



Convention on Plastic Pollution

Essential Elements: Plastic Waste Trade

March 2024



Introduction

As the production of plastics grows exponentially and the use of short-lived plastics proliferates, so too does the amount of plastic waste produced.

With even the wealthiest exporting countries struggling to handle their own domestically generated plastic waste – less than 10 per cent of plastic is recycled¹ – plastic waste has become a defining environmental challenge of our time.

At the same time, the international trade in plastic waste has become a highly contentious issue. Overwhelmed domestically, affluent exporting countries offshore their plastic waste to less wealthy importing countries with inadequate infrastructure to handle it, a move that is cheaper than investing in disposal domestically.

But this trade simply perpetuates the mismanagement of plastic waste – e.g. incineration, illegal burning and dumping in terrestrial and aquatic environments – with significant environmental and public health impacts. Such trade also displaces recycling capacity in importing countries, undermining the ability of those communities

to deal with their own domestically generated waste and further exacerbating the negative impacts. While certain actors in importing countries may reap short-term economic benefits, the long-term consequences to the communities and country as a whole are increasingly evident.

Upstream measures which limit the primary plastic polymer production and eliminate problematic and avoidable plastic products – significantly reducing the plastic waste that is generated – are critical levers to mitigate the harm of plastic waste trade. While the new international legally binding instrument to end plastic pollution (ILBI) should include upstream measures as part of its “comprehensive approach addressing the full lifecycle of plastic”, downstream measures aimed at enhancing international governance of the trade in plastic waste and ensuring environmentally sound end-of-life treatment are also needed.² Such a package of measures will be the backbone to ending plastic pollution.

The ILBI presents the opportunity to tackle this issue in the *Revised draft text of the international legally binding instrument on plastic pollution, including in the marine environment* (Revised Zero Draft) in Part II, Provision 10.b, Sub-Option 1, providing a basis for going beyond current trade regulations and closing the gaps in international governance.³

Existing governance: The Basel Convention and plastic waste trade

The Basel Convention provides the most relevant international governance framework on transboundary movement and management of plastic waste. However, it does have several limitations and challenges regulating plastic waste,⁴ for example:

- 1. inadequate scope:** A key component in tackling plastic waste trade is the overall reduction of plastic waste; however, the Basel Convention lacks effective implementation mechanisms to achieve a binding mandate on prevention or upstream measures. The Basel Convention requires prior informed consent (PIC) for all plastic waste exports, except for sorted, mostly nonhalogenated, single-polymer plastic wastes that are almost free from contamination and destined for environmentally sound recycling – with some limited exceptions.⁵ Still, nonhalogenated polymers are not without environmental concern and the Basel Convention does not have the ability to transparently track hazardous polymers and additives across the material’s lifecycle to ensure effective implementation and guarantee environmentally sound management (ESM) for each transboundary movement of plastic waste
- 2. loopholes and ambiguities:** Critically, the Convention gives no guidance on contamination thresholds nor does it determine when listings of plastic waste cannot be recycled in an environmentally sound manner. This, paired with a lack of a centralised open database to verify State-determined contamination levels and verified end-of-life treatment facilities, compounds issues of illegal trade and enforceability. Many types of plastic waste which should be regulated under the Basel Convention are not. Historical listings presumed non-hazardous, hidden wastes and loose interpretation of certain provisions contribute to ongoing plastic waste trade and the associated harms, even where the Convention has authority
- 3. limited enforcement:** Much plastic waste continues to be traded without requiring PIC. The Basel Convention deems such plastic as “other waste”, *i.e.* non-hazardous. However, the financial and procedural burden on the importing State to test each import results in a lack of proper implementation and enforcement. If misdeclaration or contaminated plastic waste is not intercepted by enforcement agencies, such waste might end up in the hands of purchasers who are either unable or unmotivated to enforce the take-back mechanism, increasing the likelihood it is not destined for ESM. Trade data shows that noncompliance is likely widespread.

The ILBI presents the opportunity to close these gaps and provide strengthened complementary measures and assurances so that all plastic waste is accounted for and managed in a way that minimises its harm to human health and the environment.

Opposite: The OECD reports that globally only 9% of plastic waste is recycled and 22% is mismanaged.



A provision on the transboundary movement of plastic waste

The Revised Zero Draft presents options for provisions to eliminate the transboundary movement of plastic waste, with exceptions for waste exported to safe and ESM.⁶

To promote compliance and enforcement, the ILBI should set out clear definitions of plastic waste, contamination and ESM, which excludes trade of plastic waste for interim storage. It should also create rules and mechanisms, including import and export requirements, for all plastic waste trade and mandate monitoring and reporting measures – going beyond Basel.

While PIC for all waste imports is a first step towards ensuring proper management and legitimatising trade, it still allows for the transboundary movement of plastic waste. Thus, EIA has several recommendations to further develop the provision on the transboundary movement of plastic waste:

- **increased control requirements.** The ILBI can address some of the challenges identified in the Basel Convention through more broad and stringent regulations and transparent monitoring mechanisms. The Revised Zero Draft contains an obligation for importing States to give PIC and exporting Parties to provide information on the composition of waste as well as comply with marking and labelling standards and other international rules and standards.⁷ To strengthen compliance, EIA recommends facilities are certified by independent third parties in accordance with robust measures and criteria to qualify environmentally sound end-of-life treatment. The new ILBI should also include import requirements for competent authorities in the importing State to comply with and give those authorities the express powers to reject shipments that do not purport to the ILBI even if caused by human error.⁸ Guidance for what constitutes noncompliance should be adopted by the CoP
- **a take-back mechanism to help shift responsibility.** To address the unequal distribution of responsibility in plastic waste trade, wherein wealthier countries find it economically advantageous to export their waste while holding the greater bargaining power of financial incentivisation and importing countries may lack inspection, monitoring and enforcement authorities to monitor the trade, there must be a mechanism for returning waste imports that do not comply with the provisions of the ILBI. Examples of such measures can be found in the take back or duty to re-import mechanism found in Basel,⁹ the EU Waste Shipment Regulation¹⁰ and the Bamako Convention.¹¹ To implement the Revised Zero Draft option whereby “[e]ach Party shall prevent and eliminate illegal trade in plastic waste”,¹² the Revised Zero Draft should require Parties to adopt strict import and export requirements, take back obligations and measures on noncompliance into national legislation
- **reporting for all plastic waste traded.** To facilitate transparent monitoring and promote compliance, the ILBI should build an online reporting database that makes globally harmonised import and export information accessible to all. This database could include a simple process for any State to categorically refuse imports and report on harmonised marking and labelling with all relevant codes (i.e., HS, Basel and regional codes). Means of implementation for the effective monitoring and reporting of plastic waste trade should also be prioritised for developing countries. The largest exporters of plastic waste should contribute financing within a dedicated multilateral fund that is earmarked for financial assistance to developing countries, especially those with limited resources, to implement robust monitoring and reporting mechanisms
- **banning of problematic exports.** Many countries have faced issues with the export of hazardous plastic waste masquerading as recyclable materials. To complement the Basel Convention, this treaty can explicitly identify and then ban or restrict the export of specific types of plastic waste that are hazardous or challenging to recycle, with narrow exemptions reviewed by the ILBI to recognise the special circumstances of developing States. This would prevent unscrupulous disposal practices and promote domestic recycling, as well as incentivising better product design to ensure recycling is technically feasible
- **non-party trade provisions.** The current reading of the Revised Zero Draft provision on transboundary movement of plastic waste prohibits plastic waste trade, except for its safe and ESM, with PIC of the importing State and in a manner consistent with the ILBI. The burden to satisfy the requirements falls on the exporter; however, as it currently reads, it is unclear whether non-Parties to the ILBI would need to follow the same process when exporting plastic waste to a Party. This creates a vulnerability whereby non-Parties can continue to export their waste without taking the requisite steps to provide the information necessary for importing States to properly monitor and control the plastic waste. Further, continued trade disincentivises wealthier nations from ratification of the ILBI, allowing the continued unsustainable production and use while offshoring waste to Parties taking the critical steps necessary to end plastic pollution. Therefore, to fully embrace the spirit of the ILBI and to effectively address the critical issues associated with plastic waste trade, EIA recommends the ban

of imports and exports of plastic waste from any State not party to the ILBI, with narrow exemptions described above¹³

- **capacity-building and technology sharing.** The ILBI can allocate resources, technical and financial assistance, technology transfer and knowledge sharing for improving waste management infrastructure and enhancing capacity for monitoring, reporting and inspections of plastic waste trade. Priority should be granted for particularly vulnerable Parties to enhance their capacity for ESM infrastructure through the lens of the zero-waste hierarchy. No assistance granted through the ILBI should facilitate exploitative, harmful or unproven technologies like chemical recycling or incineration, nor should any Party accept private funding for waste treatment practices banned in the waste management provisions of the instrument. Increased recycling capacity must be utilised for domestic waste treatment where certified recycling facilities provide accurate and up to date reporting of the waste treated
- **compliance with provisions on plastic waste trade.** Any Party should be able to request assistance from the Secretariat to comply with the implementation of new provisions. However, when illegal waste trade or noncompliance with the waste management of the ILBI occurs, there must be an immediate pause restricting exports from companies or imports to facilities acting in contravention to the ILBI. Where noncompliance occurs from the importing facility competent authorities may suspend the operation until compliance is restored. Where noncompliance occurs from the exporting company, competent authorities in the exporting State should take action through domestic law. All noncompliance should be reported in real time through a global database. In adopting national legislation to comply with plastic waste trade provisions, each Party should include access to justice for those persons whose rights have been impaired by actors who fail to comply with the ILBI, including the right to claim compensation and damages. Domestic legislation should also clearly articulate penalties for noncompliance. Measures taken to implement these provisions should be reflected in national plans. The COP should be enabled to adopt procedures for determining measures on noncompliance as well as how to treat Parties failing to comply with the ILBI
- **collaboration and cooperation with other governance.** Plastic pollution is a global problem that requires international cooperation. The ILBI can serve as a platform for countries and existing governance and agencies to collaborate on monitoring, tracking, and regulating the transboundary movement of plastic waste. Sharing information and best practices can help create a unified global front against plastic pollution. The ILBI Secretariat and Parties should cooperate with existing international organisations and enforcement and compliance agencies to combat illegal plastic waste trade, protect whistle blowers and evaluate effectiveness.

Below: Plastics can take hundreds to thousands of years to decompose in the environment. This longevity contributes to the accumulation of plastic waste in landfills, oceans, and other ecosystems.





Conclusion

The new ILBI can significantly improve the current governance on the transboundary movement of plastic waste.

By incorporating measures to stop plastic waste trade or regulate and control movements that do occur, the treaty can contribute to a more sustainable and responsible approach to plastic waste management on a global scale while safeguarding the environment and human health.

However, to optimise effectiveness, the ILBI should increase global transparency, identify and restrict hazardous polymers and chemicals and address mechanisms to manage illegal trade in plastic waste and non-Party trade in complementary coordination of existing governance.

For more information:

Amy Youngman

Legal and Policy Specialist

Environmental Investigation Agency
amyyoungman@eia-international.org
+44 0204 5499015

Christina Dixon

Ocean Campaign Leader

Environmental Investigation Agency
christinadixon@eia-international.org
+44 0207 3547979

References

1. OECD (2022). OECD Global Plastics Outlook Database. Available here: https://www.oecd-ilibrary.org/environment/data/global-plastic-outlook_c0821f81-en
2. UNEA 5/14 resolution *End Plastic Pollution Towards an International Legally Binding Instrument*. Available here: https://wedocs.unep.org/bitstream/handle/20.500.11822/39812/OEWG_PP_1_INF_1_UNEA%20resolution.pdf
3. UNEP/PP/INC.4/3 Revised draft text of the international legally binding instrument on plastic pollution, including in the marine environment [hereinafter Revised Draft Text]. Available here: <https://wedocs.unep.org/bitstream/handle/20.500.11822/44526/RevisedZeroDraftText.pdf>
4. For more see Basel Action Network, Environmental Investigation Agency and Global Alliance for Incinerator Alternatives (2023). *Bridging the Gaps of Basel with the Plastic Treaty*. Available here: <https://eia-international.org/wp-content/uploads/2023-EIA-UK-Bridging-the-Basel-Convention-Gaps-with-the-Future-Plastics-Treaty.pdf>
5. Except mixtures of plastic wastes consisting of polyethylene (PE), polypropylene (PP) or polyethylene terephthalate (PET) provided they are destined for separate recycling of each material and in an environmentally sound manner, and almost free from contamination and other types of wastes.
6. Revised Draft Text, Part II, Provision 10.B. Sub-Option 1.1.
7. Id. at Part II, Provision 10.B. Sub-Option 1.3.
8. See for example, the Convention on International Trade in Endangered Species of Wild Fauna and Flora, Article VI(6). Available here: <https://cites.org/eng/disc/text.php>
9. Basel Convention on the Control of Transboundary Movement of Hazardous Wastes and Their Disposal, Articles 8 and 9. Available here: <https://www.basel.int/TheConvention/Overview/TextoftheConvention/tabid/1275/Default.aspx>
10. Regulation (EC) No 1013/2006 of the European Parliament and of the Council of 14 June 2006 on shipments of waste, Chapter 4 which contains provisions when shipments cannot be complete and shipments are illegal. Available here: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32006R1013>
11. Bamako Convention, Article 8. Available here: <https://www.informea.org/en/treaties/bamako-convention/text>
12. Revised Draft Text Part II, Provision 10.B. Sub-Option 1.5.
13. See for example, the Montreal Protocol on Substances that Deplete the Ozone Layer, Article 4. Available here: <https://treaties.un.org/doc/publication/unts/volume%201522/volume-1522-i-26369-english.pdf>