

# The TRIPS Agreement Laid Bare

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***This policy paper that provides an account of the history of the TRIPS agreement and TRIPS flexibilities, their evolution, and the lessons learnt from the efforts to ensure a more equitable access to health technologies, particularly in relation to COVID-19.***

Intellectual property (IP) enforcement tools, chiefly patents, negatively impact access to health technologies in a number of ways. Governments can and should harness an IP protection and enforcement framework (essentially a domestic competency) to fulfil a pro-health-oriented agenda, both at national and international levels. This should guarantee not only equitable and sustainable access to health technologies, but also effective technology transfer and a more health needs-aligned research agenda.

The outbreak of the COVID-19 pandemic had a huge impact on global trade relations: borders were closed, and supply chains were severely disrupted. The scramble for personal protective equipment among governments in the early days of the pandemic reinforced patterns of inequality and imbalance between countries, leaving many LMICs unable to access critical health goods. The pandemic quickly highlighted the serious disfunction in global trade, evidenced through the difficulties endured by developing countries to access pharmaceutical markets.

## Waiver proposal to the TRIPS Agreement

For nearly two years, the [TRIPS waiver discussion](#) brought the issue of the impact of IP protection on access to health technologies to the top of the public agenda. This subsequent dialogue may be divided into four interwoven components and calls on different actors to step up their actions, fulfil their commitments and improve their coordination.

### Roles and responsibilities

While the WHO remains the leading actor in the global health sphere, it will need to cooperate more closely with other entities, such as the Medicines Patent Pool and support other initiatives (like C-TAP) more closely. Simultaneously, the WHO must pursue a more focused technical cooperation strategy to advise Member States on how to better accommodate health concerns in domestic legal and regulatory frameworks regarding manufacturing, trade and supply of health technologies.

### Strengths and opportunities

IP protection and its enforcement should be framed as an instrument, not an obstacle, to achieve better and more sustainable access to health technologies by stressing the primary

social function of innovation as response to human needs. Measures must be taken at the national, EU, and global levels to ensure this.

### **Weaknesses and challenges**

Fragmentation, duplication, and even contradiction are hindering global efforts to respond to the myriad of challenges that make up global health, and the intersection of IP and health technologies is no exception. A minimal consensus among stakeholders around a common agenda is necessary in order to enhance collaboration; without it, there is the risk of engaging in discussions with no real connection with the problems deemed to address nor possibilities to bring change.

### **Timelines and deadlines**

The urgency to improve access conditions to life-saving health technologies and the need to remove obstacles to their fulfilment will not end with the pandemic. The decision on the TRIPS agreement adopted at the 12th Ministerial Conference contemplates a six-month period for WTO members to address the eventual inclusion of therapeutics and diagnostics and there are other policy processes susceptible to provide a basis to address the IP constraints and health concerns.

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