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## **ICC response to call for submissions on part a) Principles & Scope of the future international legally binding instrument**

The International Chamber of Commerce (ICC) – as the institutional representative of more than 45 million companies in over 150 countries – applauded the landmark decision at the resumed fifth session of the UN Environment Assembly (UNEA5.2) to develop an international legally binding instrument (ILBI) to end plastic pollution.

ICC remains deeply committed to support the Intergovernmental Negotiating Committee (INC) Secretariat's and Members States' efforts and forthcoming work to secure an ambitious, effective and workable agreement by 2024 – that rallies all actors of governments and society in the collective charge of addressing plastic pollution – including setting the frame and direction for accelerated business action.

In doing so, ICC emphasises the need for an agreement that ensures the broadest possible uptake across the global business community, by businesses of all sizes, sectors and from all geographies, taking into account in particular the capabilities of micro, small and medium enterprises (MSMEs) – the lynchpin of the global economy.

ICC welcomes the continued efforts by the INC Secretariat to involve all stakeholders and particularly the business community, in all its diversity, in the process. The INC Secretariat's calls for submissions from non-Party stakeholders and Member States to inform ongoing discussions, are a critical step to continue to engage all stakeholders in an open, transparent and inclusive process.

In response to the call for submissions on elements that were not included in the options paper, such as on principles and scope, as well as on any areas for intersessional work, ICC offers the following reflections and recommendations for consideration. In preparing this submission, ICC has considered perspectives from member companies and experts from sectors across the plastics value chain, as well as representation from different jurisdictions.

## Elements not discussed at INC-2

### 1. Scope

*What is the proposed scope for the future instrument?*

*Which types of substances, materials, products and behaviours should be covered by the future instrument?*

#### **Proposed scope:**

To enable and encourage businesses to fully play their role, the ILBI on plastics pollution should define a **clear overarching goal to end plastic pollution by 2040, and enabling frameworks and means of implementation that set a workable pathway to get there. Also focusing on a comprehensive approach that addresses the full life cycle of plastics.**

#### **Explanatory Text:**

An ambitious and implementable legally binding agreement with a clear overarching objective to end plastics pollution by 2040, and a common framework for national action plans, will be key to help countries translate the provisions into clear national targets and action plans that aggregate delivery on the treaty's objective. It will also be critical as it sends clear timelines for businesses to act.

ICC highlights the need for the scope to focus on a comprehensive approach that addresses the full life cycle of plastics, including production processes, design options, the use of potentially harmful chemicals, additives and polymers (based on risk-exposure assessments), leakage of plastic waste into the environment, waste management and recycling, whilst also taking into account national circumstances, challenges, capacities, capabilities and feasibility in different economic sectors.

It is further imperative for the ILBI to provide clear definitions and clarity on key terms and concepts that will be addressed by the instrument in an effort to tackle the sources/drivers of plastic pollution. It is equally important that the future instrument is underpinned and informed by science and effectively harnesses scientific knowledge and technological innovation to inform ongoing work, including the goal, objectives and actions across the plastics value chain.

The Treaty should create the right policy frameworks to accelerate the necessary investments in innovation, infrastructure, and accelerate the development and deployment of existing and breakthrough technological solutions, including alternative solutions, for example, biodegradable or compostable, where appropriate, which can also contribute to tackling plastic pollution.

## 2. Principles

*What principles could be set out in the future instrument to guide its implementation?*

Proposed principles:

The instrument should be constructed in way that allows all necessary context for the interpretation of its provisions, based not only in the principles mentioned below, but also in relation to international law, principles of interpretation and other concepts relevant to the subject matter of the instrument. Combined with preambular paragraphs and text on the scope and objective, the principles of an instrument may provide context for interpreting the operative provisions to ensure effective implementation and guide parties while accommodating the commitments under their national legal framework.

In line with the point above, whilst it is an international legally binding instrument, it is important that the instrument coexists with non-binding provisions. As examples of non-binding acts, the Rio 92 Declaration, and the Stockholm Declaration stand out.

ICC identifies the following principles that were outlined in the options paper that should be set out in the future instrument to guide its implementation:

- a. The principle of equity, and the specific needs and special circumstances of developing and least developed countries, including small island developing States;**
  - b. Polluter pays principle;**
  - c. Extended producer responsibility (EPR);**
  - d. Waste hierarchy;**
  - e. Human rights, including the human right to a clean, healthy and sustainable environment & Social rights;**
  - f. Social rights, particularly of the informal sector workers; and**
  - g. Transparency and reliance on best available science;**
- a. *The principle of equity, and the specific needs and special circumstances of developing and least developed countries, including small island developing States***

Explanatory Text:

ICC highlights the need for the scope to focus on a comprehensive approach that addresses the full life cycle of plastics, whilst also **taking into account national circumstances, challenges, capacities, capabilities and feasibility in different economic sectors.**

ICC believes that a circular approach looking at the entire plastics life cycle will be critical to achieve a plastic pollution free economy by 2040. In addition to the reflection of moving towards a circular economy for plastics in the overall objective(s) of the ILBI, principles and

practices for reducing leakage and increasing circularity should be included at the core of the instrument to support the necessary shift in the design, use and reuse of plastic; as well as include measures to strengthen plastic waste management.

In this regard, the instrument should support national actions, including action by all actors of the society, in particular business to help close the loop of plastics in the economy and ensure that products and materials are designed for circularity and are circulated in practice, while taking appropriate steps to tackle leaked plastic waste especially in high leakage economies.

This will be essential in supporting a global transition to a circular economy that creates coherent, enabling policy frameworks and conditions to incentivise and support business action, and facilitates an effective circular economy that works in practice and at scale. **It would also be useful to give special consideration for developing countries' proportionally different needs and capabilities regarding plastic use and waste management. All design for circularity and reuse/refill obligations should be sector specific, and consider the unique challenges and solutions found in each sector.**

**Regulations should also be created that establish a supportive environment, taking into account local socio-economic contexts, for the growth of design for circularity and reuse/refill, such as more consumer education on refill and reuse systems and incentives.<sup>1</sup>**

It would be useful to provide clear and comprehensive guidance that empowers and inspires consumers. Changing consumer behaviours, also in developing countries where feasible, is a key part of the solution to changing consumption, encouraging reuse and recycling, as well as the avoidance of littering. However, progress will only be possible through stronger collaboration and partnership between all stakeholders working in concert.

**The instrument should also consider national action plans and business contributions for the prevention and elimination of plastic pollution as a key pillar of the instrument, taking into account country-specific circumstances and needs, to ensure that measures are fit for implementation at national level.**

#### ***b. Polluter pays principle***

##### Explanatory Text:

This principle should ensure that the full environmental costs are reflected in the ultimate market price for goods and services. It has been incorporated in many multilateral environmental agreements and is a commonly accepted practice for allocating the costs of preventing or managing the risks of plastic pollution to health and the environment.

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<sup>1</sup> The principles developed by the [Ellen MacArthur Foundation \(Global Commitments\)](#) related to a circular economy for plastics could serve as a useful guide in this regard.

### **c. Extended Producer Responsibility (EPR)**

#### Explanatory Text:

ICC supports options for enhancing waste management capacity and promoting innovation. Policies such as collection targets and EPR can strengthen waste management. EPR is a promising policy tool that can help partially finance improvements in local recycling infrastructure and establish performance standards for all actors across the value chain.

However, it is critical that the EPR system is constructed in a way that maximises its potential. For instance, the funds generated by an EPR program need to be ring-fenced and circled to strengthen the local recycling infrastructure. We believe that pooling national or sub-sovereign EPR funds for a global EPR fund would defeat that purpose. Many organizations have developed resources to guide countries on EPR, such as the [Ellen MacArthur Foundation EPR Program](#).

ICC recommends that any future treaty recommends EPR as a viable policy solution wherever it may be feasible. Most markets with high recycling rates and low levels of plastic pollution have adopted EPR, even in places with robust Deposit Return Systems (DRS). EPR has many benefits, including accounting for all material in the waste stream, maximising consumer convenience, generating significant funding for recycling infrastructure, and establishing performance standards for all actors across the value chain.

In some markets, EPR has developed a supplementary beverage container return program to capture high value material and create an informal waste sector. While EPR may not be feasible in all markets at this time, it is the most successful policy to improve recycling and address plastic waste.

EPR policies, such as recycled content targets, recycling targets, incentives for recycling industries, and investment in municipal recycling infrastructure can help boost the supply of recycled plastic content. Lifecycle and impact assessments should be used to inform policy makers and to reduce the risk of any implementation of restrictions, bans or use of plastic substitutions causing inadvertent negative consequences for the intended use or impact.

Policy should define what materials and activities are covered by EPR systems, set targets and roles for stakeholders. To effectively put these policies into action, there needs to be a strong infrastructure and governance in place. Additionally, audit mechanisms should be established to ensure proper reporting. National EPR policies should further strengthen traceability, collection of data and transparency.

### **d. Waste Hierarchy**

#### Explanatory Text:

Waste hierarchy principles give top priority to waste prevention, followed by re-use, recycling, recovery and finally disposal and set out a useful ranking for waste management in terms of what is best for the environment.

ICC notes that the instrument should support actions to help close the loop of plastics in the economy to ensure that products and materials are designed for circularity and are circulated in practice, while taking appropriate steps to tackle leaked plastic waste especially in high leakage economies.

It would be equally important to include measures across the plastics value chain to address plastic waste, end-of life management including collection, sorting and recycling, in an effort to ensure waste minimisation and remediation, as well as actions related to managing plastics that cannot be reused or recycled in an environmentally sound manner.

This will be essential in supporting a global transition to a circular economy that creates coherent, enabling policy frameworks and conditions to incentivise and support business action, and facilitates an effective circular economy that works in practice and at scale. It would also be useful to give special consideration for developing countries' proportionally different needs, capabilities and existing resources regarding waste management and recycling.

All design for circularity should be sector specific, and consider the unique challenges and solutions found in each sector. Even without government mandates, the business community has been voluntarily developing circular principles that the instrument can lean on.

Regulations should also be created that establish a supportive environment, taking into account local socio-economic contexts for the growth of design for circularity and reuse/refill, such as more consumer education on refill and reuse systems and incentives.<sup>2</sup>

It would also be useful for the instrument to be grounded on best practice standards and definitions to foster greater harmonisation, enhance circularity and environmentally sound management of waste. Existing work, definitions and international standards can provide a useful base and reference for consideration in this respect.

**e. Human rights, including the human right to a clean, healthy and sustainable environment**

**f. Social rights, particularly of the informal sector workers;**

Explanatory Text:

Bringing all stakeholders across society, including governments, the private sector, academia, consumers, informal waste sector and indigenous peoples alongside the journey will be integral to ensure a holistic approach and effective implementation of the treaty to end plastic pollution.

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<sup>2</sup> The principles developed by the [Ellen MacArthur Foundation \(Global Commitments\)](#) related to a circular economy for plastics could serve as a useful guide in this regard.

Most importantly, the treaty should recognise the contribution of the informal waste workers and protect and respect the livelihoods, health, labour, and human rights of these critical actors as well as of indigenous peoples and vulnerable communities. The treaty should focus on enabling an inclusive, fair and just transition to a pollution free and circular economy, while in particular putting a strong emphasis on living wages, safety and health at work, access to education and the prevention of forced and child labour. In this regard, ICC notes that topics related to human rights should consider existing international standards to ensure alignment and avoid unnecessary duplication.

**g. Transparency and reliance on best available science**

Explanatory Text:

ICC holds that it is imperative that the future instrument is underpinned and informed by science and effectively harnesses scientific knowledge and technological innovation to inform ongoing work, including the goal, objectives and actions across the plastics value chain.

An increased understanding of the multifaceted and complex reality of plastic pollution, through reliable and adequate data, scientific and socioeconomic assessments, sound forecasting and measurement metrics as well as the role and impact of technologies and innovative solutions, will be critical to achieve the ultimate goal of the ILBI, inform targets and guide actions over time. Lifecycle assessments should be used to inform policy makers and to reduce the risk of any implementation, or use, of plastic substitutions causing inadvertent negative consequences for the intended use or impact. Considering global supply and value chains, trade in plastics, aligning design approaches and the existing regulation of chemicals will be key to improving the circularity of plastics. Consideration of national circumstances and capabilities is critical to a successful agreement.

ICC recommends that the establishment of an UN scientific group that includes industry scientists and reflects necessary expertise from natural, social and economic sciences, including engineering could be explored in this regard and should include industry.

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In addition to the principles outlined in the options paper, ICC wishes to convey additional principles for consideration as highlighted below.

- (i) State sovereignty over natural resources. State sovereignty is a general principle of international law, including the concept of sovereign equality whereby all States are treated equally as legal persons in international law. States have the right to control the exploration, development, and disposition of their natural resources, including biological resources. The Prior Informed Consent (PIC) procedure as laid down in the Rotterdam Convention for the transboundary movement of hazardous chemicals recognizes the States' sovereignty to decide on potentially harmful activities within their territory.

- (ii) Sustainable development. This principle is concerned with the interdependence of all human activities. It requires that the environment is considered as part of all policies and activities, including those intended to promote economic and social development. The most widely used definition of sustainable development is that of the Brundtland Commission of 1987: ‘Sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.’ The principle is mentioned in several multilateral environmental agreements.
- (iii) Common but differentiated responsibilities. This principle provides that all States have common responsibilities to protect the environment and promote sustainable development, but the actions required from different States vary with their different social, economic, and ecological situations. It weakens requirements for developing country Parties, considering their social-environmental realities, especially regarding the status and maturity of take back schemes and waste collection systems, which are non-existent in some regions. This principle is stated in numerous multilateral environmental agreements, for example, the foundation for different commitments under the UN Framework Convention on Climate Change as well as the Paris Agreement.
- (iv) Prevention. The principle of prevention states that protection of the environment is better achieved than trying to remedy or compensate for harm caused by pollution. It will be applicable when there are safe elements to confirm the existence of a threat. It is closely linked to the duty not to cause transboundary harm and to the precautionary principle. It is most developed with respect to the prevention of pollution.

### 3. Additional considerations

*Provide any other relevant inputs, proposals or priorities here that have not been discussed at INC-2 (e.g., preamble; institutional arrangements, including governing body, subsidiary bodies, scientific and technical cooperation and coordination, and secretariat; final provisions including dispute settlements; and if appropriate annexes).*

ICC proposes the following additional aspects for consideration that were not particularly discussed at INC-2.

- ***Providing a robust and workable mechanism for governments to report and disclose data, contribution and progress***

Explanatory Text:

In order to be effective and to build trust and confidence that all countries are contributing their share to the global effort to end additional plastic pollution by 2040, the ILBI must be built on an effective and workable monitoring and reporting



system with a clear set of modalities, procedures and guidelines for governments to track progress towards national and global objectives. The reporting and transparency framework should provide built-in flexibility for developing countries in accordance with their national capacities and should provide capacity-building mechanisms to facilitate improvement in reporting over time.

Clarity on how business contributions will be taken into account in countries' reporting towards the achievement of national and global goals and targets as well as tools, metrics and mechanisms required to assess and report corporate action and progress is needed. ICC believes that governments could learn from experiences and best practices with the Nationally Determined Contributions process as well as take into account other internal and national efforts and agreed reference systems. Experience from the international climate change process has shown that business in-country engagement in the development and implementation of national action plans is critical in order for governments to further ramp-up the ambition of their national contributions.

While effective and workable reporting and disclosure requirements have an important role to play in the new ILBI, prioritising support and incentives for concrete action, in particular for SMEs is essential to ensure successful implementation of the ILBI. Leveraging and incorporating learnings from existing measurement and monitoring mechanisms into future frameworks should be preferred to establishing new structures.

- **Need to bring into focus the interplay between trade policies and the goal of ending plastic pollution, including at the level of plastic waste management, as well as deal with issues related to classification**

Explanatory Text:

It will be critical to understand how trade and trade policies can effectively support a circular economy transition and contribute to efforts to tackle plastic pollution. Policies to address plastic pollution should be developed taking into account potential interactions and integration with trade, climate, biodiversity or other relevant policy objectives and instruments for better coordination and alignment. In this context, we also encourage governments to consult the findings of an ICC study – [“The Circular Economy and International Trade: Options for the World Trade Organization”](#) on how smartly designed trade policies and rules can support a transition to a circular and resource-efficient economy. Consolidated thinking between trade and environmental policymaking will be essential if we are to deliver on the shared goal of ending plastic pollution.

The treaty should in particular facilitate strengthened plastic waste trade, ensuring consistency and efficiency. It should facilitate the complaint export of high-quality recyclable plastic waste to countries with sufficient recycling capacity, while

implementing proper checks and audits for imports to increase feedstock availability and support circular economy practices, enabling countries to achieve their national targets.

Predictable and coherent national policy and regulatory framework with regards to recycled material targets can help attract foreign investments. This will increase the financial flow to improve collection and recycling infrastructure.

- ***Strengthen processes for effective stakeholder engagement, recognising the critical role of business in implementing the instrument's objectives***

Explanatory Text:

ICC recognises existing efforts by the INC Secretariat to involve all stakeholders and particularly the business community, in all its diversity, in the process, as a critical step in setting the stage for an open, transparent and inclusive process. ICC further welcomes reference to the importance of a multi-stakeholder action agenda in the options paper.

Business engagement, in all its diversity, is indispensable to achieving a circular economy for plastics. Business is not only a central agent of innovation and technological development but also a key engine of sustainable economic growth, employment and just transition, and a source of finance, technical expertise and real-world insights.

Whilst ICC welcome references to a multi-stakeholder action agenda and promotion of cooperation amongst all stakeholders, ICC members believe that consideration should be given by the INC Secretariat and Parties to models and systems that can reflect private sector and stakeholder expertise more formally and substantively in order to strengthen the envisioned outcomes of the process. Existing models, platforms and initiatives under different other UN bodies, such as the nine Constituency Groups and the Marrakech Partnership for Global Climate Action under the UN Framework Convention on Climate Change and international organizations can provide helpful examples for strong business and stakeholder involvement.

To access greater business input and technical expertise, the creation of a technical business advisory channel could be further envisioned, that would operate in close collaboration with the existing business initiatives and organizations engaged in the process. Through a recognised channel, business could more effectively and consistently provide information on its actions (including on research and development, innovative financial mechanisms, and sectoral opportunities); analysis of the impact of its actions (particularly subnational governments, businesses, and investors); and provide direct technical input and advice to discussions throughout the INC process.