Intergovernmental Negotiating Committee to develop an international legally binding instrument on plastic pollution, including in the marine environment

Ad hoc intersessional open-ended expert group to identify and analyse criteria and non criteria based approaches with regard to plastic products and chemicals of concern in plastic products, and product design focusing on recyclability and reusability of plastic products, considering their uses and applications

In-person meeting

Bangkok, 24-28 August 2024

#### Expert Group 2 - Summary under agenda item 4a1

The Expert Group considered possible criteria and non criteria based approaches regarding plastic products, considering their uses and applications, with reference to broad categories of possible approaches identified in light of earlier inputs received from experts.

#### 1. **Preliminary observations**

Overlaps were identified between the three items under the Expert Group's mandate (plastic products, chemicals of concern in plastic products, and product design), such that consideration could be given to addressing them in an integrated manner.

Clarification was sought on the meaning of the terms "criteria based" and "non criteria based". While these two types of approaches might in principle differ, including in scale and degree of bindingness, this differentiation might not be as significant, as both types of approaches could be complementary, and both could provide a basis for action.

The need for a shared understanding of key terms and definitions (e.g., of plastic products) was highlighted, for consideration in the negotiations.

The importance of statistical data was noted, as well as the existence of data gaps, in particular on products that end up in the environment, final disposal and waste streams.

#### 2. General considerations

There were different views on the need to focus on plastic products. It was suggested that the focus should be on addressing the mismanagement of plastic waste as the ultimate source of plastic pollution, including

<sup>&</sup>lt;sup>1</sup> This summary is intended to reflect discussions at the in-person meeting of Expert Group 2 on 24 and 25 August. It is not exhaustive and does not reproduce elements contained in the synthesis document. This summary provides material to inform the preparation of the Co-Chairs' report for Expert Group 2. In preparing their report, the Co-Chairs will also take into account the deliberations during the virtual meetings, responses to the questionnaire and other further reflections related to agenda item 4(a) provided by experts at this in-person meeting. The Co-Chairs' report is a non-negotiated document and will be finalized by the Co-chairs after this Expert Group meeting and forwarded for the consideration by the Committee at INC-5. The report will be without prejudice to national positions and the outcome of negotiations conducted by the Committee.

through increased circularity of products and improvements in recycling and waste management capacities, where interrelations to product design were highlighted. It was also suggested that prevention and reduction of pollution upstream should be prioritized, in light of experience suggesting that downstream efforts have been insufficient to address plastic pollution. The importance of addressing releases throughout the lifecycle, including existing plastic pollution and cleanup of coastal areas, was noted.

A number of general considerations were identified, that could inform a range of approaches to plastic products, including the following:

- It was noted that approaches should be focused and implementable across different national circumstances, taking into account different national regulatory frameworks and capabilities.
- It was emphasized in this respect that the risk of leakage depends on characteristics of production and consumption of products as well as on waste management systems, and will differ country by country.
- The importance of avoiding regrettable substitutions and ensuring the availability, affordability and accessibility of substitutes or alternative products, also comparatively assessing their life cycles, was stressed.
- The need to resort to the least trade restrictive measures possible and avoid unnecessary obstacles to trade or unjustifiable discrimination against imports, in line with WTO rules, was also highlighted;
- The role of innovation and development of new technologies was emphasized, as well as development of recycling and waste management technology and infrastructure;
- It was further suggested that given the widespread use of plastic products, both negative and positive socio-economic and cultural implications of action encompassing potential measures to address plastic products needed to be considered at as early a stage as possible; and conversely, that the environmental and socio-economic costs of inaction should also be considered;
- It was also stressed that a symmetry of ambition would be required, between levels of obligation and means of implementation, as not all countries have yet adopted dedicated measures to regulate plastic products at the domestic level, and some may need additional time, i.e. transitional periods, and support, to implement global or national policies and measures; accordingly, any mandatory measures should be matched by adequate means of implementation, enabling just transition, with special attention to countries most in need or heavily affected without major contribution to pollution in line with CBDR, e.g. SIDS, while also applying the polluter-pays-principle.

# 3. Identification and analysis of possible criteria based and non criteria based approaches with regard to plastic products

It was observed that different types of criteria based and non criteria based approaches could be combined, and that global and national approaches could also be complementary. It was also suggested that both

mandatory and voluntary approaches were appropriate, and that mandatory approaches could include nationally determined measures.

It was also suggested that innovative approaches could be explored, that could specify a range of measures that Parties could take to address plastic products identified as problematic and avoidable, providing flexibility to account for diverse contexts.

Overall, possible approaches to plastic products identified included (two or more aspects listed below could be also combined):

## a. Approaches with global binding criteria encompassing listing of plastic products to be regulated, respective timeframes, and exemptions.

- The adoption of global criteria could level the playing field, help address transboundary issues, and guide global innovation, given that plastic products are globally traded.
- The identification of a product or group of products to be addressed at global level could send a clear and consistent signal to industries and facilitate national action.
- A list of products to be subject to elimination, reduction or regulation within certain timeframes, resulting in less plastic pollution, could be identified, possibly to be complemented by voluntary additional measures.
- An initial list of plastic products considered to be most problematic could be developed, taking into account existing domestic legislations and/or following the Stockholm Convention approach.
- Flexibility to adapt to national circumstances could be provided through specific exceptions or broad exemptions and transitional periods.
- Additional guidelines and/or guidance could be developed, e.g. on non-plastic substitutes.

Under such an approach, an effective process would be required for the development of criteria and/or lists of products. A scientific/technical body could be mandated to develop criteria, under the guidance of the governing body, and present recommendations to the governing body for decision. Such a body could also assess specific products and proposed associated control measures, based on proposals by Parties. Such body would need to be informed by current and evolving knowledge. Such process should also allow for evolutions in criteria or listings over time.

It was noted that further work would be required for the development of specific criteria, and that further clarity would be needed as to the process, timing and sequencing through which this could be done. The possibility of a process for this purpose after the conclusion of the instrument was raised.

# **b.** Approaches with global criteria and/or guidelines, complemented by nationally determined measures, taking into account national circumstances.

 Global harmonized criteria and/or guidance for the identification of problematic, or problematic and avoidable products, could provide a common direction to the efforts of all stakeholders

- The determination of specific products to be addressed could take place at the national level, based on agreed criteria and/or guidance, taking into account national circumstances, including local conditions, such as:
  - Likelihood of ending up in the environment
  - Domestic consumption patterns and cultural implications
  - Availability and affordability of alternatives
  - Waste management capacity
- A range of types of control measures relevant to different categories of products could also be identified, to guide national action.

As above, such approaches would entail the development of criteria for the identification of plastic products to be addressed, but the identification of specific products based on such criteria, as well as the identification of the measures to be applied to address them, could take place at the national level.

### c. Approaches based on nationally determined actions

- Under a bottom-up approach, both products to be addressed and possible control measures could be determined at the national level and reflected in national (action) plans, taking into account domestic circumstances and capabilities, including domestic regulatory regimes, consumption patterns, availability and affordability of alternatives, and collection and waste management capacity.
- Guidance could be developed to facilitate the development of national plans, which could include an illustrative set of considerations and questions to be used by Parties for the development of measures at the national level.

### 4. Additional considerations for the identification and/or classification of plastic products

The following additional consideration were identified with respect to the identification and/or classification of plastic products, that may be relevant to one or more of the possible aforementioned approaches:

- It was noted that the terms "problematic and avoidable" plastics are not expressly mentioned in the mandate of the Expert Group, which refers more broadly to plastic products, or in UNEA resolution 5/14, which refers to sustainable production and consumption and the full lifecycle of plastics.
- It was also noted that whether a product can be considered to be problematic and/or avoidable depends on the context and on local circumstances, including in terms of their propensity to end up in the environment, local demand and consumption patterns or collection and waste management capacities, or availability and affordability of suitable alternatives.

- Any criteria based approach should be supported by knowledge, including scientific and Indigenous knowledge, as well as sufficient data. Factors identified as relevant to a knowledge and evidencebased approach for the identification and classification of products include:
  - Contribution to worldwide plastic pollution
  - Likelihood of ending up in the environment
  - Product-based and use-based attributes
  - Impacts across the life cycle, including, including potential for leakage
  - Socio-economic and cultural implications, both positive and negative
  - Consumption patterns
  - Availability and affordability of alternatives
  - National capacity, including for recycling and waste management.
- Possible approaches identified to assess plastic products include:
  - Precautionary approach
  - LCA, to account for the full life cycle of the product and of potential alternatives
  - A decision tree approach, as a practical tool to take into account a wide range of considerations, including a tiered approach.
- Any criteria and/or lists of products developed should have the capacity to evolve with the relevant knowledge, research and technological innovation.

### 5. Conditions and prerequisites identified for effective application and implementation

In addition to aspects already identified above, the following conditions and prerequisites were identified, for an effective application of any approach to plastic products:

- Transparency and traceability, to support monitoring of effectiveness and implementation
- Monitoring and reporting, including of downstream leakage, to track progress and assess effectiveness, including possible reliance on existing mechanisms and tools to support monitoring (e.g. ISO standard 59040, under development)
- Effectiveness assessment, considering science-based approach and socio-economic impacts, both reactive (focusing on existing plastic waste, taking into account infrastructure status in different countries) and proactive (focusing on prevention of leakage, circularity of plastics, and increased recycling)
- Assessment and gap analysis
- Periodic review
- Effective decision-making mechanism
- Effective implementation and compliance mechanism, non-punitive and non-confrontational
- Just transition
- Awareness raising, public consultations and stakeholder inclusion