

THE GREAT PLASTIC RECKONING: HOW THE LAW AND GEOPOLITICS ARE SHAPING THE FUTURE OF PLASTICS

The Intergovernmental Negotiating Committee's fifth session ('INC-5'), held in Busan from 25 November to 1 December 2024, intended to inaugurate a new chapter in international environmental law. Convened by the UN, the session aimed to build upon the foundational work of prior sessions, in the ambition to conclude a legally binding treaty addressing the entire lifecycle of plastics (unlike prior legal instruments, which focused exclusively on waste management and recycling). Although its outcomes reflect the incremental nature of treaty-making, INC-5 unveiled deep fissures, dividing governments of the Global North and South, industrial ambition from ecological necessity. Its discussions unveiled tensions rooted in more than plastic alone, but also power: how it is distributed, exercised, and constrained. This article examines issues emerging from INC-5, and their relevance for corporate stakeholders across the plastic supply chain.

Introduction

For businesses operating across, or investing in, the plastic supply chain, several issues may warrant immediate attention. Firstly, given that the treaty process is advancing incrementally, a legally binding global plastic treaty is likely, although not imminent. Its eventual structure may likely combine mandatory and voluntary obligations, which mirror precedents established by other multilateral environmental agreements ('MEAs'). In the interim, companies could monitor treaty developments and, crucially, anticipate differentiated national approaches that may emerge ahead of a final agreement. Practically, this may mean prioritising efforts to reduce plastic production, fostering innovation within operations and supply chains, as well as complying with emerging ESG standards, in alignment with a forthcoming treaty's implementation timelines, all of which represent the trajectory of international regulatory momentum.

Among the major issues shaping the draft treaty's trajectory are debates over global caps on plastic production, extended responsibilities for plastic producers, prohibitions on single-use plastics, harmonised chemical additive and toxicity standards, financial and technical support mechanisms, in addition to geopolitical considerations.

Production Caps at the Crossroads

The desirability of global caps on plastic production remains central to the INC's impasse. Over 100 states—including the EU, Small Island Developing States ('SIDS'), African states, and the UK—argue that any credible treaty should include limitations on plastic production. Their

governments contend that, without such limitations, any treaty might not catalyse effective action to address plastic waste. Conversely, negotiators from several major oil-producing states strongly oppose this position. For those states, production limits potentially threaten natural resource sovereignty and economic development.

Indeed, plastics represent a significant growth market for oil, as global demand from the electricity generation and transportation sectors decline due to the energy transition. By some estimates, plastic production may drive over 40% of new oil demand by 2050. Production caps are thus more than environmental objectives, but may also foreshadow global economic and geopolitical reconfigurations. Predictably, then, debates about caps can instigate clashes between fundamental interests. For instance, plastic pollution's ecological and economic costs disproportionately undermine many low-income nations' and SIDS' sustainable development aspirations. In contrast, oil producers might view caps as excessive constraints imperilling an industry already in transition.

Stark divisions between the EU-led position, and those of China, Saudi Arabia, and the US exemplify these complexities. China advocates for a more nuanced position, which endeavours to balance its role as the world's largest plastic producer and consumer with its global environmental leadership aspirations. In the US's hesitance to erode its own national sovereignty, its government tends to resist taking part in binding MEAs. US negotiators argue for regulatory autonomy against one-size-fits-all approaches to the global governance of plastics, although it supports flexible and country-driven measures (such as encouraging national action plans).

Finally, Saudi Arabia perceives production caps as direct threats to its petrochemical industry.

These positions underscore the complexity of regulating plastics, which impinge on energy policy and economic sovereignty. With this, industry stakeholders might expect a fragmented governance regime: some jurisdictions may impose increasingly stringent production limits or quotas, while others may remain more permissive in the near term. The looming prospect of trade distortions and regulatory arbitrage persists.

Extended Producer Responsibility and Single-Use Plastics

Despite such controversies, the INC's discussions on extended producer responsibility ('EPR') policies and reducing single-use plastics reveal emerging consensus on possible substantive treaty provisions. Supporters of these measures emphasise their dual function: reducing plastic production, while fostering novel product designs and advanced material technologies. These measures may also benefit advanced economies and businesses with sophisticated recycling infrastructure.

For example, the UK's packaging regulations, Germany's dual recycling system, as well as the Netherlands' resource efficiency and extended material usage measures deploy EPR principles to incentivise innovation across plastic supply chains. Nevertheless, lower-income nations—in which informal waste management predominates—may encounter considerable implementation and enforcement challenges. While initial compliance and supply chain adjustments may incur significant costs, engaging with emerging EPR frameworks could position businesses to meet the growing demand for sustainable products. Monitoring national EPR measures may also enable businesses to better align with, and leverage, future international consensus.

Harmonised Chemical Additive and Toxicity Standards

Another contentious issue during INC-5 concerned whether prohibitions on certain chemical additives used in plastics, or toxicity standards, should form part of the treaty, or be deferred to specialised bodies (such as those established under the Stockholm and Basel Conventions). On one hand, such treaty provisions could compound existing pressures—including from the energy transition—on the petrochemical industry. On the other hand, some argue that the industry possesses vast capital, the required expertise, to lead the innovation of substitutes (including biodegradable polymers, advanced recycling techniques, and alternative materials). In addition, the cross-border nature of supply chains in this industry could facilitate the

widespread diffusion and transfer of novel environmental technologies. Through strategic diversification and collaboration—both within the industry, and with governments—businesses in this sector could help shape the global development of balanced and effective measures.

Geopolitical Congestion and Financial Mechanisms

INC-5 also illuminated enduring tensions between governments of the Global North and South. Many low-income country representatives continue to advocate for treaty provisions reflecting their unique vulnerabilities: which include limited waste management infrastructure, reliance on informal recycling systems, in addition to the acute ecological and economic pressures exacerbated by plastic pollution. Furthermore, those representatives advocate for enhanced financial and technical support from higher-income countries to build, for example, plastic management capacity and aid technology transfer of advanced materials. Despite the Global North's historical contribution to plastic pollution, and resistance to financial commitments, lower-income countries cite existing climate finance mechanisms as models for supporting the final treaty's implementation.

Clearly, these dynamics shape a complex commercial landscape for the plastics industry. Businesses operating across multiple jurisdictions must unavoidably traverse diverse interests and regulatory environments. Mitigating such cross-border risks will require thoughtful engagement with local stakeholders, as well as dynamically aligning with emerging formal and informal ESG standards in multiple jurisdictions.

The Emerging Treaty's Legal Architecture

While geopolitical divisions pose enduring challenges, the INC process remains the central and most credible pathway for a global plastics treaty. Some commentators suggest alternative approaches, such as separate negotiation pathways led by high-ambition governments outside the INC framework, although these options may lack the broad participation necessary to achieve meaningful impacts. Consequently, the focus for businesses and stakeholders should remain firmly on the ongoing treaty process under the UN's auspices, which continues to shape the emerging global governance of plastics.

In light of this, the most recent draft treaty text indicates emerging consensus on several core architectural themes (outlined below), which feature in many existing MEAs:

- **Framework convention model:** Many MEAs adopt a framework convention model, which comprises a set of general obligations, supplemented by annexes or future protocols prescribing more specific commitments (that parties can flexibly adapt and revise over time). The architecture of a finalised global plastics treaty could mirror this approach, and may also include a Conference of the Parties ('COP'), reporting and monitoring obligations, and a dedicated secretariat (possibly hosted by UNEP).
- **Obligatory and voluntary commitments:** A hybrid approach could combine obligatory provisions (including reporting and compliance obligations) with flexible measures (such as voluntary commitments made through national plastic action plans). Binding commitments may hold greater legal authority, but risks alienating parties, producing an agreement with limited participation. The inclusion of technical capacity building and financial assistance provisions—including dedicated plastic management funds and technology transfer programmes—in a final treaty may facilitate implementation by lower-income countries.
- **Compliance and review mechanisms:** Robust compliance, implementation, and enforcement will influence any final global plastic treaty's effectiveness. Indeed, such prescriptive measures are hallmarks of the most effective MEAs, including the Montreal Protocol and Basel Convention, although the scope and subject matter of those MEAs differ significantly from the plastics treaty. A non-adversarial compliance committee, established under a final treaty, may assist governments to comply with legal obligations. Periodic reporting could also inform national progress toward global targets. However, divergent national interests can result in conflicting targets or timelines. While plastic pollution presents unique challenges—given its pervasive nature, long degradation times, tendency to fragment into microplastics, as well as impacts on human health and across ecosystems—it is plausible that the final MEA may come to resemble the Paris Climate Agreement's structure: a universal framework enabling differentiated, and regularly updated, national undertakings.
- **Interim and longer-term measures:** While the timeline for implementing a global plastics treaty remains subject to ongoing negotiations, some MEAs—such as the Minamata Convention and Kyoto Protocol—have featured interim measures—including voluntary national action plans or early reporting obligations—alongside longer-term commitments, to signal progress and maintain momentum. The Paris Agreement's nationally determined contributions ('NDCs') also illustrate how phased obligations can evolve over time.

A global plastic treaty's complexities suggest potentially staggered implementation timelines, with parties tailoring differentiated obligations to their national circumstances and capabilities. For businesses, this suggests an extended timeline to full implementation, with more immediate impacts arising from anticipatory national measures pre-empting eventual treaty requirements.

Furthermore, we expect that the resumed session—which the negotiating parties could designate as INC-5.2, to maintain continuity with the existing negotiation framework and INC-5's agenda—may occur during the first half of 2025. This aligns with the historical six-month intervals between previous INC sessions, and reflects the urgency to finalise treaty negotiations, which commenced in 2022. If INC-5.2 resolves the major contentious issues outlined in the previous sections, the treaty's consolidation and adoption may swiftly follow. Subsequently, entry into force of the treaty would require ratification by a requisite number of parties, the domestic procedures for each which can differ significantly. While comparable MEAs have typically taken an average of 4.6 years from the agreement of their final texts to entry into force, the Paris Agreement achieved this milestone in under 11 months.

Notwithstanding these issues and timing, the ongoing treaty negotiations appear to be influencing domestic regulatory approaches—particularly in the UK and EU—although to varying extents. EU member states, for instance, are collectively advancing regulatory frameworks like the Single-Use Plastics Directive and the European Green Deal, which set binding targets on plastics and waste reduction. These, and other measures, demonstrate proactive regulatory movements, irrespective of treaty outcomes. At the same time, some states may postpone new regulations, preferring to align with anticipated treaty provisions to ensure coherence with emerging international standards. For businesses, this duality underscores the importance of monitoring both international negotiations and domestic developments, as early movers may face stricter regulations ahead of any global agreement, while others may benefit from delayed implementation.

Bridging Divisions: A Way Forward

Ultimately, the INC-5 negotiations unveiled profound tensions that transcend plastic waste; they concern the global economic infrastructure underpinning plastic supply chains. Still, INC-5's incremental progress on the treaty's architecture indicates that any final legal instrument—which may follow a hybrid framework convention model—remains achievable. Coupling mandatory reporting, and targeted product bans, with capacity building and flexible national commitments, would replicate the Paris Agreement's balance of universal aims with differentiated commitments. The coming months will reveal whether governments, industries, and civil society can bridge their remaining rifts, or if the promise of a genuinely global plastics treaty will fragment into a patchwork of partial or exclusively voluntary measures. For businesses and other stakeholders navigating this terrain, the lesson from Busan is clear: innovation, negotiation, and cooperation will determine who shapes the path ahead, and how the future of plastics will be written.

CONTACTS



Hywel Davies

PARTNER

T +44 (0)20 7090 3102

E hywel.davies@slaughterandmay.com



Richard Todd

PARTNER

T +44 (0)20 7090 3782

E richard.todd@slaughterandmay.com



Moira Thompson Oliver

HEAD OF BUSINESS AND HUMAN RIGHTS

T +44 (0)20 7090 3115

E moira.thompsonoliver@slaughterandmay.com



Aaron Wu

SENIOR PROFESSIONAL SUPPORT LAWYER

T +44 (0)20 7090 3328

E aaron.wu@slaughterandmay.com

London

T +44 (0)20 7600 1200

F +44 (0)20 7090 5000

Brussels

T +32 (0)2 737 94 00

F +32 (0)2 737 94 01

Hong Kong

T +852 2521 0551

F +852 2845 2125

Beijing

T +86 10 5965 0600

F +86 10 5965 0650

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