

CIVIL SOCIETY LETTER ON SUPPORTING THE PROPOSAL TO A WAIVER FROM CERTAIN PROVISIONS UNDER THE TRIPS AGREEMENT DURING THE COVID-19 PANDEMIC

Brussels, 19 November 2020

Dear Members of the Trade, Health and Development Committees of the European Parliament,
Dear Members of National Parliaments of European Union member states,

We, the undersigned civil society organisations, call on you to take actions in your capacity as a parliamentary member of the European Parliament (EP) or the national parliaments of European Union (EU) member states, to urge the European Commission (EC) to strongly supportⁱ the adoption of the proposal for a temporary ‘Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19’ (Waiver proposal) as submitted by India and South Africa, co-sponsored by Kenya and Eswatini, at the TRIPS Council of the World Trade Organization (WTO).

When COVID-19 was declared to be a pandemic, there was overwhelming consensus that there was an urgent need for international collaboration to speed up product development, scale up manufacturing, expand the supply of effective medical technologies and ensure everyone, everywhere is protected. At the EP, a resolution was adopted recognizing the need to ensure equal and affordable access for all people worldwide to future COVID-19 vaccines and treatments as soon as they are available, and reaffirming the use of the TRIPS flexibilities during this pandemic.ⁱ Several Heads of State also called for COVID-19 medical products to be treated as global public goods.

Despite the pressing needs and consensus, shortage of supply continues to occur while pharmaceutical companies at large continue to pursue a “business-as-usual” approach to intellectual property, limiting manufacturing and supply capacities. Indeed, industrial associations have openly rejected initiatives calling for voluntary contributions and open sharing of COVID-19 technologies.ⁱⁱ

A few countries, including EU member states Germany and Hungary, have revised their national laws to make it easier and quicker for governments to use any patented medical technologies when needed during the pandemic, alerting the need to address Intellectual Property (IP) barriers. However, when countries lack immediate manufacturing capacity for any of the essential parts for a product, including raw materials, components or packaging materials, removing IP barriers on one product in one country alone will not be sufficient. Therefore, a country-by-country and product-by-product approach of using the TRIPS flexibilities remains limited in addressing IP challenges in this pandemic.ⁱⁱⁱ

The proposed waiver came at this critical moment, envisaging a temporary and complementary policy space within the TRIPS framework that could empower governments to take more automatic and expedited actions when accessing the IP-protected technologies that are needed to protect public health. Many developing countries demonstrated strong support when the proposal was first presented at the TRIPS Council on the 15th of October 2020. More than 300 civil society organisations globally^{iv} and a number of international organisations including WHO, UNAIDS, the South Centre, and other international organisations including UNITAID, DNDi, TWN and MSF have expressed their strong support for the move.^v

ⁱ The European Commission to support the waiver on behalf of the EU.

Instead of realising global solidarity, prioritising public health and joining the support for the Waiver Proposal, the EU, represented by the EC, has chosen to oppose the initiative with a small group of WTO members.^{vi} We consider the EU position divisive and detrimental and call on parliamentary members to react.

Whereas the EU announced a global pandemic response based on global solidarity with the EC President Von der Leyen referring to a COVID-19 vaccine as ‘a universal public good’; the EU’s strong opposition to the temporary waiver starkly contrasts and is incoherent with this rhetoric. The EU position considers that IP is not a barrier in relation to COVID-19 medicines and technologies, ignoring the hard evidence that restrictive licensing practices have already caused a shortage of supply of for example from remdesivir and ventilator valves in several European countries.^{vii, viii}

While the EU pledged important financial contributions to the Access to COVID-19 Tools Accelerator and its vaccine pillar the COVAX Facility for the purchase of potential COVID-19 vaccines, only limited quantities of COVID-19 vaccines can be reserved from developers because high-income countries, including EU member states, have bypassed these global mechanisms and secured a vast share of global vaccine supplies at the detriment of the majority of the global population living in low-and-middle income countries.

The EC argues that it consistently supports the use of flexibilities enshrined under the TRIPS agreement including the use of compulsory license and the special procedures under Article 31*bis* facilitating import and export of goods produced under compulsory license. However, in reality, the EU has pressured developing countries who were either improving their national laws or making use of compulsory license.^{ix} The EU itself - with its member states - has also opted out from the Article 31*bis* stipulating eligibility to import medical goods produced under compulsory license. Without recognising its own need to address the limitations currently stopping the collective use of flexibilities in a pandemic and omitting its own conduct of discouraging its trade partners in using TRIPS flexibilities, the EU argument, as such, is moot.

The proposed waiver does not overhaul the TRIPS agreement or pose a threat to the IP system but instead leaves it intact by providing the possibility for countries to *temporarily* opt out of certain obligations in a global crisis. EU member states can support the waiver and stand in solidarity with the rest of the world without applying or using the waiver itself, if they wish.

Therefore, the EC’s strong opposition to the Waiver Proposal is a regrettable disservice to the EU’s founding values of human dignity and solidarity, as its opposition essentially denies non-EU countries the additional legal flexibility to produce or import life-saving medical tools when needed.

We therefore ask that you, as members of parliament, launch extraordinary inquiries and actions be it in the form of letters, hearings and/or resolutions to demand the EC and your national government reconsider the EU’s position on the Waiver Proposal and demand support for the proposal.

Signatories:

1. Access to Medicines Ireland
2. Access to Rights and Knowledge Foundation, Nagaland, India
3. Actions Traitements
4. ACTIONS TRAITEMENTS
5. AIDS Access Foundation
6. Aktionsbündnis gegen AIDS (Germany)
7. All India Drug Action Network
8. Amnesty International

9. Amref Salud África
10. ARK (Access to Rights and Knowledge) Foundation
11. Asociación por un Acceso Justo al Medicamento (AAJM), España
12. Association des Femmes de l'Europe Méridionale (AFEM)
13. Association for Proper Internet Governance
14. Associazione Culturale Pediatri
15. Bangladesh Nari Progati Sangha (BNPS)
16. Blanca Martínez bueno
17. Brazilian Interdisciplinary Aids Association (ABIA)
18. Bread for the World
19. BUKO Pharma-Kampagne
20. Centre for Research on Multinational Corporations-SOMO
21. Centro per la Salute del Bambino - onlus
22. Centro Salute Globale
23. Child Way Uganda
24. Community Network for Empowerment
25. Complutense University of Madrid
26. Consumer Association the Quality of Life
27. Coordinadora de ONGD-España
28. Coordinadora Estatal de VIH y Sida (CESIDA)
29. Corporate Europe Observatory (CEO)
30. CurbingCorruption
31. DAWN (Development Alternatives with Women for a New Era)
32. Drug Action Forum Karnataka, India
33. European AIDS Treatment Group
34. European Alliance for Responsible R&D and Affordable Medicines
35. Fairwatch Italy
36. Farmamundi
37. Federación de asociaciones de vecinos de Gijón
38. Federación de Asociaciones para la Defensa de la Sanidad Publica
39. Federación Española de Estudiantes de Medicina para la Cooperación Internacional (IFMSA-Spain)
40. Fix the Patent Laws Coalition (South Africa)
41. FOAESP (Fórum das ONG AIDS do estado de São Paulo)
42. Fondation Eboko
43. Forum Umwelt und Entwicklung
44. FOS
45. France Assos Santé
46. Freedom from Debt Coalition (Philippines)
47. FTA Watch
48. Fundación Anesvad
49. Global Health Advocates / Action Santé Mondiale
50. Global Justice Now
51. Grandmothers Advocacy Network
52. Handelskampanjen /The Norwegian trade campaign
53. Health Action International (HAI)
54. Health Global Access Project
55. HIV Legal Network
56. Human Rights Watch

57. Indonesia for Global Justice
58. IndustriALL Global Union
59. Initiative for Health & Equity in Society
60. Initiatives for Dialogue and Empowerment through Alternative Legal Services Inc. (IDEALS Inc.)
61. International Treatment Preparedness Coalition (ITPC)
62. IT for Change
63. Kamukunji Paralegal Trust (KAPLET)
64. LAWYERS COLLECTIVE
65. Médecins du Monde International Network
66. Médecins Sans Frontières, Access Campaign
67. Medical Action Group, Inc.
68. Medico international, Germany
69. Medicus Mundi España
70. Misión Salud
71. NoGrazie
72. Organisation for Workers' Initiative and Democratisation
73. Oxfam
74. Pakistan Fisher Folk Forum
75. People's Health Movement Australia
76. People's Health Movement Europe
77. People's Health Movement South Africa
78. Pharmaceutical Accountability Foundation
79. Plataforma NoGracias (Spain)
80. Plataforma por la Salud y la Sanidad Pública Asturias
81. Pro Ethical Trade Finland
82. Public Eye
83. Roots for Equity
84. Salud por Derecho
85. Salud y Farmacos
86. Saluteinternazionale.info
87. Sanayee Development Organization SDO
88. Sankalp Rehabilitation Trust
89. SECTION27
90. Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO)
91. Society for International Development (SID)
92. South Asia Alliance for Poverty Eradication (SAAPE)
93. Stichting Commons Network
94. SumOfUs
95. T1International
96. TB Proof
97. Third World Network
98. Transnational Institute
99. UFC-Que Choisir
100. Universities Allied for Essential Medicines (UAEM)
101. Viva Salud
102. Wemos
103. Women In Development Europe+

104. Working Group on Intellectual Property of the Brazilian Network for the Intergration of Peoples (GTPI/Rebrip)
105. World Vision Deutschland e.V.
106. 11.11.11

ⁱ European Parliament Resolution on the EU's public health strategy post-COVID-19. (2020/2691(RSP))

https://www.europarl.europa.eu/doceo/document/RC-9-2020-0216_EN.html

ⁱⁱ <https://www.statnews.com/pharmalot/2020/05/28/who-voluntary-pool-patents-pfizer/>

ⁱⁱⁱ https://msfaccess.org/sites/default/files/2020-10/COVID_Brief_ProposalWTOWaiver_ENG_2020.pdf

^{iv} <https://msfaccess.org/civil-society-wto-members-support-india-and-south-africas-proposal-waiver-ip-protections-covid-19>

^v UNAIDS statement of support:

https://www.unaids.org/en/resources/presscentre/pressreleaseandstatementarchive/2020/october/20201015_waiver-obligations-trips-agreement-covid19; The South Centre statement of support: <https://www.southcentre.int/wp-content/uploads/2020/11/Note-on-India-SA-proposal-waiver-TRIPS.pdf>; UNITAID statement of support: <https://unitaid.org/news-blog/unitaid-supports-call-for-intellectual-property-waivers-and-action-for-access-to-covid-19-products/#en>; DNDi statement of support: <https://dndi.org/statements/2020/dndi-statement-india-south-africa-request-wto-waive-ip-rules-covid-19-health-tools/>; WHO supports:

<https://economictimes.indiatimes.com/industry/healthcare/biotech/pharmaceuticals/who-favours-india-south-africas-ipr-waiver-proposal-to-wto-for-covid-treatment/articleshow/78743258.cms>; MSF supports: <https://msfaccess.org/landmark-move-india-and-south-africa-propose-no-patents-covid-19-medicines-tools-during-pandemic> .

^{vi} EU position to the waiver proposal <https://www.keionline.org/34275>

^{vii} <https://www.swissinfo.ch/eng/european-countries-face-shortages-of-covid-19-drug-remdesivir/46080304>; see also

<https://www.biospace.com/article/eu-faces-remdesivir-shortages-amidst-sharp-spikes-in-new-covid-19-cases/> .

^{viii} <https://msfaccess.org/india-and-south-africa-proposal-wto-waiver-ip-protections-covid-19-related-medical-technologies>

^{ix} https://trade.ec.europa.eu/doclib/docs/2020/january/tradoc_158561.pdf (page 11-12)