

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

Name of country (for Members of the committee)	
Name of organization (for observers to the committee)	Forum on Trade, Environment & the SDGs (TESS)
Contact person and contact information for the submission	Carolyn Deere Birkbeck, Executive Director, carolyn.deere@graduateinstitute.ch
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

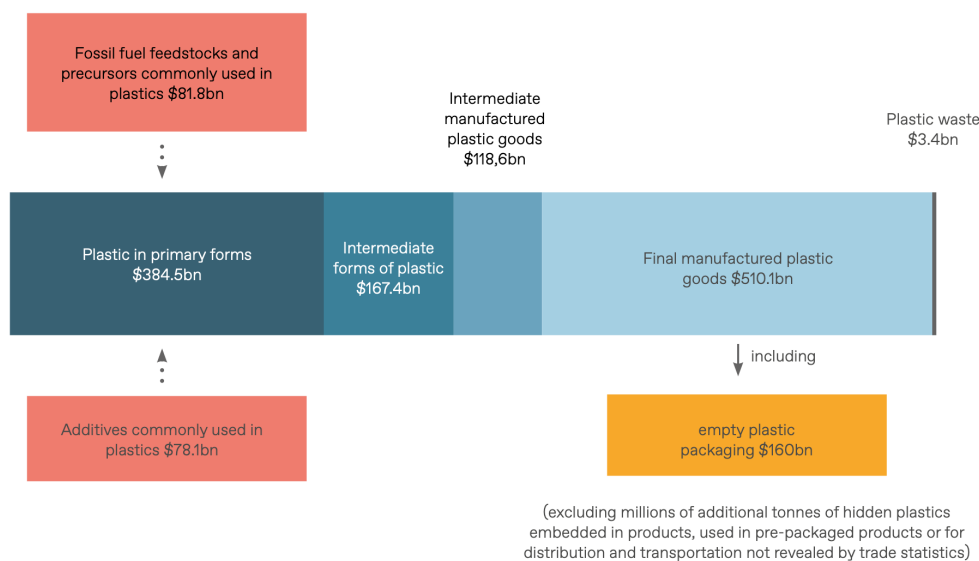
This submission aims to provide input relating to trade-related issues relevant to the following potential areas for intersessional work arising in Contact Group 1:

- Information on criteria and the development of criteria, including:
 - Chemical substances of concern in plastics,
 - Problematic and avoidable plastic polymers and products and related applications
 - Design e.g. for circularity, reuse
 - Substitutes and alternatives to plastic polymers and products
- Potential substances of concern in plastics, problematic and avoidable plastic polymers and products

Disaggregated information across the life cycle of plastics is important because the environmental and health impacts of plastics and plastic products vary, as does the ease with which different plastics can be collected, sorted, disposed of, reused, and recycled. Across the life cycle of plastics, tackling plastic pollution requires granular information about the polymers and additives used in plastic products, consumption and investment trends, and environmental and health impacts. Information about polymer-product combinations, for instance, is key to redesigning products and to improving post-consumer management of plastics and plastic waste, including through collection, reuse, and environmentally sound and safe recycling. In addition, information about the presence of specific harmful, hazardous, and toxic additives used in plastics is vital to protecting human health and the environment.

At present, however, there is no internationally recognized and comprehensive list (or classification) of plastics to facilitate a straightforward identification of which polymers and chemicals are used by product category or industrial application. Further, most plastic products are not labelled in ways that clearly identify the additives included in them. Such technical challenges underline the need for governments and stakeholders to pursue cooperation on international definitions, standards, requirements, and labelling in regard to the material composition of plastic products, which, in turn, will be important for trade cooperation.

For chemical substances of concern in plastics, an effective global approach will require that governments and stakeholders regulate not only the manufacture and use but also the import and export of chemical substances, as well as problematic and avoidable plastic polymers and products. Already, to tackle the plastic pollution crisis, a growing number of countries are implementing policies to better regulate international trade in array of plastic products, inputs and wastes. With trade across the life cycle of plastics worth over \$1 trillion, trade plays a key role in the global plastics economy and trade policies are important in shaping international plastics trade and responses to plastic pollution. [See the following TESS paper for trade trends across the life cycle of plastics: “Trends in Trade Flows Across the Life Cycle of Plastics”, <https://cdn2.assets-servd.host/lyrical-cormorant/production/assets/images/Publications/TESS-Briefing-Note-Trends-in-Trade-Flows-Across-the-Life-Cycle-of-Plastics-Preliminary-Review.pdf>]

Figure 1: Export Flows Across the Life Cycle of Plastics (2021)

Note: Feedstocks, precursors, and additives are inputs used in plastic production and processing. The values noted in this figure are for the total amount of trade, recognizing that not all of the trade of all of the products included in those values will be destined for use in plastics. Empty plastic packaging is included in the value for final manufactured plastic goods.
Source: Authors' elaboration based on UNCTADSTAT (n.d.).

Trade flows are relevant to plastic pollution for several reasons. First, plastic pollution occurs across the life cycle of plastics and significant volumes of trade also occur across that life cycle. The significance of trade flows in the plastics sector is amplified by the fact that trade can represent a major share of overall production at key points along the plastics value chain. According to 2019 data on global industrial output from the United Nations Industrial Development Organization (UNIDO), the production of primary “plastics and rubber” that year was 368 Mmt. In the same year, a reported 243 Mmt of primary plastics and rubber were exported, representing 66% of production.

Second, trade in plastics and plastic waste adds to the pollution burden on importing countries and the associated leakage of plastics into the environment, especially in countries with inadequate capacity for environmentally sound waste management. Third, international trade flows play a central role in the international supply chains, production systems, and consumption trends that shape the global plastics economy. Transformation of international trade and supply chains will thus be key to ending plastic pollution, which in turn will require coordination and cooperation on regulatory approaches and standards across international markets.

A critical piece for effective, evidence-based policymaking is reliable and disaggregated data on cross-border trade flows across the life cycle of plastics, including for chemicals of concern used in plastics, as well as products that contain chemicals of concerns, and problematic and avoidable plastic polymers and products. Currently, however, official trade data provide limited information on trade flows in a vast diversity of products that contain embedded plastics or that have associated packaging, such as pre-packaged goods, or cross-border flows in plastic packaging used in the distribution and transportation of products. Official trade classifications and data are also only available at a granular level for a limited number of the range of single-use plastics that many governments are seeking to better regulate at the national and international (see Table 1 below).

When considering which products, polymers and chemicals of concern, and plastics to address in the treaty, challenges related to limitations in how trade flows are classified for the purposes of official

statistics and monitoring will also be relevant for consideration. Critically, this does not mean that governments should not seek to take action, but it does mean governments will need to consider the range of options for addressing data and transparency shortages, and the capacity of border officials to administer trade-related measures and identify relevant goods for control.

The collection of trade data is underpinned by the World Customs Organization's (WCO) Harmonized System (HS), which is an important starting point for building a more granular picture of trade flows across the life cycle of plastics. At present, however, there are a number of gaps and challenges in the HS that are relevant to efforts to tackle plastic pollution. At the national and regional level, some governments have updated their trade classifications to enable them to better monitor and regulate trade in certain plastics and plastic products, and several countries are currently considering options for further amendments.

At the international level, the most significant global action to date to address trade-related aspects of plastic pollution has been the 2019 amendments to the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal. Effective from 1 January 2021, these so-called "plastic waste amendments" spurred a request for the Secretariat of the Basel Convention to develop a draft proposal to the WCO on amendments to the HS, with the goal of enabling governments to better track different kinds of trade in plastic waste in ways that would facilitate implementation of the Basel Convention (Secretariat of the Basel Convention, 2020)

Countries also have obligations related to plastics trade arising from the Stockholm Convention, which, among other goals, includes requirements on the production, use, import, and export of intentionally produced persistent organic pollutants (POPs). These requirements generate a need for data on trade flows of specific POPs used in plastics, including POPs embedded in plastic products, that governments aim to restrict or phase out. Governments are also working to enhance requirements for the identification and reporting of chemicals, including in response to the provisions contained in the Rotterdam Convention on international trade in hazardous chemicals.

At the WTO, a December 2021 Ministerial Statement on Plastic Pollution and Environmentally Sustainable Plastics Trade, now co-sponsored by over 70 WTO members, contained a commitment to intensify work to "improve the understanding of global trade in plastics, including flows of plastics embedded in internationally traded goods or associated with them (such as plastic packaging), and enhance transparency regarding trade policies relevant to reducing plastic pollution and more environmentally sustainable plastics trade" (WTO, 2021b). Further, the co-sponsors of the statement also agreed to identify "actions needed to improve gathering of data on trade flows and supply chains, including by utilizing the Harmonized Commodity Description and Coding System (HS Convention) of the World Customs Organization or other trade instruments or standards[...] and the flow of information about the chemical and material characteristics of plastic products traded internationally" (WTO 2021a). WTO Members participating in the dialogue are currently exploring options to advance cooperation on this topic at the World Customs Organization. Ideally, trade data could be available, for instance, on all primary plastics by polymer, the polymers and their combinations, additives included in plastic products, and the packaging associated with products. While this would be a huge challenge, there are opportunities to address some key priorities in this regard, including by providing more granular HS codes for certain items. *[See Vaca Eyzaguirre, C., & Deere Birkbeck, C. (2022). Plastic pollution and trade across the life cycle of plastics: Options for amending the Harmonized System to improve transparency. Forum on Trade,*

Environment, & the SDGs (TESS). <https://tessforum.org/media/2022/05/TESS-Policy-Brief-Plastic-Pollution-and-Trade-Across-the-Life-Cycle-of-Plastics-2.pdf>]

Examples of types of trade-related actions that have been proposed for inclusion in the legally-binding instrument that would require detailed trade information.

- *Restrict or Ban Trade in Specific Products and Categories of Products That Contribute to Plastic Pollution:* For treaty provisions that may seek to reduce or eliminate the production, consumption, or trade of specific plastic polymers, additives, or plastic products, or to substitute such trade with non-plastic products, there is a need for specific HS classifications that can provide detailed information on relevant trade flows. For example, if a country bans or sets a reduction target for trade in a particular polymer, material, or product, then HS classifications are needed that can help customs authorities identify and reject imports of banned products while enabling imports of others.
- *Monitor and Regulate Trade by Plastic Polymer Type:* To devise policies and regulations on specific plastic polymers or polymer-product combinations that contribute to plastic pollution, policymakers need to be able to monitor the volumes and values of trade in different plastic polymers. Such monitoring would also help national policymakers devise appropriate waste management strategies and provide information vital for targeting policies and incentives to promote innovation in product design, material substitution, and plastic reduction.
- *Promote Standards and Labelling Requirements for Imports and Exports:* A growing number of countries are developing and applying standards and labelling requirements to boost transparency of the material composition or properties of plastic products. A number of countries already have regulations on plastic packaging for food that cover, for example, the types of plastic polymer and additives that are permitted and for which traders must show proof of compliance. However, challenges arise where countries do not recognize each other's standards or certification systems, or where testing facilities are not available to verify compliance
- *Promote Use of Environmentally Sound and Safe Recycled Content:* More granular data on trade flows in plastic waste would not only support governments to limit or ban trade in waste that cannot be management in an environmentally sound and safe manner in their countries, it would also support efforts to develop more environmentally sound waste management and recycling markets. Greater differentiation of plastic waste by plastic polymer type, plastic polymer combinations, material combinations—such as colourants and other additives used—and the presence of hazardous chemicals would help the work of governments to ensure that recycling markets and recycled materials are environmentally sound and safe.

Sample of key shortfalls of the existing HS classification

Following is a sample of key shortfalls in the HS systems from the perspective of the level of detail about trade in plastics required to support national and international efforts to tackle plastic pollution.

- Limited differentiation of primary plastics by polymer type and by feedstock (e.g. fossil fuel feedstocks and recycled feedstocks).
- Limited differentiation of persistent organic pollutants and other harmful chemical additives.
- Insufficient breakdown of single-use plastics of high environmental concern. See Figure 2 for a sample of existing codes.
- Gaps in the range of products that are classified as plastics.
- Varying detail on the share of plastics embedded in products. While some plastic items in international trade have specific, dedicated classification HS codes (meaning that data on trade flows are readily available), a significant share of plastic that crosses international borders is embedded in products that contain some plastic but are not entirely plastic.
- Limited information on the material composition of plastic products and waste, including polymer types and the presence of harmful chemical substances of high environmental and health concern. There is also little

differentiation of the diversity of intermediate or manufactured plastic products by polymer type, with some exceptions. Many different types of plastics are not distinctly specified under their own subheading but grouped under the catch-all category “Other.” While there is an HS code for polyactic acid (PLA), which is one type of bio-based primary plastic, it does not differentiate intermediate plastic goods or final plastic goods made of PLA from plastic goods made of other primary plastics, or from particular shares of recycled content.

- Missing information on plastic packaging that is an integral part of other traded products. The approach to classification of products used in the HS does not lend itself to capturing the enormous amount of plastic packaging that moves internationally through trade. While there are HS codes for a number of different types of “empty” plastic packaging, the HS does not capture the significant volumes of packaging used for pre-packaged foods, beverages, and personal hygiene products or packaging that is used in the distribution or transportation of products (such as business-to-business packaging and packaging used in shipping and distribution to online buyers).
- Limited granularity in classifications of plastic waste (including poor alignment with the Basel Convention). Although HS codes differentiate some types of plastic waste by polymer type, they do not differentiate plastic waste on the grounds of whether it is hazardous, contaminated, mixed, or recyclable nor, as noted above, do they provide separate codes for secondary materials (e.g. recycled plastic resins).

Table 1. Examples of Harmonized System Codes Covering Single-Use Plastics

392310	Plastics; boxes, cases, crates and similar articles for the conveyance or packing of goods
392321	Ethylene polymers; sacks and bags (including cones), for the conveyance or packing of goods
392329	Plastics; sacks and bags (including cones), for the conveyance or packing of goods, of plastics other than ethylene polymers
392330	Plastics; carboys, bottles, flasks and similar articles, for the conveyance or packing of goods
392340	Plastics; spools, cops, bobbins and similar supports, for the conveyance or packing of goods
392350	Plastics; stoppers, lids, caps and other closures, for the conveyance or packing of goods
392390	Plastics; articles for the conveyance or packing of goods n.e.c. in heading no. 3923
392410	Tableware and kitchenware, of plastics
630531	Sacks and bags; of a kind used for the packing of goods, of polyethylene or polypropylene strip or the like
630532	Sacks and bags; of a kind used for the packing of goods, of man-made textile materials, flexible intermediate bulk containers
630533	Sacks and bags; of a kind used for the packing of goods, of man-made textile materials, of polyethylene or polypropylene strip or the like, not flexible intermediate bulk containers
560811	Twine, cordage or rope; fishing nets, made up of man-made textile materials
560819	Other knotted netting of twine, cordage or rope; made-up fishing nets and other made-up nets, of textile materials

Priorities for greater transparency on trade flows

- Greater differentiation of primary plastics by polymer type and by feedstock (e.g. differentiating conventional feedstocks and recycled feedstocks, such as for recycled PET).
- Greater differentiation of chemicals of concern in HS codes, including for persistent organic pollutants and other harmful chemical additives used in plastics (including but not limited to those already individually regulated by the Rotterdam and Stockholm Conventions).
- Greater differentiation of specific single-use and other plastics of high environmental concern, such as PVC products, and that are widely regulated by governments.
- Greater differentiation of traded plastic products and wastes that are of high environmental or health concern according to their material composition, such as by polymer types and mixtures, share of recycled content, and the presence of toxic chemicals and chemicals of concern.

- Greater differentiation of the share and types of plastics embedded in products, focusing on goods of high environmental concern, such as fishing nets and equipment.
- Consideration of ways that HS classifications could provide more information on the share and composition of plastic packaging that is an integral part of traded products highly associated with plastic pollution (e.g. packaging associated with beverages, pre-packaged foods, and personal care products). This could include differentiation on the share of recycled plastic in packaging; the polymer type; and characteristics such as whether the packaging is mono-layer or multi-layer; mono-material or multi-material; or of non-plastic materials.

Relevance to intersessional process

Given the importance of trade data to transparency and regulatory efforts related to cross-border flows of products and chemicals that governments may identify for restriction or elimination in the treaty, this submission recommends that alongside the treaty negotiations governments cooperate to identify HS amendment options that could feasibly be pursued in the current 2022–2027 HS amendment cycle at the WCO, and on which their could be coordinated action at the national level.

The 2027 HS amendment cycle at the WCO provides an immediate and critical opportunity for governments to strengthen the empirical foundation for national policies and international cooperation to tackle the plastic pollution, starting with a focus on polymers, chemicals and products that governments are already seeking to regulate at the national level. Waiting for the subsequent cycle would yield amended classifications that would enter into force in 2032 at the earliest. In this context, there is an urgent need for governments, intergovernmental organizations, and stakeholders to develop and submit detailed proposals for the 2027 HS amendment cycle for consideration by relevant committees at the WCO in 2023. Moving amendment proposals forward will require the active engagement with environmental officials and experts who can provide critical expertise and evidence on priorities, and active collaboration among trade, customs, and environmental authorities.

Critically, as noted above, the current limitations in HS codes and trade-related data does not mean that governments should not seek to take action on trade flows of chemicals and polymers of concern or problematic plastics. However, it does mean governments will need to consider how to swiftly also advance options for addressing data and transparency shortages, and the capacity of border officials to administer trade-related measures and identify relevant goods for control.

In addition to reform of national and international trade classifications, for instance, governments could explore other technical tools, international standards, and technologies that can boost transparency across supply chains and at the borders. [See also forthcoming September 2023 TESS report on international standards and plastic pollution, co-published with the ISO at www.tessforum.org]

In sum, in terms of next steps, as part of the INC intersessional discussions on criteria, governments could usefully:

- Agree on the need to work together to address shortcomings of the HS classification in relation to international efforts to end plastic pollution
- Empower national customs authorities to explore options and develop proposals for amendments to the HS classification in the 2027 HS amendment cycle that would support current policy efforts and anticipated provisions in the plastics treaty
- Share experience and act on 8- and 10-digit codes in domestic HS classifications that can improve trade-related data to support plastic pollution reduction efforts
- Request WTO & WCO Secretariats with support from UNEP to cooperate on development & review of specific options

- Collaboration among environmental & trade ministries engaged in national policymaking & international discussions on these topics
- Call for expert input from stakeholders and environmental experts on specific priorities and recommendations
- Review technological & technical options for enhancing ability to monitor and regulate different types of plastics and products at the border (incl. labelling, cooperation on international standards, digital technologies such as QR codes)