

## *Occasional News Wrap – #1/March 2021*



### **WTO TRIPS Provisions Waiver or No Waiver on COVID-19 Vaccines *Need for Global Solidarity***

The COVID-19 pandemic, and the battle to make useful technologies and vaccines more accessible to people around the world, has once again highlighted the tension between intellectual property rights and the promotion of public health.

The pandemic resulted in a global crisis of unprecedented scale. Governments worldwide are making several attempts to control the number of cases and its impact. However, it finds its way back, with mutated strains claiming to be deadlier than before.

At the same time, as compared to what it was in last year, with multiple vaccines having been produced and said to be effective, the situation is improving in many countries. Countries around the world have started vaccinating their population but unequal distribution of vaccines between the rich and poor countries has become a contentious issue.

In order to address the mismatch between the supply and demand, and the intensification of manufacturing of the COVID-19 vaccines in the hands of a few, an urgent need is being felt to enhance their availability using the already existing production facilities of diverse vaccine manufactures so as to ensure a more equitable access at affordable prices.

Since October 2020, the WTO (World Trade Organisation) members have been debating a proposal initiated by India and South Africa to waive obligations under the WTO Trade-Related Aspects of Intellectual Property Rights (TRIPS) Agreement to make COVID-19 technologies, including vaccines, medical devices and protective kits, more and quickly accessible across the world. More than 50 countries have backed this proposal.

However, this proposal is facing opposition, especially from countries such as the United States of America, Canada, the European Union and the United Kingdom, which want to protect their pharmaceutical industries.

The current conflict is reminiscent of a similar debate that took place in 1998 when some pharmaceutical companies brought legal proceedings against the South African government to stop it from introducing laws that would make HIV/AIDS drugs more accessible and affordable.

However, the case was abandoned by those pharmaceutical companies. Also, it resulted in the Doha Declaration on TRIPS and Public Health, which called for more accessible and affordable prices for medicines on public health ground. Therefore, it remains to be seen as to how the current conflict is resolved in light of the COVID-19 public health crisis.

In short, the current situation demands and expects countries to support and stand with each other in global solidarity to successfully overcome the COVID-19 pandemic.

Therefore, this Occasional News Wrap (ONW) highlights the immense importance of this debate. Among others, it covers the stand of the developing countries, which are requesting for the TRIPS waiver on the COVID-19 vaccines and related medical devices including technologies so that they are available in a more accessible and affordable manner worldwide including the least developed countries and the stand of the developed countries which are against such waiver.

This ONW is categorised into three sections, which are as follows:

1. India's stand on the TRIPS waiver on COVID-19 vaccines
2. Support for India's and South Africa's Proposal
3. Debate around this proposal

## 1. India's stand on the TRIPS waiver on COVID-19 vaccines

1.1	<p>Safeguarding the World's Response to COVID-19 from the Intellectual Property Police</p> <p><i>Biswajit Dhar and Gopakumar</i></p> <p><b>The Wire</b></p> <p>October 17, 2020</p>	<p>Access to medicines at prices that the patients can afford has been a recurrent concern for the global community ever since the Agreement on TRIPS was adopted as one of the covered agreements under the WTO. The TRIPS Agreement is a charter for <a href="#">strengthening intellectual property rights</a> (IPRs) and over the past 25 years, there are instances galore where holders of intellectual property have exercised their rights to extract exorbitant rents from the users of proprietary products.</p>
1.2	<p>India and South Africa's COVID Vaccine Proposal to the WTO: Why Patent Waiver Must Be Considered Over Compulsory Licensing</p> <p><i>By Manvi Rathod &amp; Keiya Barot</i></p> <p><b>IP Watchdog</b></p> <p>January 02, 2021</p>	<p>While coronavirus spent the majority of 2020 wreaking havoc on earth, pharmaceutical companies have been busy at work trying to invent a vaccine to combat it. Renowned pharmaceutical companies have been successful in developing the vaccine, which will be protected under the TRIPS.</p> <p>Reason cited for opposing the proposal for waiver was that the TRIPS Agreement already has flexibility protocols to combat public health emergencies, such as compulsory licensing. Compulsory licensing ensures the use of a patent without authorization from the patent holder in cases of national emergency and for public non-commercial use, thus allowing governments to make generic versions of medications without the patent holder's consent. However, <a href="#">while the developing countries tout compulsory licensing as the solution to the problem of procurement</a>, this solution will be an ineffective one for more than one reason.</p>
1.3	<p>Pressure on WTO to consider India's proposed IPR waiver on COVID vaccines</p> <p><i>World Trade Organization</i></p> <p><b>Business Standard</b></p> <p>February 25, 2021</p>	<p>India, which is often described as 'World Pharmacy' is supplying vaccines to more than 70 countries on a humanitarian and commercial basis, is <a href="#">spearheading the move to get a TRIPS waiver at the WTO</a>. Such a waiver would enable greater access to affordable COVID-19 health technologies, including vaccines, in particular for developing and middle-income countries.</p>
1.4	<p>I am sure global pharma industry will support India's WTO proposal of IP waiver for COVID-19: Goyal</p> <p><b>The Hindu</b></p> <p>February 25, 2021</p>	<p>Commerce and Industry Minister Piyush Goyal on February 25 expressed hope that global <a href="#">pharmaceutical industry</a> will show "big heart" and support India's proposal in the WTO for relaxing certain provisions in a multilateral agreement on intellectual property with a view to containing the pandemic.</p>

1.5	<p>WTO may consider India's proposal regarding IPR waiver on COVID-19 vaccines, could result in decrease in costs</p> <p><b>Hindustan Times</b> February 25, 2021</p>	<p>If India succeeds in getting the proposed waiver of the agreement on TRIPS, <a href="#">it will reduce the cost of vaccines substantially and enable free flow of medicines</a>, easy technology transfer across the world. However, the road to getting the proposal cleared and develop consensus is not easy as many western countries are opposing the move, official source dealing told the reporter that if this gets through it will be a 'game changer'.</p>
1.6	<p>India's plan for supplying affordable COVID vaccine gains traction among WTO members</p> <p><i>By Rahul Shrivastava</i></p> <p><b>India Today</b> February 26, 2021</p>	<p>At the moment, <a href="#">COVID vaccines are being produced by a handful of companies in some countries</a>. Only ten countries account for 95 per cent of the total vaccine doses administered globally. It is against the WTO advisory that 70 per cent of the global population needs to be vaccinated to beat the pandemic.</p> <p>As the situation stands, the world needs around 11 billion COVID vaccine doses. The current availability is nearly 7.5 billion doses. While the developed world accounts for 16 per cent of the world's population, 60 percent of available doses have assured access via commercial agreements with manufacturers. In comparison, developing and poor countries with high population account for only 10 per cent of vaccines.</p>
1.7	<p>Global growth to be hit if IP norms not waived to deal with COVID-19: India at WTO</p> <p><b>Financial Express</b> February 27, 2021</p>	<p>The world is fighting the pandemic which could potentially cost USD 9 trillion to the world economy. Further, Navnit said that it does not make any sense that on one side countries are providing <a href="#">USD 1 trillion or USD 1.5 trillion</a> worth of fiscal stimulus, but on the other hand they are not willing to compensate for design remuneration for IP rights' holder and expand the manufacturing by just putting USD 30-40 billion in bucket.</p>
1.8	<p>Buy out Covaxin's IPR, for world's sake</p> <p><b>The Economic Times</b> March 08, 2021</p>	<p>Even as rich countries have looked inward, India has supplied COVID vaccines – indigenously developed Covaxin and the AstraZeneca vaccine produced by Serum Institute of India, as grant assistance and exports, even as it meets its huge domestic requirements. The <a href="#">government should buy out the IPRs to the vaccines</a> and let the vaccines be sold at a price minus the component attributable to IPR, as well as license producers anywhere in the world to manufacture the vaccine, subject to quality control.</p> <p>If the world is to truly recover from the pandemic, it cannot do so by leaving the poorer countries behind. IPR-free vaccines would help.</p>

## 2. Support for India's and South Africa's proposal

2.1	Urgently Waive Intellectual Property Rules for Vaccine <b>Human Rights Watch</b> December 10, 2020	Governments should stop blocking a temporary waiver of some global intellectual property rules that will help boost global access to COVID-19 vaccines, <a href="#">Amnesty International and Human Rights Watch</a> said ahead of a key WTO meeting in Geneva on December 10, 2020. If adopted, the waiver proposal would enable more governments to fulfill their obligations to respect the rights to life and health.
2.2	EU parliamentarians back India-South Africa's proposal for IPR waiver on COVID-19 vaccine patents <i>By Sidhant Sibal</i> <b>DNA</b> Feb 05, 2021	European Union Parliamentarians have strongly backed India and South Africa's joint proposal at the World Trade Organization for a waiver on intellectual property rights for COVID-19 vaccine patents in a letter to EU leadership. The letter by 14 <a href="#">Members of the European Parliament</a> (MEPs) has called for a moratorium on the suspension of COVID-19 vaccine patents.
2.3	LDCs back India-South Africa proposal for IPR waiver on COVID vaccines <i>By Sidhant Sibal</i> <b>DNA India</b> February 24, 2021	The 35 member LDC group (Least-developed countries) has come out to support the India-South Africa proposal for waiver on IPR for COVID vaccine patents. Tuesday saw a meet on the issue that has seen "rapid" movement and getting support from " <a href="#">top to bottom</a> ", one official aware of the development told WION.
2.4	India's neighbours among 50-odd WTO members backing easy vaccine access <b>Economic Times</b> February 24, 2021	Afghanistan, Bangladesh, Sri Lanka, Nepal and Pakistan are among <a href="#">57 countries</a> that have backed a joint proposal by India and South Africa at the WTO seeking a temporary waiver in global intellectual property agreements to ensure uninterrupted flow of vaccines amid the ongoing pandemic.
2.5	118 European MPs ask EU to lift opposition to TRIPS waiver proposal for accessible vaccines <b>Economic Times</b> February 25, 2021	As many as 118 MEPs on Wednesday urged the European Commission and the <a href="#">European Council to review their opposition</a> to the TRIPS waiver proposal at the WTO, which serves to enable greater access to affordable Covid-19 health technologies, including vaccines, in particular towards developing and middle-income countries.
2.6	Countries obstructing COVID-19 patent waiver must allow negotiations to start <i>By Dr. Christos Christou</i> <b>Medecins Sans Frontieres</b> March 09, 2021	Countries must stop <a href="#">obstructing and show the leadership required to deliver on the 'global solidarity'</a> they have so often declared during this pandemic. The proposed IPR waiver could provide a more expedited and automatic policy option for governments at the international level to facilitate increased access, instead of only relying on voluntary measures by the pharmaceutical industry. The waiver proposal could help by removing legal uncertainties and risks for potential producers and governments to quickly start preparing to scale up production and supply of treatments, vaccines, and other essential medical tools.

### 3. Debate around the proposal

<p>3.1</p>	<p>As Vaccine Roll-out Begins, WTO Members Intensify Debate Over Policy Solutions <i>By Sofía Baliño</i> <b>IISD</b> December 21, 2020</p>	<p><a href="#">The communication from the Ottawa Group calls for launching a new “Trade and Health Initiative.”</a> The co-sponsors of the proposal include Australia, Brazil, Canada, Chile, the EU, Japan, Kenya, Mexico, New Zealand, Norway, Singapore, the Republic of Korea, and Switzerland.</p>
<p>3.2</p>	<p>Joe Biden, Buy Out COVID Vaccine IPR <b>Economic Times</b> November 11, 2020</p>	<p>There would be no better gesture to demonstrate US commitment to the world at large than for the <a href="#">US government to buy out the IPRs</a> to up-and-coming coronavirus vaccines and waive any licence fee for developers around the world. If he were to offer to buy out the IP of American vaccine developers, that would, perhaps, set a model for the EU to buy out the IP of Europe-based vaccine developers and render vaccines free of expensive licence fees for capable vaccine producers to mass-produce the vaccine at minimal cost.</p>
<p>3.3</p>	<p>US, Europe still oppose India-SA plan to waive COVID vaccines’ IPR, WTO to discuss on 4 Feb <i>By Nayanima Basu</i> <b>The Print</b> January 25, 2021</p>	<p>India and South Africa’s proposal to <a href="#">temporarily waive the intellectual property and patent rights on COVID vaccines, medical devices and protective kits</a> was again met with stiff opposition from the developed world at an informal meeting of the WTO, though it has found support from some developing countries such as Afghanistan, Pakistan, Zimbabwe, Egypt, Mongolia, Chad, Indonesia, Nepal, Bangladesh, Sri Lanka, Cambodia and Venezuela.</p>
<p>3.4</p>	<p>New WTO boss warns against vaccine nationalism <i>By Jonathan Josephs</i> <b>BBC News</b> February 16, 2020</p>	<p>The newly-appointed head of the World Trade Organization (WTO) has told the BBC that vaccine protectionism must be overcome to solve the pandemic. Ngozi Okonjo-Iweala said "a phenomenon where rich countries are vaccinating their populations and poor countries have to wait" must be avoided. She argues for " <a href="#">a third way</a>, in which we can licence manufacturing to countries so that you can have adequate supplies while still making sure that intellectual property issues are taken care of". That is already happening with the Oxford-Astra Zeneca vaccine, which has been licenced to the Serum Institute of India</p>
<p>3.5</p>	<p>Intellectual property and COVID-19 medicines: why a WTO waiver may not be enough <b>The Conversation</b> February 24, 2021</p>	<p>The monopolies offered by exclusive rights such as patents are necessary to incentivise pharmaceutical companies to invest huge resources and develop useful drugs. These rights help <a href="#">manufacturers recoup</a> those investments. It is not only drugs and medical equipment like ventilators which are needed, but also essential technologies such as copyright-protected virus-tracing software.</p>



3.6	<p>IPRs &amp; WTO waivers in the time of COVID-19  <i>By Atul Diwakar</i>  <b>Live Mint</b>  February 28, 2021</p>	<p>There are <a href="#">two distinct facets to IPRs, namely, a social aspect and a commercial aspect</a>. Resolving the two has never been an easy task. The conflict is reminiscent of the affront in 1998 when pharmaceutical companies brought legal proceedings against the South African government to stop it from introducing laws that would make HIV and AIDS drugs more affordable. The pharmaceutical companies claimed that if such laws were passed, their patent protection would be severely negatively impacted. In 1998, the pharmaceutical companies abandoned their case. It remains to be seen how the same conflict will be resolved in 2021 in the fight against COVID-19, where the death toll is still increasing, and new variants of the virus are cropping up.</p>
3.7	<p>DG calls on COVID-19 vaccine manufacturers to increase production in developing countries  <b>World Trade Organization</b>  March 09, 2021</p>	<p>Director-General Ngozi Okonjo-Iweala on 9 March called on COVID-19 vaccine manufacturers to do more to ramp up production in developing countries to combat the vaccine supply shortage that is excluding many <a href="#">lower-income nations</a> from access. In remarks to an event hosted by the UK think tank Chatham House, she said cooperation on trade, and action at the WTO, would help accelerate vaccine scale-up.</p>
3.8	<p>Rich vs. Poor (Again) at WTO  <i>By Colm Quinn</i>  <b>Foreign Policy – Morning Brief</b>  March 10, 2021</p>	<p>Navigating the divide is Okonjo-Iweala, new director-general of WTO who has proposed a “third way” to solve the issue ‘in which we can <a href="#">license manufacturing to countries so that there can be adequate supplies while still making sure that intellectual property issues are taken care of.</a>’ Such a move has already been taken with the AstraZeneca vaccine, which has been licensed to the Serum Institute in India.</p>
3.9	<p>COVID vaccines and IPR  <i>By Enrico Bonadio and Dhanay M Cadillo Chandler</i>  <b>Telangana Today</b>  March 11, 2021</p>	<p>The arguments against the waiver - (a) TRIPS Agreement already contains flexibilities, including the freedom to use parallel imports and compulsory licences that help countries get access to medicines; (b) it <a href="#">would not alleviate the burden of access to effective and affordable medicines</a> and vaccines because of poor healthcare provision and infrastructure in some countries; (c) it could potentially hamper R&amp;D and innovation in the pharmaceutical sector; (d) few developing countries have entered into bilateral agreements, especially with the US, the EU and these have limited the ability of generics producers to manufacture and distribute cheap medicines and (e) countries such as France and United Kingdom have pushed for plans to share vaccines instead and therefore, the COVAX scheme, led by the WHO, the Global Vaccine Alliance and the Coalition for Epidemic Preparedness Innovations, have raised hopes for more than two billion doses to reach people in 190 countries by the end of 2021.</p>