

To all WTO delegates

On Monday 30th of May, negotiation continues at World Trade Organisation (WTO) on a critical text that deals with intellectual property rules (IPRs) on COVID-19 vaccines.

The original proposal on a waiver on Trade Related Aspects on Intellectual Property Rights (TRIPS) was submitted by India and South Africa to the WTO in October 2020. It proposes a temporary waiver on several IPRs related to COVID-19 technologies. After initial reluctance, the US agreed on “a waiver” of IPRs just for vaccines.

After 18 months of derailing and delaying by high-income countries – notably from the EU, UK, Switzerland, and Canada – a slimmed-down alternative text was presented by the WTO secretariat, which focuses only on patents for vaccines, disregarding treatments and other IPRs like trade secrets. Worryingly, it would add new requirements before a country can exercise the existing flexibilities in the TRIPS agreement, erecting new barriers for developing countries combatting COVID-19. This is in the context of a pandemic where inequality in access to vaccines, tests, and treatments is causing death and suffering and affecting the economies of all countries, with a major impact on poorer countries.

Nearly 18 months after the first vaccine dose was administered, around 75% of people in high-income countries are fully vaccinated, including many with booster doses, compared to less than 13% in lower-income countries.

Therefore, the challenge today for WTO negotiators is to ensure that a decision on TRIPS provisions in the context of the COVID-19 pandemic must enable manufacturers in Lower and Middle-Income Countries (L&MICs) to produce tests, vaccines, and medicines so that they can respond effectively to the pandemic and to mitigate its social and economic impact. Ensuring access to COVID-19 products for people living in L&MICs will also play an important role to control the pandemic at global level. The danger of variants that could evade current vaccine protection has not disappeared.

WTO delegates must face their collective responsibility of removing all barriers to diversified production of vaccines, tests, and medicines in the global South to ensure access in L&MICs. Keeping L&MICs at the back of the queue for these products causes unnecessary death and suffering, while damaging all efforts to control the virus.

During the height of the HIV crisis, WTO members responded with the Doha Declaration, which stated that “the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health”. Without amendments, the current text under negotiation at the WTO is a reversal of the Doha declaration. It undermines the flexibilities in the TRIPS agreement that were emphasized by the commitments made by WTO members in 2001. Moreover, any agreement that adds new barriers could set a dangerous precedent for future pandemics.

Therefore, we urge WTO delegates to make all efforts to ensure that the document includes amendments especially:

1. Remove the anti-diversion clause in order to enable importing countries to export what they do not need or use to others. This will help countries to share doses when needed, facilitate regional procurement, and prevent dose wastage.
2. Extend the waiver on article 39 to cover all its elements and remove the proposed new bracketed text. This will remove restrictions on disclosing trade secrets – a step necessary for manufacturing that should not be restricted to compulsory licensing.
3. Remove text that go beyond the TRIPS agreement (TRIPS+), such as the test of whether a compulsory license is “necessary” and the limitation of the waiver to only cover COVID-19 vaccines, which would exclude the export of vaccine ingredients.
4. Remove the obligation for a government to notify the WTO when using the provisions in this document; a requirement which would open the door for trade retaliation and political and commercial pressure on governments and local manufacturers.
5. Include therapeutics and tests in this WTO decisions. Just as with vaccines, L&MICs have been left at the back of the queue for oral antivirals, other treatments, and tests. WTO members must not repeat the mistakes of vaccine apartheid. Member states should ensure WTO decision covers all COVID-19-related tools, including diagnostics and therapeutics.
6. Remove the current restrictive eligibility criteria, which exclude any country that exports more than 10% of vaccines. This clause prevents countries with production and export capacity from exporting to others that may not have such capacity. In fact, countries with production and export capacity should not be encouraged to opt out of the agreement. Moreover, WTO rules apply to all countries without discrimination so this document must include all members.

Signed

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