengthen implementation through coordinated efforts on trade and trade policies.

Avoiding Fragmentation: Recognizing the historical challenges of fragmentation and tensions in trade measures, the discussions emphasize the importance of avoiding such pitfalls for the future plastics governance and ensuring transparency in the context of the plastics treaty.