

Letter to European Commission and Member States on EC TRIPS Communication

We, the undersigned, would like to express our serious concerns regarding the position of the European Commission on efforts to increase access to COVID-19 vaccines, treatment, and other medical goods by means of a temporary waiver of certain provisions of the Trade Related Aspects of Intellectual Property Rights (TRIPS) Agreement.

For over a year, the pandemic has been ravaging societies and economies. Meanwhile, disparities in access to vaccines and other health technologies has resulted in uneven paths of recovery, with many countries yet to see any light at the end of the tunnel. The proposal from India and South Africa on a TRIPS waiver, submitted in October 2020, and the revised decision text presented in May, attempts to address inequities in access to critical commodities for controlling COVID-19 by expeditiously facilitating freedom to scale up of production and diversification supply options. This proposal is now co-sponsored by 63 World Trade Organization (WTO) Members and supported by more than 100.

In the last nine months the proposal has been discussed extensively and the co-sponsors have responded to questions and requests from WTO Members, including the European Union (EU). The proposal has received massive global support and is backed by United Nations agencies including World Health Organization and UNAIDS, the scientific community, medical associations, trade unions, community and faith-based leaders, national and regional lawmakers, former presidents, prime ministers and Nobel laureates.

Within the EU, Member States legislatures in Spain, France and Italy have been very vocal supporting motions for a waiver at WTO. Furthermore, the European Parliament recently approved a resolution “calling for support for proactive, constructive, and text-based negotiations for a temporary waiver of the WTO TRIPS Agreement, aiming to enhance global access to affordable COVID19-related medical products and to address global production constraints and supply shortages” .

On 4th June 2021, the European Commission submitted communication IP/C/W/680 to the Council for TRIPS titled “Urgent Trade Policy responses to the COVID-19 crisis: Intellectual Property”. This was followed by another communication on 18th June proposing a declaration on the TRIPS Agreement and Public Health in the circumstances of a pandemic” (IP/C/W/681)

The communications presented by the European Commission to the WTO are, in our view, devoid of any useful solutions at a critical time when WTO should be making decisive and concrete contribution to ensure timely, equitable global access to vaccines, treatments, diagnostics, and other COVID-19 health technologies and goods.

The clarifications contained in the communications are inadequate as they address issues that have never been in dispute and that are clearly provided for in the text of Article 31, and Article 31bis of the TRIPS Agreement and the Doha Declaration on TRIPS and Public Health. These “pseudo-proposals” will create nothing but confusion and will simply serve to distract and delay discussion on the TRIPS waiver proposal.

The communications also fail to address the underlying concern with respect to compulsory licensing, i.e., that its “case-by-case” or “product-by-product” approach is limiting during the pandemic and the need for additional tools to overcome IP barriers. In fact, historically the EU, the US and other high-income countries have discouraged developing countries from using compulsory licensing. Further, the requirements of Article 31bis of the TRIPS Agreement has rendered the mechanism unworkable to generally address access to medicines, even more so during a pandemic.

In addition, the Communications’ focus on compulsory licensing is short-sighted as it does not address the challenges posed by intellectual property rights, such as trade secrets, industrial designs and copyright that are needed to produce vaccines and other health technologies.

The disparity in access between high-income and lower-income countries is vast. Latest data shows that high-income countries that represent only 16% of the world population have fully vaccinated 28.5% of their populations, while a mere 0.1% of people in low-income countries and on average about 7.8% of middle-income countries have been fully vaccinated . Similarly access to testing, therapeutics and other health technologies remains a challenge in developing countries. There is an urgent need to scale up and diversify production of vaccine and other critical technologies.

The EU Communications cannot be considered as an alternative to the waiver proposal to address the pandemic access issues because they do not respond to any of the elements and concerns raised by the co-sponsors of the TRIPS waiver proposal and introduces text that may instead undermine the use of existing TRIPS flexibilities. In fact, we note that the TRIPS Waiver is based on a specific process under Article IX of the WTO.

To conclude:

- We urge the EU member states to request the EC to reconsider its communications to the TRIPS Council since they do not offer any meaningful solutions to facilitating equitable access and may instead undermine TRIPS flexibilities.

- We demand the EU to not distract and disrupt the discussions on the TRIPS waiver proposal. The EU must acknowledge the European Parliament opinion and constructively engage into the text-based negotiations of the TRIPS waiver proposal (IP/C/W/669/Rev.1), ensuring the will of European citizens and billions of people around the world is heard and realized.

Sincerely,

agreement on Covid-19 vaccines, treatment, equipment and increasing production and manufacturing capacity in developing countries - Thursday, 10 June 2021 (europa.eu)

2. IP/C/W/680 (wto.org)

3. IP/C/W/681 (wto.org)

4. MSF analysis of EU communications to TRIPS Council on COVID-19 IP waiver proposal <https://msfaccess.org/msf-analysis-eu-communications-trips-council-covid-19-ip-waiver-proposal> and “Disinformation, Diversion, and Delay: The Real Text of the European Union’s Communication to the WTO TRIPS Council” at <http://infojustice.org/archives/43180>

5. .Compulsory licenses, the TRIPS waiver and access to COVID-19 medical technologies andMSF Technical Brief: Analysis of EU position on compulsory licensing and TRIPS waiver in the COVID-19 pandemic

6. <https://ourworldindata.org/covid-vaccinations>