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| To:   | Heads of Delegation and INC Focal Points.    |
| From: | Ambassador Luis Vayas Valdivieso, INC Chair. |
| Date: | September 24, 2024.                          |

COMMUNICATION FROM THE CHAIR  
SECOND ITERATION OF NON-PAPER

Dear colleagues,

This non-paper represents the second iteration of the non-paper originally circulated in advance of the informal virtual meeting at the Heads of Delegations level on 16 September 2024. The reflections below have been revised to include possible content under each element and sequencing considerations. It is not intended to be subject to negotiations, but rather to facilitate discussions among Members to help build a common understanding on how the text can be agreed and approved at INC-5. Further, it is not intended to prejudge the outcome of INC-5. It builds on the compilation text, and our work so far, including our informal virtual Heads of Delegations meeting of 16 September 2024.

While not all issues on possible content and sequencing considerations may have been addressed, all issues identified in the negotiations so far can be discussed in the context of one or more of the possible provisions.

Implicit in my approach, and echoing what I have heard from members, is that a simplification in the structure and content of the treaty is a necessary, albeit a complex task, and that INC members will need to be open to accepting a more focused treaty. Feedback I have heard to date reflects the broad understanding that the INC will have the opportunity to develop the details further in the interim period after the Diplomatic Conference for consideration and adoption by the COP, provided that the approved text at INC-5 provides the necessary basis for such work. Therefore, there is a need to sharpen focus on the elements that are necessary for the treaty to be fully operational and effective.

I wish to emphasize that the zero options reflected in the compilation text remain on the table as we move forward with our discussions as they represent negotiating positions of some of the Members.

Regarding our in-person HoDs on September 30 to 1 October, I propose we focus our work and time on:

- The appropriate sequencing of work at and beyond INC-5, which will also impact preparation for INC-5 and the organization of work at INC-5, bearing in mind that we will have only seven days in Busan in which to finalize the text;
- Those provisions addressing possible obligations and measures as well as those related to means of implementation. I propose to focus on these above-mentioned elements on the grounds that, moving forward, a common understanding of these provisions will allow us to move quickly to a common understanding of other provisions. This does not imply that other elements do not carry an equal level of importance.

My expected outcomes from the in-person HoDs meeting include:

- Inputs that would help me develop further substantive proposals that will support the necessary further steps toward the final stage of negotiations;
- Inputs towards the organization of work at INC-5.

As we move forward, I am optimistic about the progress we will make together and am confident that we will continue to work effectively towards our shared goal.

Revised to include possible content under each element and sequencing considerations.

Preamble – Principles – Approaches – Overarching provision

[Approved text expected at INC-5.](#)

- Content and structure to be further discussed as we advance.

1. Objective

[Approved text expected at INC-5.](#)

- This article would set out the core goal for the instrument and would inform any evaluation of its effectiveness when implemented. I note that two overall approaches have been identified in proposals to date:
  - “The objective of this instrument is to protect human health and the environment from [the adverse effects of] plastic pollution”; and
  - “The objective of this instrument is to end plastic pollution.”

2. Definitions

[Approved text expected at INC-5.](#)

- This article could be used for:
  - Terms with no broadly accepted definitions, but which are used in more than one article, e.g. plastic product, microplastic;
  - Terms that are cross-cutting for all or most provisions of the instrument, e.g. Party.
- Terms with limited use could be defined within the substantive or procedural provisions to which they are relevant rather than in this article.

3. Plastic products & chemicals of concern as used in plastic products

[Approved text expected at INC-5.](#)

- This obligation would require each Party to not allow, to reduce a control manufacture, import or export of products, or categories of plastic products, listed in a potential annex, and of plastic products, or categories of plastic products, containing chemicals listed in an annex.
- The term “plastic products” could include intentionally added microplastics and fishing gear.
- Initial lists to be contained in annexes.
- Process and initial schedule for work for the Conference of the Parties (COP) to identify further plastic products and chemicals of concern as used in products to be subject to control, including process for review of the lists.
- The obligation can make a reference to national circumstances and capabilities and possible linkage to applications.
- The article could include references to:
  - Procedure for amending annexes;
  - Transparency and traceability.
- Guidelines/guidance to be developed by the COP to facilitate national implementation of this provision.

[Work in the interim period between the DipCon and COP-1 \(for adoption by the COP at its first meeting\) could include:](#)

- Plastic products
  - Development of guidance and/or guidelines to facilitate national implementation.
  - Development of technical guidelines on specified issues such as substitutes and alternatives.
  - Development of criteria as needed and process for the consideration by the COP of any revisions to the contained in the annexes.
  - Details on transparency and traceability.
  - Terms of reference for any technical bodies to be established. -
  - Dedicated programmes of work by the COP to develop further guidance on specific sector or product categories.
  
- Chemicals of concern as used in plastic products
  - Guidance/guidelines to assist Parties in implementation, including in transitioning away from listed chemicals of concern as used in plastic products.
  
- Product design
 

Approved text expected at INC-5:

  - An obligation for the COP to develop and adopt criteria/guidelines/guidance/principles on product design, including in relation to reuse, repair, safety, durability, and recyclability of plastic products.
  - The article could include references to:
    - Encouraging Parties to adopt such guidelines to inform measures they undertake and ensure alignment of action at the national level with these guidelines or guidance, according to national capacities and circumstances;
    - Work for adoption by the COP at its first meeting;
    - Dedicated programmes of work by the COP to develop further guidance on specific sector or product categories;
    - Assessment and use of alternatives and substitutes.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- Criteria/Guidelines/guidance/principles to inform national action, potentially also for specific sectors or groups or products.
  
- Exemptions
  - The inclusion of this article is conditional on there being articles on plastic products and/or chemicals of concern as used in plastic products. Would enable a Party to register for one or more time-constrained exemptions from the potential phase-out dates listed in annexes associated with plastic products and chemicals of concern as used in plastic products.

#### 4. Supply

Approved text expected at INC-5 (recognizing that proposals presented on supply and production need further shared understandings on text that can be discussed and approved at INC-5)

- This article would require Parties to cooperate to achieve a global objective of sustainable levels of production.
- This article could require:

- Reporting on production of primary and secondary polymers;
- Decision on the need for further action at a later meeting of the COP.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- Measures and guidelines to support the objective of this article.

#### 5. Emissions and releases

Approved text expected at INC-5.

- This obligation would aim to seek to control, reduce, and, where feasible eliminate, emissions and releases of plastics to the environment across their life cycle.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- Guidelines and/or guidance, including where relevant, on a sectoral basis, to facilitate implementation of the obligations set out in this article;
- Guidelines and/or guidance on best available techniques and best environmental practices on preventing emissions and releases of plastic into the environment;
- List of sources subject to control measures (if no annex agreed in text).

#### 6. Plastic waste management

Approved text expected at INC-5.

- This obligation would require each Party to take measures, including, where relevant, through a sectoral approach, so that plastic waste is managed in an environmentally sound manner.
- The article could include:
  - Measures to facilitate / enhance waste management infrastructure;
  - Reference to national circumstances and capacities; Ensuring a just transition for workers involved in management of plastic waste;
  - Encouragement of behavioral change through the value chain;
  - Extended producer responsibility;
  - Reference to the waste hierarchy;
  - Measures for inadequate waste disposal practices;
  - Reference to obligations and guidelines developed under the Basel Convention;
  - Guidelines that may be adopted by the COP.

No work in the interim period between the DipCon and COP-1 is envisaged.

#### 7. Existing plastic pollution, including in the marine environment

- This obligation would aim for Parties to cooperate to identify, evaluate and prioritize locations most affected, and to develop and maintain global, regional and national plans for the remediation of (terrestrial and marine) sites contaminated with plastic wastes.
- The article could also include requirements/encouragement to mobilize resources for prevention, identification and mitigation efforts and Information disclosure.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting)

- Guidelines for national action, including best available techniques and best environmental practices.

#### 8. Just transition

Approved text expected at INC-5

- This article would include:
  - Incentivize development of skills and job opportunities;
  - Actions to be taken by each Party;
  - Consideration of socio-economic factors;
  - Guidelines/guidance to be adopted after entry into force.

#### 9. Finance, including the establishment of a Financial Mechanism

Approved text expected at INC-5 (recognizing that proposals presented on finance, including during the open-ended intersessional expert group meeting in Bangkok, need further shared understandings on text that can be discussed and approved at INC-5)

I expect that this article would, inter alia:

- Require each Party to mobilise, within its capabilities, resources in respect of those national activities that are intended to implement the instrument, in accordance with its national policies, priorities, plans and programmes.
- Recognize that the ability of some Parties to implement some legal obligations effectively under this instrument will depend on the availability of capacity-building and technical and adequate financial assistance.
- Include an aim to align public and private investment and finance with the objective and provisions of the instrument.
- Define a mechanism for the provision of financial and technical cooperation to such Parties to assist their compliance with the control measures under the instrument. The mechanism could:
  - Include one or more funds;
  - Be operated by one or more entities, to be decided by the COP;
  - Include other entities providing multilateral, regional and bilateral financial and technical assistance;
  - Include contributions from the private sector.
- Mandate the COP to provide overall policies and guidance for the mechanism.
- Require Parties to contribute resources through the mechanism.
- Mandate the COP at its first meeting to decide on the institutional arrangements of the mechanism.
- Mandate the COP to review the effectiveness of the mechanism, including its ability to address the changing needs of the developing country Parties.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- Development of the operational modalities for the financial mechanism.
- Transitional arrangements and any other arrangements to give effect to the provision.

#### 10. Capacity building, technology assistance and technology transfer, including international cooperation

Approved text expected at INC-5:

- This article would require Parties to cooperate to provide timely and appropriate capacity building and technical assistance to developing country Parties to assist them in implementing their obligations.

The article could also include references on:

- Regional, subregional and national arrangements, including existing regional and subregional centres, through other multilateral and bilateral means, and through partnerships, including partnerships involving the private sector;
- Facilitation of the development, transfer, diffusion of and access to technologies addressing plastic pollution in an environmentally sound manner;
- The mandate for the COP to keep under review capacity-building and technical assistance to support the implementation of this instrument.

No work in the interim period between the DipCon and COP-1 is envisaged.

#### 11. Implementation and Compliance

Approved text expected at INC-5:

- This article establishes a mechanism, including a Committee as a subsidiary body of the Conference of the Parties, to promote the implementation of, and review compliance with, all provisions of the instrument.
- The article could include paragraphs that:
  - Define the composition and role of the Committee;
  - The process for electing members to the Committee;
  - Decision-making within the Committee.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- Development of modalities and procedures for the Committee.

#### 12. National Plans

Approved text expected at INC-5:

- This article would address the development of national plans which would elaborate national implementation measures, taking into account national capabilities and circumstances.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- Development of guidance for the preparation of national plans, including format.

#### 13. Reporting

Approved text expected at INC-5:

- An obligation agreed in the text, which could include:
  - Reporting obligations on implementation of the provisions;
  - Frequency of reporting;
  - How the reports are to be considered by the COP.

Work in the interim period between the DipCON and COP1 (for adoption by the COP at its first meeting) could include the:

- Development of a draft format for the preparation of national reports.

#### 14. Monitoring of Progress and Effectiveness Evaluation

Approved text expected at INC-5:

- An obligation agreed in the text, which could include:
  - Mandate for the COP to carry out the evaluations;
  - Identify potential sources of information for the evaluation;
  - Periodicity.

No work in the interim period between the DipCon and COP-1 is envisaged.

#### 15. Information exchange

Approved text expected at INC-5:

- This article would require each Party to facilitate the exchange of information relevant to the implementation of the instrument.
- The article could also:
  - Require each Party to designate a national focal point for the exchange of information;
  - International cooperation with other relevant instruments and international organizations;
  - Specific types of information to be exchanged;
  - Modalities for the exchange, including at regional, national and international levels or through a clearing house.

No work in the interim period between the DipCon and COP-1 is envisaged.

#### 16. Awareness, education and research

Approved text expected at INC-5:

- This article would require Parties to raise awareness, improve education and research relevant to the implementation of the instrument.
- The article could include:
  - Need to advance scientific and technological research, development and innovation, including encouragement of international cooperation, in particular on technical aspects.

No work in the interim period between the DipCon and COP-1 is envisaged.

#### 17. Conference of the Parties, including ability to establish subsidiary groups

Approved text expected at INC-5:

- This article would establish the Conference of the Parties, and its key operational modalities, including:
  - Convening of the first meeting, and of subsequent meetings;
  - Adoption of Rules of Procedure and Financial Rules;
  - Functions to be assigned to it, including the establishment of such subsidiary bodies as it considers necessary for the implementation of the instrument;
  - Participation in meetings;
  - Ability to establish subsidiary bodies as necessary.

The establishment of a technical/scientific body in the treaty text could also be considered.

Work in the interim period between the DipCon and COP-1 (for adoption by the COP at its first meeting) could include:

- o Development of draft Rules of Procedure and Financial Rules for adoption by the COP at its first meeting.

#### 18. Secretariat

[Approved text expected at INC-5:](#)

This article would establish the secretariat, define its functions, and provide for cooperation and coordination between the Secretariat and the secretariats of other relevant international bodies. The article also identifies who provides the secretariat services.

[No work in the interim period between the DipCon and COP-1 is envisaged.](#)

#### 19. Final provisions:

[Approved text expected at INC-5:](#)

Elements referred to as “Final Provisions”. Draft texts, based on examples from other MEAs, have been developed at INC-4 and are set out in the relevant sections of INC.5/4.

Agence Europe