



# Avoiding Trade Concerns in the Design of Plastic Pollution Measures

Evidence and recommendations for policy-makers

IISD REPORT



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### **Avoiding Trade Concerns in the Design of Plastic Pollution Measures: Evidence and recommendations for policy-makers**

July 2024

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## 1.0 Introduction

In March 2022, United Nations (UN) member states gathered in Nairobi, Kenya and adopted one of the most ambitious resolutions for environmental protection in recent history. UN Environment Assembly (UNEA) Resolution 5/14 established a mandate for countries to end plastic pollution and establish an international legally binding agreement addressing the full life cycle of plastics by the end of 2024 (UNEA, 2022). Because plastic products—including those that are new, in use, and those discarded as refuse—are so ubiquitous, initiatives aimed at meeting the resolution’s deadline will impact myriad products flowing through supply chains around the world. Inevitably, new national and international policies aimed at curbing the manufacture, sale, import/export, and use of certain types of plastics, plastic products, or plastic waste will impact trading partners, sometimes in unforeseen ways. This policy brief aims to identify and help policy-makers avoid possible frictions that may emerge as a result of trade-related policy measures aimed at reducing plastic pollution.

Work in this area has been ramping up in recent years. Hundreds of individual measures targeting plastics have already been adopted by governments at the national or subnational level (Nicholas Institute for Energy, Environment & Sustainability, n.d.). A group of World Trade Organization (WTO) members have also been working since 2020 on trade-related solutions at the Dialogue on Plastic Pollution and Environmentally Sustainable Plastics Trade (DPP) (WTO, n.d.-b). Nevertheless, with annual flows of plastic into the oceans expected to triple by 2040 in a business-as-usual scenario, much work still must be done (PEW Charitable Trusts & SystemIQ, 2020). Many WTO members have already established national bans and prohibitions of specific plastic products to restrict their use, and some have also added supplementary requirements with conditions on the ways in which plastic products are allowed in their markets (Baršauskaitė & Irschlinger, 2023). Due to the absence of a global agreement harmonizing the conditions of plastics-related prohibitions, restrictions, and requirements, governments have been left on their own to define scope or conditions. This lack of structure has led to a wide variety of approaches for defining criteria for targeted products (WTO, 2023).

Regulatory differences across jurisdictions can disrupt traditional trade flows (Organisation for Economic Co-operation and Development, 2017) and cause friction in existing trade relationships—especially when they are introduced abruptly or with unclear justification. To help ameliorate such concerns, WTO members can make use of an established framework that allows them to scrutinize proposed drafts or already adopted laws and measures. These long-established procedures provide the data that form the basis for this policy brief, which aims to identify challenges and good practices and develop a set of recommendations for policy-makers, helping them to maintain smooth trade relations as they develop and implement plastics regulations. Such recommendations might prove to be particularly valuable for governments and organizations thinking about new measures that could be taken to implement the commitments of the UN plastics treaty or any policy actions that the DPP process would lead to.

The brief examines instances in which plastics-related policies implemented by WTO members have created frictions with trading partners due to their actual or potential impact



on trade. The authors identify where such frictions have arisen, determine the nature of the issues that have been raised, and classify them into six types: transparency, justification, timing and implementation time frame, discrimination, proportionality, and absence of stakeholder engagement.

The brief does not attempt to provide an exhaustive inventory of all plastics-related trade policy issues that have arisen to date. The issues discussed are drawn from two major sources of data: the ePing Sanitary and Phytosanitary (SPS) & Technical Barriers to Trade (TBT) Platform (n.d.-d) and Trade Policy Review (TPR) discussions documented in the WTO's Environmental Database (EDB) (WTO, n.d.-a). Strategic keyword searches and further analysis revealed a range of examples of frictions associated with trade-related policy measures to reduce plastic pollution.<sup>1</sup> The resulting examples fell into two categories: specific trade concerns (STCs) raised in either the SPS or TBT Committees; and issues that have emerged from the specific WTO member's TPR process (e.g., requests for clarification or questions submitted by a trading partner). By highlighting and providing objective analysis of these meaningful examples, this brief aims to establish a foundation upon which a set of helpful regulatory principles and practices could be established to help minimize trade frictions and ensure the smooth implementation of plastics policies.

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<sup>1</sup> For additional information on the data and methodology used for this brief, see Appendix A.



## 2.0 An Overview of Measures

Overall, the authors identified 21 policy measures implemented by 14 WTO members<sup>2</sup> that had potentially problematic aspects flagged by 21 other members.<sup>3</sup> Of the total number of measures, 13 cases were raised through STCs in the context of the WTO Committee on Technical Barriers to Trade (TBT Committee), seven were raised in TPR questions, and one was raised through both an STC and a TPR question.<sup>4</sup> In terms of geographical distribution, more than three-quarters of the measures that have triggered STCs and TPR questions were introduced or proposed by European and Asian WTO members, accounting for 43% and 33% of the total, respectively (see Figure 1).

The WTO members who raised STCs and/or TPR questions related to policy measures were a broad and diverse group of 21 members (see Figure 3). In terms of regional breakdown, North America led the way, with two members targeting 14 policy measures, followed by Asia, where six members targeted 15 measures. In Latin America and the Caribbean, six members targeted nine measures and in Europe, three members targeted seven measures. In Oceania, two members targeted four policy measures, and one African member targeted one measure. Members raising concerns over the largest number of plastics-related policy measures were the United States (eight), Canada (six), the European Union (four), Mexico (four), China (three), and the Republic of Korea (three).

In terms of their distribution by development status, 57% of members who raised concerns over a policy measure were developing, while 43% were developed. Results showed no concerns were raised by least developed countries.

### Box 1. By the numbers

- 21** Measures targeted by members (13 through STCs, 7 through TPR questions, 1 through both).
- 21** Members raising issues.
- 14** Members whose measures have been questioned.
- 6** Distinct types of issues raised by members.

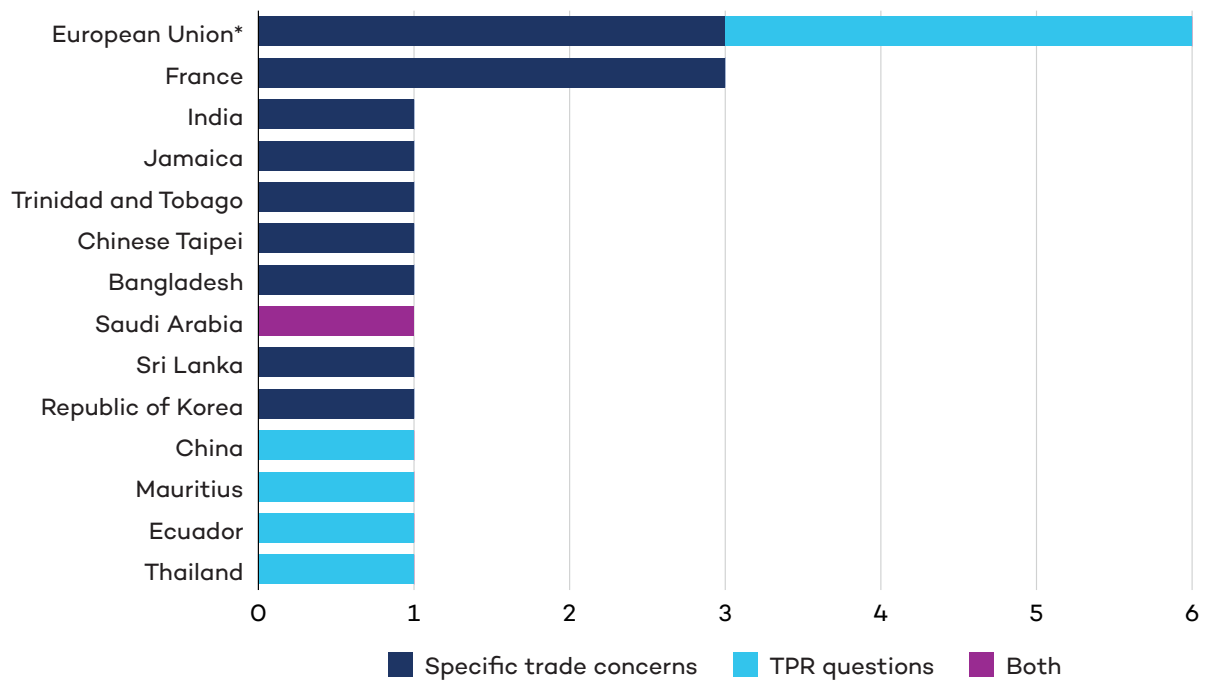
<sup>2</sup> Bangladesh, China, Chinese Taipei, Ecuador, European Union, France, India, Jamaica, Mauritius, Republic of Korea, Saudi Arabia, Sri Lanka, Thailand, and Trinidad and Tobago.

<sup>3</sup> Argentina, Australia, Canada, Chile, China, Chinese Taipei, Dominican Republic, European Union, Guatemala, India, Indonesia, Malaysia, Mexico, New Zealand, Philippines, Republic of Korea, Russian Federation, South Africa, Switzerland, Thailand, and United States.

<sup>4</sup> In this case, the member raising the TPR question specifically referred to the existing STC (See WT/TPR/M/407/Add.1, p. 78, question 15). Available at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/TPR/M407A1.pdf&Open=True>



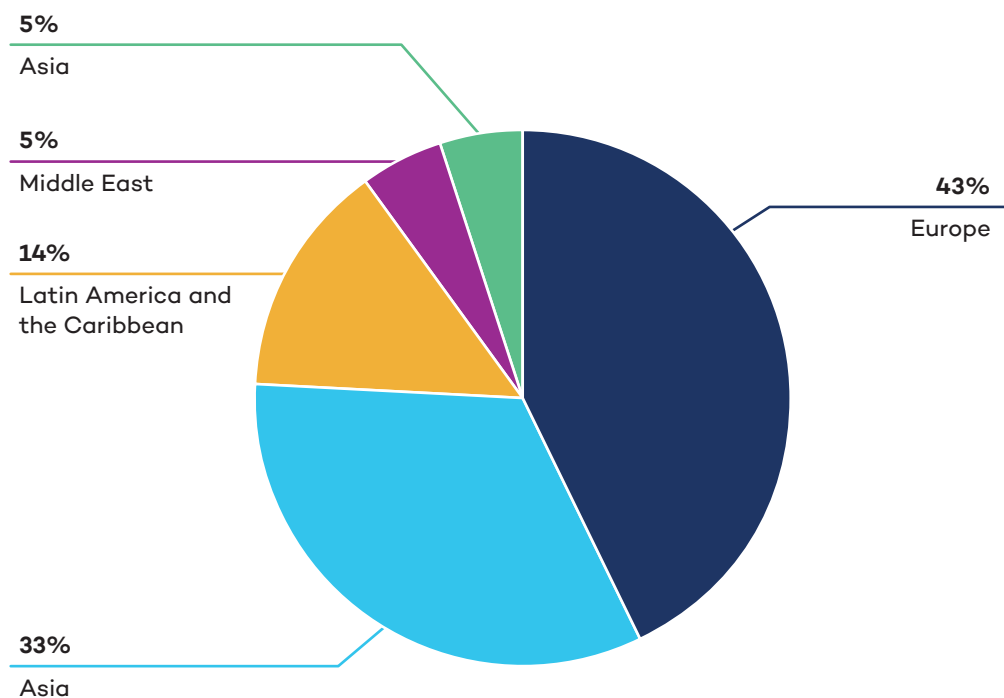
**Figure 1.** Number of policy measures targeted by STCs and TPR questions, by implementing WTO member



\* European Union measures are those that have been implemented by all 27 members. Because EU countries are all individual WTO members, they can also adopt national-level measures that are added if raised as such.

Source: Authors' calculations based on the information in the World Trade Organization's ePing database, as accessed on 23 August 2023.

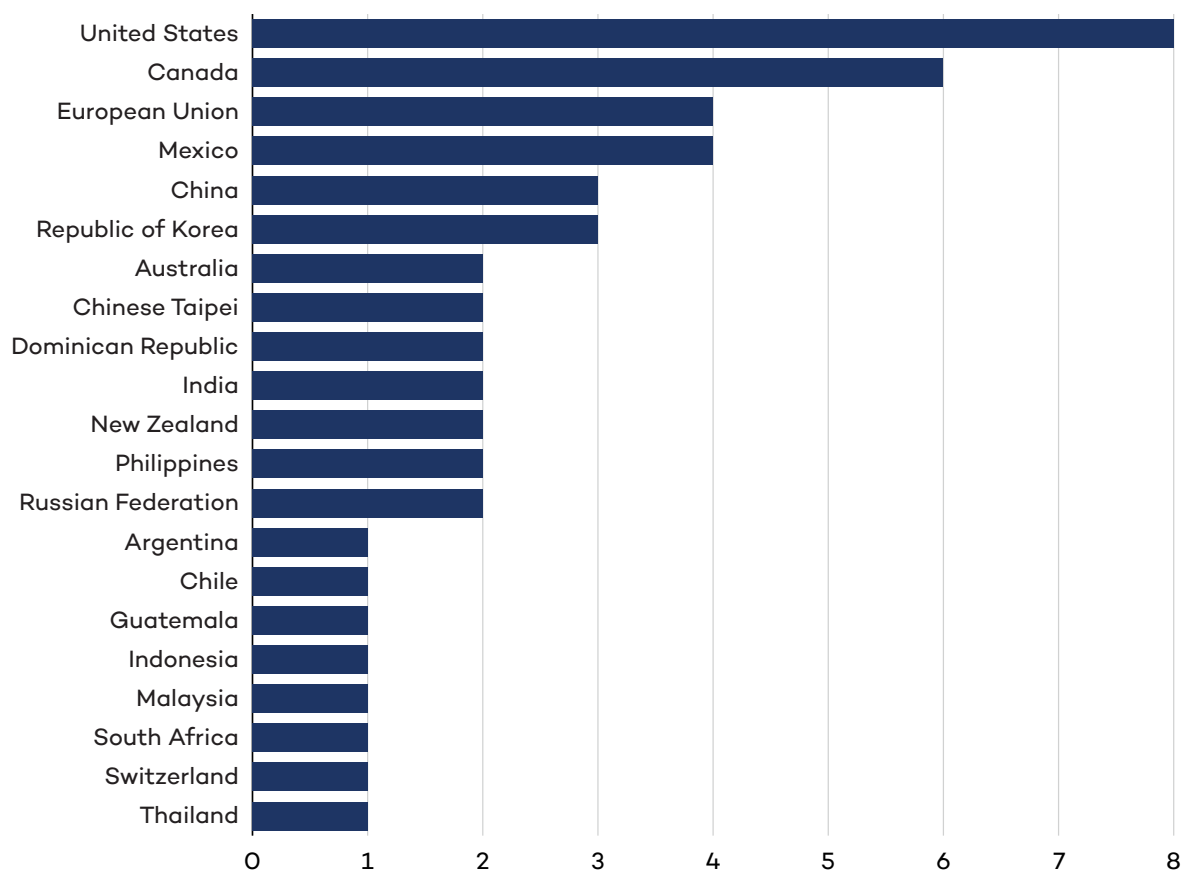
**Figure 2.** Share of implemented policy measures targeted, by region



Source: Authors' calculations based on the information in the World Trade Organization's ePing database, as accessed on 23 August 2023.



**Figure 3.** WTO members who raised concerns or questions over plastics-related policy measures



\* Includes European Commission.

Note: Individual policy measures were often targeted by more than one member. As such, the overall number presented in Figure 3 exceeds 21 (the total number of individual measures targeted by members).

Source:

The 21 policy measures questioned by members are primarily technical regulations or specifications (13); others consisted of bans or prohibitions (four), tax incentives (two), and other types of measures, such as wider strategies to deal with plastics and promote the circular economy (two). The high prevalence of measures that are technical regulations or specifications is due not only to the nature of the sources consulted, notably the ePing database, which largely focuses on technical regulations, but is also determined by the fact that technical regulations are in general one of the most popular trade-related measures that the WTO members introduced when tackling plastic pollution (Baršauskaitė & Irschlinger, 2023).

A chronological breakdown of identified policy measures related to plastic pollution shows that a majority of such measures were introduced in recent years and, overwhelmingly, during the last decade. This upward trend reflects the fact that WTO members have increasingly moved to introduce measures targeting plastic pollution and trade concerns have emerged as a result over the same period (Baršauskaitė & Irschlinger, 2023). Consequently, out of the 21 relevant measures, all but four were introduced after 2015.



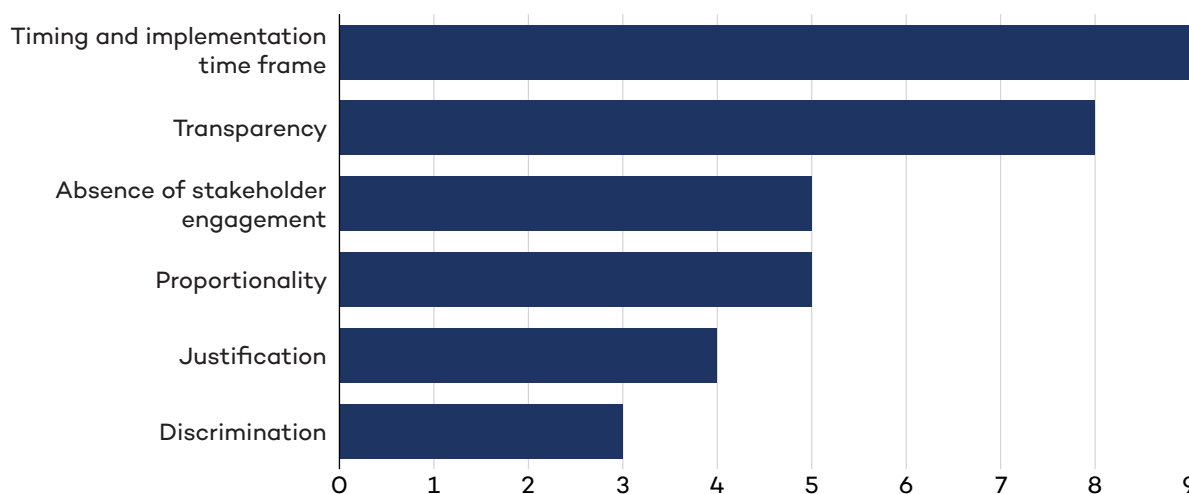


### 3.0 STCs: Identifying dominant types of issues

For 14 of the 21 policy measures that triggered frictions between WTO members, issues were raised through STCs before the TBT Committee. The measures in question consisted primarily of prohibitions (e.g., import bans on polystyrene or single-use plastics) or regulations on the treatment, management, or trade of plastic waste. Other measures included introducing waste reduction strategies and policies to encourage the recycling of plastics.

Upon thorough examination of the STCs targeting relevant measures, the authors identified six distinct types of issues for the purposes of this brief. Regarding plastic pollution measures, WTO members are primarily concerned with issues related to timing and implementation time frames (nine targeted measures) and issues related to general issues of transparency, such as access to the legal drafts of the measure (eight measures). Other frequently cited concerns relate to the absence of stakeholder engagement (five measures), proportionality risks, such as being subjected to disproportionately costly or burdensome obligations in relation to the stated policy objective (five targeted measures), and the justification or rationale for the measure and its operation (four targeted measures). Although less frequently cited, discrimination was the focus of three relevant measures that were considered by WTO members to be inconsistent with WTO obligations regarding non-discriminatory treatment. Each type of concern is elaborated further below.

**Figure 4.** Types of issues in STCs raised by WTO members



Note: Each STC can be comprised of multiple issues and, as such, the overall number presented in Figure 4 exceeds 21 (the total number of individual measures targeted by members).

Source: Authors’ calculations based on the information in the World Trade Organization’s ePing database, as accessed on 23 August 2023.



### 3.1 Timing and Implementation Time Frame

The research revealed that the most common type of STC related to plastic pollution measures focuses on the timing of adoption and implementation periods for a proposed measure. A common type of timing-related trade friction relates to the absence of an established timeline for implementation, including a clearly defined transition period to allow trading partners to adapt and prepare for compliance.<sup>5</sup> In some cases, concerns have been raised over a planned implementation period that was considered too short to allow trading partners to comply with the new regulation, mainly because of the scale of regulatory adjustments that are required.<sup>6</sup>

Problems also arose when the design of the measure included a consultation period that was poorly coordinated or not fully honoured by the WTO member implementing the measure. For example, in France – Decree on the minimum proportion of re-used packaging to be placed on the market annually (ID 758) (ePing SPS & TBT Platform, n.d.-b), the implementing member had provided trading partners with a consultation period for comments and impact assessment on the measure, but reportedly proceeded to adopt the measure before the end of the deadline. Members showed concern over the feasibility of taking into account trading partners' comments when it clearly appeared that both deadlines were incompatible. France was encouraged to revise the implementation process to ensure feedback from trading partners was duly taken into account before the adoption of the measure.

Another trade friction over implementation time frame emerged in the same STC. Trading partners stated that while the draft proposal was notified in a timely manner, implementation guidelines were not yet available and were only expected to be ready some 8 months after the notification of the draft measure, thus greatly shortening the effective transition period between the old and new regulations. On the basis of this difficulty, the United States requested that the implementation date be delayed in order to allow trading partners “a reasonable time to become acquainted with the guidelines and adapt their products or methods of production to the new requirements” (ePing SPS & TBT Platform, n.d.-b).

### 3.2 Transparency

These types of issues reflected concerns over insufficient access to information about the measure during the regulatory process and/or following the adoption of the measure. Members' requests most often focused on the information provided in the notification of the measure to the TBT Committee, but sometimes also on access to an updated and/or translated version of a previously notified measure and on transparency over implementing guidelines. Findings from the ePing database show that some members have been proactive

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<sup>5</sup> Such concerns have been raised by trading partners in STCs, including Sri Lanka – National Environmental (Plastic Material Identification Standards) Regulations No. 01 of 2021 (ID 711) (ePing SPS & TBT Platform, n.d.-i); *India - Plastic Waste Management (Amendment) Rules, 2021 and 2022* (ID 719) (ePing SPS & TBT Platform, n.d.-e); *France - Decree on the minimum proportion of re-used packaging to be placed on the market annually (ID 758)* (ePing SPS & TBT Platform, n.d.-b).

<sup>6</sup> Republic of Korea – Amendments to the Act on the Promotion of Saving and Recycling of Resources (ID 588) (ePing SPS & TBT Platform, n.d.-h).



in requesting implementing members to notify drafts of trade regulations and to provide all members with full access to the comprehensive text of the proposed regulation and its implementing guidelines.

As observed in Republic of Korea – Amendments to the Act on the Promotion of Saving and Recycling of Resources (*ID 588*) (ePing SPS & TBT Platform, n.d.-h), the United States and Canada initially expressed concern over the fact that the proposed measure had not been notified. Once the regulation was notified by the Republic of Korea, further transparency-related concerns were expressed over the measure. Several members requested more transparency and clarification of the implementation guidelines, as well as clarifications on how the implementing member intended to conduct its announced consultations with affected companies. Other concerns included demands for an updated version of the notified regulation and guidance on the timeline for adoption.

### 3.3 Absence of Stakeholder Engagement

Another concern raised by members is the lack of opportunity to provide formal stakeholder inputs, suggestions, and feedback on potential trade impacts of a proposed measure. In STC ID 786 – European Union – Proposal for a Regulation on packaging and packaging waste amending Regulation (EU) 2019/1020 and Directive (EU) 2019/904, and repealing Directive 94/62/EC (ePing SPS & TBT Platform, n.d.-a), the Russian Federation noted the absence of such an opportunity, arguing that the implementing party did not take into account the particularities of the specific impacted industry when designing the policy.

According to some members, stakeholders should have an opportunity to play a role in providing additional evidence as part of the development of the regulation. As an illustration, in STC ID 719 – India – Plastic Waste Management (Amendment) Rules, 2021 and 2022 (ePing SPS & TBT Platform, n.d.-e), the United States expressed concern over the absence of formal input from stakeholders and failure to consider specific stakeholder information. From the perspective of the United States, relevant information that could have been provided by the stakeholders was related to the worldwide shortage of suitable recycled materials, which would make compliance with mandatory recycled content targets of the measure unachievable.

### 3.4 Proportionality

The proportionality of the proposed measure vis-à-vis its stated policy objective is also a factor that has generated frictions among WTO members. Although not one of the most common frictions identified, some proportionality issues have been raised by members over measures that they perceive as creating excessive costs, cumbersome obligations or that are likely to hinder the intended outcome, in relation to their stated policy objective. The WTO Agreement on Technical Barriers to Trade (TBT Agreement) spells out specifically that “technical regulations shall not be more trade-restrictive than necessary to fulfil a legitimate objective, taking account of the risks non-fulfilment would create.”<sup>7</sup>

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<sup>7</sup> Article 2.2 of the TBT Agreement, second sentence.



For example, the introduction of new recycling labelling for plastics has led to tensions over proportionality in STC ID 420 – France – Recycling Triman Mark: “Draft Decree on a common set of symbols informing the consumer about recyclable products subject to a system of extended producer responsibility associated with waste sorting instructions” (ePing SPS & TBT Platform, n.d.-c), which addresses the introduction of additional labelling regulations aimed at increasing the domestic recycling rate in France. In the view of the United States, for example, the implementation costs were “disproportionately high in light of the stated policy objectives of simplifying waste sorting activities.” Canada was concerned that overlapping recycling marks could be confusing for consumers and, therefore, less effective than the status quo, while new requirements could mean “significant cost increases for products sold in France, particularly those from SMEs.” Additional arguments over effectiveness were put forward, highlighting the risk that manufacturers would try to comply with the regulation by increasing the packaging size to fit the new label, thereby diluting the intended environmental objective.

In STC ID 583 – Kingdom of Saudi Arabia – Technical Regulation for plastic product OXO – biodegradable (ePing SPS & TBT Platform, n.d.-g), Switzerland expressed proportionality concerns in a similar way. Switzerland pointed to industry concerns that the Kingdom’s requirement for certain types of plastic packaging to be “oxo-degradable SASO-certified” and bear a specific mark to demonstrate compliance leads to additional costs and creates trade barriers. In turn, it encouraged the implementing member to “consider less trade-restricting alternatives to achieve its environmental objectives.”

### 3.5 Justification

This category relates to STCs through which members point to a lack of evidence or justification to support a measure, part of a measure, or the way it operates. In the context of these concerns, members have argued that a relevant measure, while establishing a legitimate policy objective for tackling plastic pollution, does not provide the necessary scientific, technical, or technological basis to support its rationale. In such cases, trading partners raising the concern have often argued that alternative measures would be better suited to achieve the environmental objectives of implementing members. While this category is very closely linked to proportionality, the issue at stake in this case is not the level of trade-restrictiveness of the introduced measure but rather the very nature of the specific measure itself.<sup>8</sup>

Evidence on this type of friction appears, for example, in Kingdom of Saudi Arabia – Technical Regulation for plastic product OXO – biodegradable (*ID 583*) (ePing SPS & TBT Platform, n.d.-g). While acknowledging the legitimate objectives pursued by the Kingdom of Saudi Arabia, the European Union signalled that “a substantial amount of international scientific research . . . undertaken on so-called oxo-biodegradable plastics” had questioned the effectiveness of such measures and the fact that it had “real environmental benefits.” Thus, some members asserted that the relevant measure was insufficiently substantiated and would create unnecessary trade obstacles. Switzerland, for example, encouraged the implementing

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<sup>8</sup> It is thus rather the issue of “necessity” that is also often raised in the discussions related to Article 2.2 of TBT Agreement.



member to incorporate relevant international scientific research into the drafting of its policy measures addressing plastic pollution.

Some of these concerns also relate not to the measure in itself but rather to part of it and how it operates. In another example of justification, Australia raised Republic of Korea – Amendments to the Act on the Promotion of Saving and Recycling Resources (*ID 588*) (ePing SPS & TBT Platform, n.d.-h). In it, Canberra asked for “clarification on the scientific and technological basis for the measure and for classifying different colours of glass bottle in this manner,” indicating that it would be concerned if the regulation “limited the range of colours of glass containers considered ‘recycle friendly’ without a scientific basis.”

### 3.6 Discrimination

This final type of trade concern is related to the discrimination that policy measures may introduce in favour of domestic economic actors and to the detriment of foreign suppliers. This includes, in particular, situations where a measure is not consistent with national treatment obligations under Article III:4 of the General Agreement on Tariffs and Trade and/or Article 2.1 of the TBT Agreement.

In Jamaica – Regulations Banning Single-Use Plastic Products (*ID 581*) (ePing SPS & TBT Platform, n.d.-f), the Dominican Republic expressed concern over the mandate given to the Jamaican ministerial authority by the proposed measure, which conferred broad discretionary powers to grant exemptions to domestic producers or trading partners and to decide on a flexible application of the measure. The Dominican Republic stated that the drafting did not properly regulate the use of such discretionary powers. It also argued that the regulations banning single-use plastics provided for a “different treatment . . . applied to imports and domestic products in terms of grace periods,” as only one of the two applicable Decrees (namely the one addressing domestic products) provided for such a transitional period. In its view, both elements could lead in practice to a discriminatory application of the measure, amounting to a breach of national treatment obligations under Article III:4.



## 4.0 TPR Questions: An overview of issues raised

TPRs tend to cover a broad range of policy issues. While some of these TPR questions fit neatly into the distinct STC issue types identified in Section 3, they are presented separately here for clarity. A total of seven trade-related plastics policy measures were found to have raised questions from WTO members in the context of TPRs, with at least 11 questions raised. Examples of these policy measures included bans on single-use plastic products or imports of solid waste products, tax incentives for recycling, and broader strategies for addressing plastic pollution or advancing a circular economy.

Analysis of the TPR questions shows that two issues raised were related to **timing and implementation time frame**. One question was raised by Canada to China over the timeline for removing COVID-19 SPS measures related to its import prohibition on solid waste products.<sup>9</sup> The other was raised by Thailand over the adoption of a ban on single-use plastics by Mauritius, a measure whose implementation Mauritius has since paused.<sup>10</sup> These two measures were also the subject of two additional questions related to justification. One was raised by Canada over the scientific evidence supporting China's import prohibition on solid waste products,<sup>11</sup> which also raised a question over the justification of Mauritius' ban on single-use plastics.<sup>12</sup>

Two TPR questions referred to discrimination claims. One was raised by the United States over perceived inconsistencies in China's import prohibition on solid waste products.<sup>13</sup> The other was raised by Chinese Taipei over how the EU planned to address plastics-related member state initiatives that disrupt the free movement of goods and prevent access to the EU's single market.<sup>14</sup> One other issue was related to transparency concerns, where Canada asked for information on other proposed and adopted measures directly related to Thailand's Roadmap on Plastic Waste Management and Circular Economy initiatives.<sup>15</sup>

Four additional TPR questions that emerged through research refer to enquiries over follow-up of implementation of existing measures and do not fall within the types of STC issues noted in Section 3.<sup>16</sup> The first question in this "other" subset was related to **environmental impact assessment**. Raised in 2019 by the Philippines in response to a policy introduced by Ecuador in 2011, the question addressed the effectiveness of a redeemable tax on plastic

<sup>9</sup> Question by Canada, [WT/TPR/M/415/Add.1](#), p. 285.

<sup>10</sup> Question by Thailand, [WT/TPR/M/417/Add.1](#), p. 90.

<sup>11</sup> Question by Canada, [WT/TPR/M/415/Add.1](#), p. 285.

<sup>12</sup> Question by Canada, [WT/TPR/M/417/Add.1](#), p. 57.

<sup>13</sup> Question by the United States, [WT/TPR/M/415/Add.1](#), pp. 162/209.

<sup>14</sup> Question by Chinese Taipei, [WT/TPR/M/395/Add.1](#), p. 584.

<sup>15</sup> Question by Canada, [WT/TPR/M/400/Add.1](#), p. 40.

<sup>16</sup> An additional TPR question raised under the TPR mechanism was related to a measure's policy rationale and its operation, but the trading partner's comment specifically mentioned an STC (STC ID 583 – Kingdom of Saudi Arabia – Technical Regulation for plastic products OXO – biodegradable [ePing SPS & TBT Platform, n.d.-f]) and was therefore tallied in Section 3.



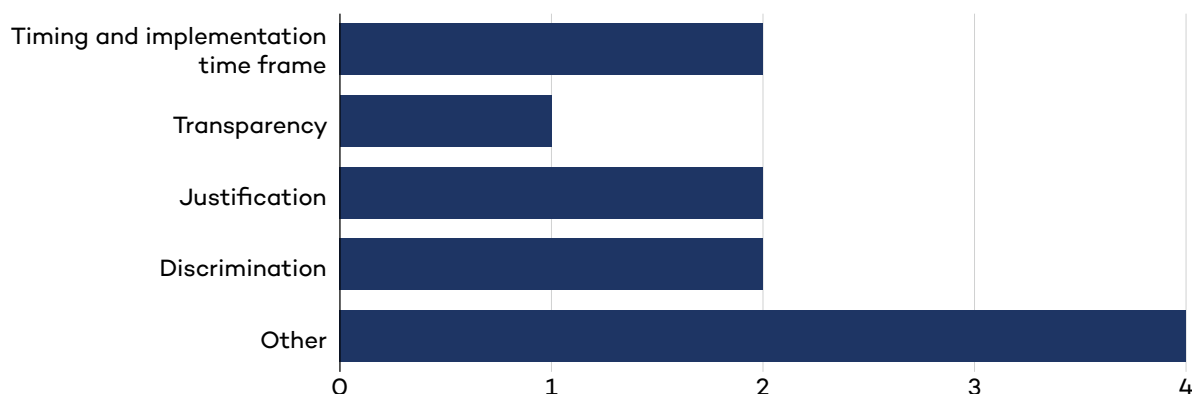
bottles to reduce pollution and encourage recycling. The Philippines asked how effective the mechanism was in reducing plastic waste in the country and whether the initial targets had been met 8 years after the policy’s implementation.<sup>17</sup>

The second instance looked at the theme of **support for third countries**. The question was raised in 2020 by the Philippines in response to the 2018 launch of the Circular Plastics Alliance initiative<sup>18</sup> by the European Commission. The Philippines asks whether there are resources in place to support or encourage the relocation or reorganization of facilities in order to adopt a circular economy approach. The Philippines further asks whether the EU offers support to third countries planning to adopt a circular economy approach.<sup>19</sup>

The third instance was related to **international cooperation**. The question was raised in 2020 by Chinese Taipei in response to a report on the Circular Economy Action Plan adopted by the European Commission in 2015. In it, Chinese Taipei asks for clarity on whether the EU plans to cooperate with trading partners to halt the pollution of plastics waste and if it has intentions of developing an international standard to help improve the quality of plastics recycling.<sup>20</sup>

Finally, the fourth example in this other subset of types addressed **follow-up on implementation**. The question was raised in 2022 by Canada in response to Mauritius’s ban on single-use plastics (also noted above as the subject of timeline and implementation time frame and justification questions). Because the ban was implemented in 2021 and was enforceable, in part, through import requirements, Canada questioned whether any changes or delays were experienced as a result of the COVID-19 pandemic.<sup>21,22</sup>

**Figure 5.** Types of TPR questions raised by WTO members



Source: Authors’ calculations based on the information in the World Trade Organization’s ePing database, as accessed on 23 August 2023.

<sup>17</sup> Question by the Philippines, [WT/TPR/M/383/Add.1](#), p. 101.

<sup>18</sup> An initiative uniting over 330 organisations representing industry, academia and public authorities that aims to boost the EU market for recycled plastics (European Commission, n.d.).

<sup>19</sup> Question by the Philippines, [WT/TPR/M/395/Add.1](#), p. 438.

<sup>20</sup> Question by Chinese Taipei, [WT/TPR/M/395/Add.1](#), p. 505.

<sup>21</sup> The ban was subject to a moratorium.

<sup>22</sup> Question by Canada, [WT/TPR/M/417/Add.1](#), p. 58.



## 5.0 Conclusions

This policy brief aims to provide only an initial overview of potential frictions that have been triggered by trade-related policy measures to address plastic pollution to date. Research findings from the ePing database and TPR entries show that a wide variety of concerns have emerged in response to measures enacted by WTO members. At least 53 issues related to 21 different policy measures enacted by 14 WTO members have been identified. These issues were raised by a diverse group of 21 WTO members, representing both developed and developing economies in virtually all regions.

Identified trade frictions belong to six distinct types of issues and were found in all steps of policy conception, from planning and consultations to later stages of implementation and its impact assessment. When some members believed the objective of a measure to tackle plastic pollution failed to provide enough justification for its adoption, they have questioned the rationale. In cases where justification has been sufficiently demonstrated, some members had issues with the perceived trade effect that was excessively restrictive and disproportionate to the policy objective.

Policy design and implementation have also been a point of friction, with some members expressing apprehension over timing and implementation issues. Examples included the absence of a policy's transition period or a poorly structured transitional timeline. Another recurring issue type that emerged from the research is the absence of stakeholder inclusiveness and failure to take into account input from industry actors. Members noted that this lack of consultation fails to allow producers and manufacturers to anticipate and adequately prepare for compliance. Finally, members have also pointed to potential incompatibility between a given policy measure and national treatment obligations.

This overview of trade frictions linked to policy measures targeting plastic pollution aims to offer a helpful summary of the types of issues that have emerged to date. As increasingly more governments are taking action targeting this global problem, including the collective effort to forge an international legally binding agreement on plastic pollution by the end of 2024, this policy brief aims to not only summarize the issues raised but also to provide some recommendations that might help policy-makers avoid unnecessary frictions with their trading partners when addressing the problem of plastic pollution in their own jurisdiction.

## Recommendations for Policy-makers

### Timing and Implementation Time Frame

- ensure that an implementation timeline has been established and shared with trading partners;
- early in the measure design process, allocate a reasonable consultation period to collect comments from trading partners, ensuring that the process will allow sufficient time and space to integrate such comments into the final draft;
- establish a clearly defined transition period to allow trading partners to adapt and prepare for compliance, taking into consideration the specific implementation





challenges that new technical requirements might pose to the stakeholders in specific sectors;

- prepare and make available implementation guidelines in a timely manner to allow adequate time for trading partners to adapt products or production methods to the new requirements.

### **Transparency**

- ensure that the measure is notified to relevant WTO bodies;
- make the comprehensive text of a proposed regulation and, if needed, its implementing guidelines, available to all WTO members;
- apply the same transparency level to any updates and/or translations of texts, timelines, and implementation guidelines.

### **Absence of Stakeholder Engagement**

- establish an opportunity for formal stakeholder input, suggestions, and feedback on potential trade impacts of a proposed measure;
- provide clear guidance on how stakeholder consultations related to the measure will be conducted and how to participate;
- ensure that time frames for stakeholder engagement are clearly defined, reasonable, and accessible to trading partners.

### **Proportionality**

- ensure that any implemented measure is proportional in its scope and impact vis-à-vis the problem it is designed to address;
- ensure that the measure does not create excessive costs or cumbersome obligations that could needlessly restrict trade and hinder the intended environmental outcome if the same outcome could be achieved with less burdensome obligations;
- defer to or seek consultation from the research community on policy approaches that are effective at achieving certain objectives as they relate to plastic pollution.

### **Justification**

- ensure that all measures provide the necessary scientific, technical, or technological basis to support the rationale and provide this basis when notifying or otherwise sharing the measure with trading partners;
- review alternative measures—including those already in use elsewhere—for potential alternatives that may be better suited to achieve the environmental objective.

### **Discrimination**

- ensure that introduced policy measures do not favour domestic economic actors and are consistent with national treatment obligations;
- in general, any exemptions, flexibilities or temporal grace periods provided by the implementing member should be equally accessible to domestic producers and trading partners.



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## Appendix A. Data and Methodology

The research results for the brief were extracted from two open-access, publicly available data sources: the ePing Phytosanitary (SPS) & Technical Barriers to Trade (TBT) Database and the Trade Policy Review (TPR) entries from the Environmental Database (EDB) of the World Trade Organization (WTO). These databases were chosen because they are currently the most openly accessible, transparent, and comprehensive sources with available information on the exchanges between WTO members on relevant trade-related policies to address plastic pollution. As a result, the findings of this brief are limited to the policy measures discussed in the context of the TBT Committee and relevant entries from Trade Policy Reviews (TPRs) of individual WTO members.

To navigate through the vast amount of information available in these databases, a keyword-based search methodology was adopted. The authors drew upon Duke University's Plastics Policy Inventory (Nicholas Institute for Energy, Environment & Sustainability at Duke University, n.d.) to establish 20 plastics policy-related keywords, which were then used to obtain relevant data. Once matching results were extracted, they were reviewed to ensure only cases that fell within the scope of the study were kept (i.e., cases in which the design or implementation of a trade or trade-related policy measure to address plastic pollution has led to concerns or questions raised by other WTO members).

Based on the two data sources used and the types of findings obtained from them (which are different between the ePing and EDB databases), the cases in which trade-related frictions emerged fell into two broad and separate categories. The first category includes the cases raised as "specific trade concerns" (STCs). An STC is a formal request or complaint raised by a trading partner over a particular aspect of a policy measure in the context of the TBT and SPS Committees. STCs are registered and labelled as such in the ePing database. The second category includes queries raised about a policy measure through a request for clarification or a question submitted by a trading partner in the context of the specific WTO member's TPR process. In this policy brief, those cases are referred to as "TPR questions." In one case, a measure introduced by a member was discussed in both fora (i.e., a question was raised in the TPR process while referring to an existing STC). Each category is carefully examined in the respective sections of this brief.

After examining all cases, the authors identified six distinct categories that questions could be classified by. The authors also note a handful of TPR issues that do not fall neatly into the established categories yet were seen as important as they add depth to the understanding of WTO members' concerns and interests.

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