

Submission by the United States of America
February 13, 2023

The United States is pleased to present its views on potential options for elements of an international legally binding instrument on plastic pollution for consideration at INC-2. We thank the Secretariat in advance for drawing on these views in its preparation of a document with potential options for elements of the instrument for INC-2. We also note our appreciation for the many observers who provided their thoughtful written input.

The United States envisions an ambitious, innovative, and country-driven instrument that will result in near-term and lasting meaningful reductions of plastic pollution entering the environment through a combination of legally binding obligations, commitments, and voluntary approaches. We support robust engagement by INC Members in the negotiation of this instrument to take both common and nationally determined actions to combat plastic pollution. We recognize the value of stakeholder input to inform the development, and support the implementation of, a modern and successful instrument.

For the document on options for potential elements of the instrument for INC-2, the United States proposes the Secretariat use the following potential elements to facilitate discussions at INC-2, without prejudice to their eventual order or categorization within the instrument and with some adjustments to the terminology presented in INC.1/5. These potential elements are: preamble; definitions; objective; obligations, commitments, and voluntary approaches; national action plans; national reporting; science, technology, and innovation; stakeholder engagement; awareness raising, education, and exchange of information; effectiveness evaluation; means of implementation (including financial mechanism); compliance; governing body; subsidiary bodies; secretariat; and final provisions. This organization would remove the additional categorical headings introduced by document INC.1/5 (i.e., introductory elements, implementation measures, institutional arrangements). As shown below, the United States has used this approach in the organization of this submission.

We look forward to the Secretariat's document providing detailed conceptual options, ideas, and/or examples of such elements for consideration by Members that will facilitate discussions at INC-2, taking care to reflect the range of views provided in Member submissions, and without prejudging what the committee might decide regarding the structure and provisions of the instrument. The Secretariat document should not provide draft text.

Preamble

The instrument should have a concise preamble that provides the underlying rationale for the operational provisions set out in the instrument. The preamble should cogently recognize plastic pollution as a global and transboundary issue that requires a coordinated global response. We support recognizing the need to end plastic pollution, including through efforts aimed at eliminating the release of plastic into the environment by 2040. We can also envision discussion of whether the preamble might underscore the ubiquitous role of plastics in the economy; the impact of plastic pollution on the environment, including the marine environment, and its related risks to human health and adverse effects on human well-being; the economic and social impacts

of plastic pollution; the beneficial role of plastic, including for human health and food safety, among other sectors; the importance of addressing adverse impacts from plastic pollution disproportionately borne by marginalized and underrepresented communities within Parties' respective jurisdictions; the importance of mitigating risks to livelihoods from transiting to more circular approaches for plastics; and perhaps brief references encouraging further relevant efforts to combat plastic pollution in other international fora. We would welcome discussion on the preamble after substantive provisions of the instrument are further developed.

Definitions

The instrument may require a section for definitions, although it is too early to negotiate inclusion of any specific defined terms. The need for specific defined terms should be determined by the content of the substantive provisions of the instrument, in particular to ensure the clarity of its provisions and to facilitate their implementation. We would welcome discussion on definitions after substantive provisions of the instrument are further developed.

Objective

The objective should succinctly convey what the instrument is intended to achieve and be of enduring relevance. We support an objective focused on the protection of human health and the environment from plastic pollution. The provisions of the instrument should be developed with an eye toward achieving the objective and facilitating an assessment of whether the instrument is achieving its objective.

Operative paragraph 3 and the third preambular paragraph of UNEA resolution 5/14 establish the scope of the negotiating mandate for a future instrument as plastic pollution, including in the marine environment, with plastic pollution understood to include microplastics. The United States also recognizes that this scope does not exclude consideration of the impact of plastic pollution on terrestrial and freshwater ecosystems, in addition to protecting our ocean. We also underscore that the resolution is clear that this instrument should not be duplicative of other multilateral efforts.

Obligations, commitments, and voluntary approaches

The United States envisions the global instrument containing a range of ambitious provisions – including legally binding obligations, commitments, and voluntary approaches – designed to prevent and reduce the amount of plastic pollution entering the global environment. We see a wide range of such provisions, some of which could call on all Parties to implement actions in a similar manner, and others of which could include a range of possible actions that Parties could take domestically towards specific outcomes called for in the instrument.

The instrument's obligations, commitments, and voluntary approaches should strive to promote the sustainable production and consumption of plastic, increase plastic circularity in a manner that is protective of human health and the environment, and strengthen the environmentally sound management of plastic waste. We recognize that many of these actions, when taken together, could also drive down the demand for plastic. Taken as a whole, the instrument should

be sufficiently flexible to allow for different solutions to address different problems at the various stages of the lifecycle, taking into account national circumstances. We believe that prescriptive measures alone would not sufficiently accommodate the diversity of consumer and social behaviors, production practices, and environmental factors across countries. We also recognize the importance of using approaches that are science- and evidence-based in how Parties take action on plastic pollution.

Examples of potential areas for obligations and commitments within the instrument that the United States has been considering include, but are not limited to:

- Measures to enhance the circularity of plastic, including through reuse.
- Measures to foster innovation and incentivize sustainable or green chemistry to further reduce the use of hazardous substances in plastic and further the development of more sustainable alternatives to plastics.
- Processes for working with stakeholders, international organizations, and others to consider product design and develop transparent labeling of plastic products that can enable informed consumer choices and facilitate reuse and recycling.
- Public procurement policies or other approaches that prevent and reduce the generation of plastic waste, including from single-use plastics.
- Measures to publish and update, in a transparent manner, relevant and available information on plastic production, use, and additives, consistent with national laws.
- Measures to strengthen environmentally sound management of plastic waste, including actions to prevent and reduce the generation of plastic waste.
- Measures to strengthen demand for secondary plastics to facilitate environmentally sound plastic scrap recycling, including by using public procurement to drive demand for plastic products containing higher recycled content levels, where feasible.

The instrument should not directly establish standards because such activities are more appropriate for, and would duplicate the work of, existing international standard-setting bodies (e.g., ISO, ASTM). Cooperation and other approaches to encourage such other bodies to undertake activities on standards could be considered.

National action plans

Each Party should be obligated to develop and communicate a national action plan that outlines how it will contribute to the achievement of the instrument's objective, including how it intends to implement obligations specified in the instrument with regard to preventing, reducing, or eliminating plastic pollution. Parties should also describe planned implementation of other relevant provisions specified in the instrument, including voluntary approaches that best fit their national circumstances. The United States views national action plans as a mechanism to foster ambitious action, whereby Parties can identify and address sources of plastic pollution throughout the lifecycle of plastic in ways that are most suited to their national circumstances. This approach allows for greater flexibility, adaptability, innovation, and timeliness of implementation. It can also support regional and international cooperation through information sharing on effective policies, legislation, regulations, and other efforts to address plastic pollution.

The instrument should obligate Parties to update their respective plans regularly (e.g., every five years). The instrument should call on Parties to demonstrate continued progress and increased ambition over time via their successive national action plans, taking into account, among other things, developments in science and innovation. The instrument should call for the development of procedures for Parties to promote transparency and understanding regarding the elements of national action plans and their implementation.

Each national action plan should include well-defined actions to prevent, reduce, or eliminate plastic pollution in a manner that is tailored to the Party's circumstances, including with respect to how to implement the obligations, commitments, and voluntary approaches specified in the instrument. The actions outlined in such national actions plans could include administrative, legislative, policy, regulatory, or other approaches. These might address a range of areas, including, among other things, improving product design, ecolabeling, public procurement, recycled content levels in plastic products, the management of plastic waste, and programs to incentivize recycling and reuse (e.g., extended producer responsibility approaches). While national action plans should contain common elements, we note that the INC will need to consider to what extent such common elements should be specified in the text of the instrument versus decided by the governing body of the instrument.

We envision each plan addressing, at a minimum, the following elements:

- National goal(s) relating to the Party's contribution to the achievement of the objective of the instrument. Such goals could be timebound and measurable, where feasible.
- Sources and types of plastic pollution to be addressed through a Party's national action plan.
- Nationally determined actions, including regulations, policies, programs, measures, and voluntary approaches. We would expect descriptions of such actions to include, as appropriate, associated timelines, targets, and intended outcomes, that should facilitate the Party's estimation of how its actions contribute toward achieving the objective of the instrument. Relevant sub-national actions could also be described, as appropriate.
- Actions to address adverse impacts from plastic pollution disproportionately borne by marginalized or underrepresented communities, through the Party's development, implementation, and enforcement, as appropriate, of laws, regulations, and policies.
- Description of how the Party would assess progress in implementing its national action plan.

National reporting

The instrument should have provisions on mandatory national reporting. The United States believes that such reporting obligations can help shed light on the extent to which Parties are individually contributing to the achievement of the instrument's objective and complying with their obligations under the instrument. The governing body of the instrument should be able to use the reporting information generated to assess the overall progress of the instrument in achieving its objective and to contribute to the evaluation of the effectiveness of the instrument.

The United States believes that, as a general matter, any national reporting requirements of the instrument should:

- Be binding on all Parties;
- Serve a clear purpose;
- Be precise;
- Be relevant to specific obligations of the instrument;
- Promote transparency;
- Promote accountability;
- Establish a regular cycle;
- Be based on readily available information (both at a global and country level);
- Be broadly applicable to all Parties to ensure that sufficient data is available for the governing body to evaluate and make future decisions for the instrument;
- Avoid duplicative reporting available through other multilateral environmental agreements, fora, or generally accessible global databases; and
- Be manageable and not too burdensome, to avoid unduly drawing resources away from implementation of substantive provisions of the instrument.

The United States supports a reporting obligation that requires the regular provision of relevant information by Parties. Depending on the substantive provision being reported on, such information could include information on aspects of the lifecycle of plastic; science, technology, and innovation; and awareness raising, education and exchange of information. With regards to national action plans, the United States supports an obligation for each Party to report on the progress achieved on implementation of all elements of its national action plan, including progress towards achieving any goals or targets set out in the plan. Such reporting should be done transparently to demonstrate the progress the Party is making under its plan and inform periodic assessments of the effectiveness of the instrument.

During the INC process, consideration will need to be given to which aspects of any reporting obligations are outlined in the instrument text and which aspects would be left to the governing body to determine, such as the details of how and when reporting should occur. While there are benefits to codifying aspects of reporting in the instrument text itself, there are also benefits to providing the governing body flexibility to adjust such aspects over time.

Where possible, such aspects could include a standardized format for reporting and a set of harmonized methodologies and measurements, metrics, and indicators to measure progress under the instrument, as well as progress in the implementation of national action plans, building on existing data collection activities.

Science, technology, and innovation

The United States recognizes the important role of science and the significant amount of global research needed to fill critical knowledge gaps related to the lifecycle of plastics and plastic pollution. The instrument should have provisions to encourage Parties to promote the cooperation and coordination of research to improve understanding of plastic pollution, including, *inter alia*, monitoring and modeling the fate and transport of plastic in environmental

compartments, environmental impacts, potential adverse human health outcomes, and the environmental, economic, and socioeconomic consequences and effectiveness of specific interventions throughout the lifecycle of plastic. This should also include improving the understanding of production and consumption of plastic, including, *inter alia*, lifecycle analysis of plastics and their alternatives, and the circularity of plastic.

The instrument should include provisions for Parties to promote cooperation and coordination on technological innovation, including on product design, materials, and manufacturing processes; sustainable, green chemistry, and circular approaches related to plastics; and other technological advancements for environmentally sustainable and cost-effective approaches to address plastic pollution at local, regional, and global scales. The instrument should also promote sharing of knowledge and greater understanding of best practices, policies, and interventions to enhance Parties' efforts to address plastic pollution across the plastics lifecycle. The instrument should seek to leverage contributions from the private sector, scientific community, international technical and scientific bodies, and others on such issues in combating plastic pollution.

These efforts can help inform the instrument's governing body, as well as national and sub-national governments and stakeholders, to make informed decisions on how best to combat plastic pollution. The instrument should allow Parties the flexibility to incorporate new information as it becomes available in their approaches to addressing plastic pollution.

Stakeholder engagement

The United States believes that the plastic pollution problem cannot be solved by national governments alone and supports involvement from stakeholders in the instrument, including civil society, the private sector, the informal sector, indigenous peoples, academia, and subnational governments. Stakeholder involvement should include the most affected local communities, with a focus on particularly affected community members, including women and children; and workers and unions, including informal waste workers.

In considering the possible approaches for engaging stakeholders under the instrument, we note the importance of promoting public participation and awareness throughout the process, access to information, and open dialogue through formal and informal mechanisms. We support accreditation of stakeholders to meetings related to implementation of the instrument, with the opportunity to speak and organize side meetings. We also recognize the important role stakeholders may play in any subsidiary bodies that might be established, such as acting as advisors to subsidiary bodies focused on scientific or technical aspects of plastic pollution.

Multi-stakeholder action agenda

The instrument should establish an innovative multi-stakeholder action agenda to complement the actions taken by Parties in support of the objective of the instrument. Such an action agenda should seek to promote ambitious actions to address plastic pollution and promote cooperation with a wide variety of stakeholders. Objectives of the action agenda could potentially include:

- Promote high-level stakeholder engagement in a new legally binding instrument;
- Promote ambitious actions by stakeholders to address plastic pollution;

- Mobilize stakeholder financial and technical resources to contribute to achieving the objective of the instrument;
- Promote cooperation at the global, regional, and local levels;
- Share knowledge and highlight successes to replicate and scale sustainable solutions;
- Raise awareness with a wide variety of audiences;
- Build on existing stakeholder efforts; and
- Inform the instrument's governing body decisions on implementation of the instrument.

Some potential considerations for aspects of the action agenda could include:

- A High-Level Forum to serve as a platform for major stakeholder announcements and to build relationships between government leaders and senior management from stakeholder organizations. The High-Level Forum could meet as appropriate on the margins of the instrument's governing body and enable government and stakeholder leaders to share experiences, announce new projects, interact on topics related to combating plastic pollution, and highlight successes to develop, replicate, and scale sustainable solutions. The Forum would provide an opportunity for stakeholders to showcase and celebrate high-level commitments and progress to combat plastic pollution. The Forum could also be accompanied by events demonstrating innovation in technologies, goods, and services to promote the sustainable production and consumption of plastic and combat plastic pollution, and to increase environmentally sound management of plastic waste. The Forum should also review whether prior commitments to action have been met.
- A portal on stakeholder actions to share information and publicize stakeholder contributions to achieving the objective of the global instrument. The portal could provide additional opportunities to strengthen connections among stakeholders, as well as national governments, foster innovation, and facilitate further action and cooperation among those working towards similar commitments.
- Periodic progress reports to the instrument's governing body to share information directly with Parties and to provide input beyond the traditional stakeholder engagement models of other multilateral environmental agreements. This information could include self-reported progress on commitments, descriptions of new actions and responses, and expert input on specific topics. The governing body could also encourage stakeholders to take action in specific focus areas or to provide technical information.

To support the organization of activities of the action agenda, further consideration will need to be given to its budget once the substantive role of the action agenda is further developed.

Awareness-raising, education, and exchange of information

The instrument should include provisions on awareness raising, education, and information exchange that facilitate public outreach and understanding in addressing plastic pollution. Where possible, activities undertaken should have demonstrated evidence of success in preventing and reducing plastic pollution and could include consumer behavior change campaigns, training, education, public awareness, public participation, and public access to information. Educational opportunities should be geared towards enabling consumers and the public to make better decisions about plastic use and disposal, rather than just sharing resources

about the impacts of plastic pollution. Such educational opportunities could increase public engagement and support for policies addressing plastic pollution, as well as facilitating compliance with relevant domestic laws and regulations.

Parties and others should be encouraged to actively promote the sharing of information on, for example, sustainable consumption and production, environmentally sound waste management, sources of plastic pollution, human and animal exposures to plastic pollution, associated risks, and reduction options, among policy makers, stakeholders, and the public. The INC could consider the role of the Global Partnership on Plastic Pollution and Marine Litter (GPML) and other multistakeholder entities in supporting awareness-raising, education, and exchange of information on plastic pollution.

Effectiveness evaluation

The United States supports a robust, science-based, transparent, and cost-effective effectiveness evaluation of the aggregate actions taken under the instrument that is based on consistent and reliable data. The instrument could include an article on an effectiveness evaluation and remain non-prescriptive as to how the evaluation would be conducted and organized. Such an approach could define a limited number of key parameters, such as sources of information and frequency of evaluations, and call for the governing body to define other aspects of the evaluation at a later date. An effectiveness evaluation could be based on information from the following potential sources:

- National reporting under the instrument,
- Scientific and socioeconomic assessments related to plastic pollution, and
- Relevant information on any challenges Parties may be experiencing in complying with the instrument's obligations.

The effectiveness evaluation should be a scientific and technical process (rather than a policy-making process) that relies on existing information and/or data, rather than generating new data. The scale of the evaluation should be global and focus on the effectiveness of aggregate actions under the instrument to achieve the objective. Any outcomes should be technical in nature, and it would be the role of the governing body to consider any policy matters in light of the evaluation's findings.

Careful consideration should be given to how the timing for such a process would be sequenced in relation to other processes (e.g., timelines for communicating and updating national action plans, national reporting, and any scientific assessments) to maximize the value of the exercise by incorporating the most recent information available. The first evaluation should be scheduled to give sufficient time for measurable progress attributable to the instrument's implementation to manifest and be measured. The periodicity of evaluations should allow time to measure new and additional progress in implementation as well as changes in the environment.

Means of implementation, including financial mechanism

Overall, the United States recognizes the critical roles that means of implementation (MoI), including a financial mechanism, will play in ending plastic discharge into the environment. Capacity building, technical assistance, and technology transfer under voluntary and mutually agreed terms are important contributions to the instrument's eventual effective implementation. MoI should prioritize activities that result in transformational action in addressing the full lifecycle of plastics, particularly in countries with significant plastic pollution issues. MoI should focus financial assistance on those countries with the most limited capacity and resources to address them, and not provide financial assistance to the world's very largest economies. We understand that this support could be delivered through new and existing multilateral, regional, subregional, bilateral, and national arrangements, including regional and subregional centres, and through partnerships, including involving the private sector. Stimulating locally appropriate innovations along the plastic lifecycle may be a particularly important role for MoI in this instrument.

We have reservations about supporting the development of separate mechanisms on capacity building, technical assistance, or technology transfer, where their siloed nature can limit effectiveness. In our view, capacity-building should be country-driven, based on and responsive to national needs, and foster country ownership by Parties, including at the national, subnational, and local levels. Capacity building, technical assistance, and technology transfer activities should be well communicated among and between the Parties. It will be important that the eventual instrument references the contributions of the private sector and subnational entities to further these activities, as well as their critical role in finance.

Financial Mechanism

The ideal institutional structure for the financial mechanism will be significantly guided by the development of substantive obligations for the instrument, which will only become clear later in the INC process. The United States is currently open to considering a range of institutional structures for the financial mechanism, including being based at an existing institution, being a dedicated multilateral fund, or some combination of the two. The financial mechanism should provide support toward the agreed incremental costs of meeting the instrument's obligations.

The United States recognizes that effectively addressing plastic pollution will require a financial mechanism capable of flexibly prioritizing financial assistance for those countries that most need it and for those activities most effective at contributing to the instrument's objective. Such a mechanism should be capable of receiving contributions from a broad country donor base that reflects current economic realities, as well as accepting contributions from the private sector. Given that current and projected plastic use, as well as current and future capacities to manage plastic waste, vary significantly across countries and will vary over time, the ability to strategically program limited financial mechanism resources will be key. Assistance provided through the financial mechanism additionally takes place within a dynamic finance landscape that includes private sector, bilateral and multilateral funding, and development assistance across the full lifecycle of plastics. It will be critical that the instrument references the financial flows

provided by these entities and that the financial mechanism play a clear, additive, and complementary role to these financial flows.

Compliance

The United States supports including a provision in the instrument establishing a compliance process, once there is further clarity with respect to the nature of the substantive obligations that Parties would undertake. The primary goal for a compliance process is to ensure that it promotes the effectiveness of the instrument, including the achievement of its objective. Key characteristics that we believe would be integral to a successful compliance process include:

- A focus on facilitating compliance;
- Equal application to all Parties, with any differentiation based on the nature of obligations rather than the circumstances of the Party;
- Simplicity and efficiency; and
- A transparent process with ultimate decisions in the hands of Parties.

Governing body

The instrument should establish a governing body as the main decision-making authority under the instrument, such as a “Conference of the Parties” (COP), and should provide for the convening of ordinary and extraordinary meetings of that governing body. The general authorities and functions could include reviewing and evaluating implementation of the instrument; establishing subsidiary bodies as it considers necessary for the implementation of the instrument; cooperating, where appropriate, with competent international organizations and intergovernmental and non-governmental bodies; reviewing information made available to it, such as through national reporting and subsidiary bodies; and considering any matters related to compliance.

The instrument should direct the governing body to adopt rules of procedure for itself, as well as other decisions relating to the implementation of the instrument. We would also support a provision allowing for the attendance and participation by observers in the meetings of the governing body.

Subsidiary bodies

The United States supports provisions that would allow for the governing body of the instrument to establish one or more subsidiary bodies to support the governing body in specific aspects of implementation of the instrument. Other than specific subsidiary bodies addressed elsewhere in this document, for example a compliance mechanism, our view is that it should be the governing body, and not the INC, that should determine whether any subsidiary body is needed, when it is needed, how its terms of reference should be developed, what duties it should be tasked with, and what duration it should have (i.e., permanent or ad hoc). While there may be benefits to having the INC establish a subsidiary body in the instrument text itself, there are also benefits to providing the governing body flexibility to establish and adjust such details over time on the basis of practical experience.

That being said, we recognize that having access to up-to-date scientific and economic information, as well as examples of successful practices and programs, will play an important role in countries' efforts to address plastic pollution, and in monitoring or assessing the amounts, distribution, types, and other aspects of plastic pollution in the environment. Should any monitoring or assessment bodies or processes be established, our inclination would be to have such a body or process under the instrument rely on available information and data, rather than producing its own data. We could envision, for example, any scientific assessment process relying on the latest findings from the scientific community, as well as existing global, regional, and/or national monitoring networks.

Secretariat

We support the establishment of a Secretariat for the instrument to carry out typical functions, such as: making arrangements for meetings of the governing body, any subsidiary bodies, and potentially the multistakeholder action agenda; providing them with services as required; coordinating, as appropriate, with the Secretariats of relevant international bodies and instruments; assisting Parties, as required, in the exchange of information related to the implementation of the instrument; and preparing and making available to the Parties periodic reports based on national reporting and other sources of information, as appropriate.

Final provisions

The United States notes the appendix to the annex of document UNEP/PP/INC.1/8 contains a set of sample final provisions, and we recognize that such provisions are sometimes similar across multilateral environmental agreements. We are open to using these sample provisions as an initial basis for the negotiation; however, once the broad structure and substantive obligations of the instrument are further discussed, a different approach to some aspects of the final provisions may need to be considered. Below are a few comments on specific issues raised by the sample provisions annexed to document UNEP/PP/INC.1/8.

- *Settlement of disputes:* We note our reservation on whether an additional annex on arbitration in the instrument would be needed.
- *Amendments to the instrument:* We believe that it should be clear that any amendments will generally be subject to acceptance by Parties. Further, all amendments should be adopted by consensus, which would ensure that the views of all the Parties to the instrument are reflected.
- *Adoption and amendment of annexes:* This provision in particular would be premature to debate or agree on since it has not yet been considered whether the instrument would have annexes, let alone what kinds of information would be contained in them.
- *Entry into force:* While the Secretariat's sample provision on this topic provides for entry into force upon a set number of Parties having ratified, there are other ways in which entry into force could be addressed. The United States is interested in hearing views from others about a range of potential formulations.
- *Reservations:* Whether reservations should be permitted under the instrument should depend on the nature of the eventual obligations. Reservations might be necessary or

desirable, in some cases, to facilitate wider general acceptance of the final instrument, and without undermining the objective of the instrument.

- *Withdrawal*: Document INC.1/8 includes a sample withdrawal provision that can be invoked only after being a Party for at least 3 years. We note that once a Party has made a decision to withdraw, it should be permitted to do so, and there is no benefit to keeping Parties in the instrument if they do not wish to be bound. We would welcome clarification on the reason for the inclusion of such a sample provision.