

Ms. Ursula von der Leyen  
President of the European Commission

European Member States  
Permanent Diplomatic Representations in Geneva

cc. Ambassador Dagfinn Sørli  
Chair of the Council for TRIPS

29th June 2021

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, treatments, 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 have 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, attempt to address inequities in access to critical commodities for controlling COVID-19. They do so by expeditiously facilitating freedom to scale up production and diversify supply options. This proposal is now co-sponsored by 63 World Trade Organization (WTO) Members and supported by more than 100 Members.

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 the 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 State legislatures in Spain, France and Italy have been vocal in supporting motions for a waiver at the 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”*<sup>1</sup>.

On 4<sup>th</sup> June 2021, the European Commission submitted communication IP/C/W/680<sup>2</sup> to the Council for TRIPS titled *“Urgent Trade Policy responses to the COVID-19 crisis: Intellectual Property”*. This was followed by another communication on 18<sup>th</sup> June proposing a declaration on the *TRIPS Agreement and Public Health in the circumstances of a pandemic (IP/C/W/681)*<sup>3</sup>.

The communications presented by the European Commission to the WTO are, in our view, devoid of any useful solutions, despite this being a critical point at which the 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 31 *bis* of the

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<sup>1</sup> Texts adopted - Meeting the Global Covid-19 challenge: effects of waiver of the WTO TRIPS agreement on Covid-19 vaccines, treatment, equipment and increasing production and manufacturing capacity in developing countries - Thursday, 10 June 2021 ([europa.eu](https://ec.europa.eu/eu-press/))

<sup>2</sup> IP/C/W/680 ([wto.org](https://www.wto.org/))

<sup>3</sup> IP/C/W/681 ([wto.org](https://www.wto.org/))

TRIPS Agreement and the Doha Declaration on TRIPS and Public Health.<sup>4</sup> 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 major underlying concern with respect to compulsory licensing - that its “case-by-case” or “product-by-product” approach is limiting during the pandemic and that this approach means additional tools are needed to overcome IP barriers.<sup>5</sup> 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 31*bis* of the TRIPS Agreement have 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 in that it does not address the broader 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<sup>6</sup>. 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’s 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 that the European Commission reconsiders its communications to the TRIPS Council given that they do not offer any meaningful solutions to the issue of equitable access and may instead undermine TRIPS flexibilities.
- We demand that the EU does not disrupt the discussions on the TRIPS waiver proposal. The EU must acknowledge the European Parliament’s opinion and constructively engage in 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,

### **Signatory organizations**

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<sup>4</sup> 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>

<sup>5</sup> Compulsory licenses, the TRIPS waiver and access to COVID-19 medical technologies <https://msfaccess.org/compulsory-licenses-trips-waiver-and-access-covid-19-medical-technologies> and MSF Technical Brief: Analysis of EU position on compulsory licensing and TRIPS waiver in the COVID-19 pandemic <https://msfaccess.org/analysis-eu-position-compulsory-licensing-and-trips-waiver-covid-19-pandemic>

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

## International Organizations

1. African Centre for Global Health & Social Transformation (ACHEST)
2. Action against AIDS Germany
3. ActionAid Nederland
4. AIDS Action Europe
5. Amnesty International
6. APN+
7. Asia Pacific Forum on Women, Law and Development
8. Asian Health Institute
9. Association for Proper Internet Governance
10. Australian Arts Trust / Music Trust
11. Brot für die Welt
12. BUKO Pharma-Kampagne
13. Centre for Health and Resource Management
14. CHISA
15. Comitato ICE NOPROFITONPANDEMIC Cosenza
16. Consiglio Nazionale delle Ricerche (Italy)
17. Corporate Europe Observatory (CEO)
18. COVID Advocates Advisory Board
19. Development Alternatives with Women for a New Era (DAWN)
20. Drug Action Forum – Karnataka
21. East African Health Platform
22. Education International
23. European African Treatment Advocates Network
24. European AIDS Treatment Group
25. European Citizens' Initiative No Profit on Pandemic
26. European Federation of Public Service Unions (EPSU)
27. Farmamundi
28. Feminist Task Force
29. Focus on the Global South
30. Fondation Eboko
31. Fondazione Lelio e Lisli Basso Onlus
32. Foundation for Integrative AIDS Research (FIAR)
33. Frontline AIDS
34. Fundación Salud por Derecho
35. Gandhi Development Trust
36. GenderCC SA
37. Global Health Advocates / Action Santé Mondiale
38. Global People's Health Movement
39. Governance Links
40. GRAIN
41. Health Action International (HAI)
42. Health Action International Asia Pacific
43. Health Alliance International
44. Health GAP
45. HIV Legal Network (Canada)
46. Human Rights Watch
47. IFARMA Foundation
48. Latin American Institute for La Paz and Citizenship (ILAPYC)
49. IndustrialALL Global Union
50. Institute for Agriculture and Trade Policy
51. Institute for Economic Research on Innovation
52. Interfaith Center on Corporate Responsibility
53. International Federation of Anthroposophic Medical Associations

54. International Treatment Preparedness Coalition (ITPC)
55. International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF)g
56. International Women's Rights Action Watch Asia Pacific (IWRAP Asia Pacific)
57. IT for Change
58. ITPC-LATCA
59. Kazan Medical University
60. KEI Europe
61. Médecins du Monde
62. Médecins Sans Frontières (MSF) Access Campaign
63. Medical Mission Institute
64. Medicina Democratica Onlus
65. Medicusmundi
66. NGO Santé Diabète
67. Oxfam International
68. Pan-African Treatment Access Movement
69. Peoples Health Movement
70. People's Health Movement (PHM) Europe
71. Pertubuhan Kebajikan Intan Zon Kehidupan
72. Pharmaceutical Accountability Foundation
73. PHM – Zambia
74. PT Foundation
75. Public Service International (PSI)
76. Right2cure/Dirittoallacura Italia
77. Salud y Fármacos
78. Sisters of Charity Federation
79. Society for International Development (SID)
80. Solidarité Agissante pour Développement Familial (SADF)
81. South Asia Alliance for Poverty Eradication (SAAPE)
82. Southern African Programme on Access to Medicines and Diagnostics (SAPAM)
83. The European Network against Commercialisation of Healthcare and Social Protection
84. The Global Network of People living with HIV (GNP+)
85. Third World Network
86. Transnational Institute
87. Transparency International Global Health
88. Treatment Action Group
89. UNI Global Union
90. University College Dublin
91. Viva Salud
92. WeMove Europe
93. Womankind Worldwide
94. World Vision Deutschland e.V.
95. Yolse, Santé Publique et Innovation

## **National Organizations**

96. Access to Medicines Ireland
97. Acción Internacional para la Salud (AIS PERU)
98. ActionAid Ireland
99. ADSP-IB Associació per a la Defensa de la Sanitat Pública de les Illes Balears
100. Africa Japan Forum
101. Alianza por la Solidaridad-ActionAid
102. Alliance Women of Advocating for Change (AWAC)

103. All India Drug Action Network
104. Ashar Alo Society
105. Asociación de Mujeres Gente Nueva-AMUGEN-
106. Asociación por un Acceso Justo al Medicamento
107. Associação Brasileira Interdisciplinar de AIDS (ABIA)
108. Association de Lutte Contre la Dépendance
109. Association For Promotion Sustainable Development
110. Australian Fair Trade and Investment Network
111. Belgia Center for Pharmacotherapeutical Information
112. Bolivian Committee for Consumers Protección CODEDCO
113. Canadian Centre for Policy Alternatives (CCPA)
114. Cancer Alliance, South Africa
115. Coalition of Women Living with HIV and AIDS
116. Center for Health, Human Rights and Development (CEHURD)
117. Child Way Uganda
118. CNCD-11.11.11
119. Coalition for Health Promotion and Social Development (HEPS Uganda)
120. Coalizione Italiana Libertà e i Diritti civili (CILD)
121. COAST Trust
122. Consumer Association the Quality of Life-EKPIZO
123. Consumers' Association of Penang
124. Cooperative and Policy Alternative Center
125. Coordinadora de Organizaciones para el Desarrollo
126. Crisis Home
127. Dandora Community Aids support Association (DACASA)
128. Ecologistas en Acción
129. Equidad de Género: Ciudadanía, Trabajo y Familia
130. Fairwatch
131. Federación de Asociaciones para la Defensa de la Sanidad Pública
132. Focsiv Italian Federation Christian NGOs
133. Forum Maranhense Das Respostas Comunitarias de Luta Contra as IST AIDS e Hepatites Virais
134. Fórum ONG AIDAS RS
135. Foundation for Male Engagement (FOME)
136. Friends of the Earth Malaysia
137. Fundación Grupo Efecto Positivo (FGEP)
138. GeneEthics
139. Gestos (soropositividade, comunicação, gênero)
140. Grupo de Incentivo à Vida (GIV)
141. Grandmothers Advocacy Network
142. Grupo de Resistência Asa Branca- GRAB
143. Grupo Pela Vidada SP
144. Handel Anders Coalitie
145. Health Equity Initiatives
146. Indonesia AIDS Coalition
147. Indonesia for Global Justice
148. Initiative for Health & Equity in Society
149. Innovations for Development (I4DEV)
150. Integrated Social Development Effort (ISDE) Bangladesh
151. International Community of Women Living with and affected by HIV- Kenya Chapter
152. IPlleft
153. ItsOurFuture (NZ)
154. Just Treatment
155. Kamukunji Paralegal Trust (KAPLET)
156. Kenya Legal & Ethical Issue Network on HIV & AIDS

157. Kenyan Network of Cancer Organizations
158. Khulumani Support Group
159. Konsil LSM Indonesia
160. Korean Pharmacists for Democratic Society
161. Malawi Health Equity Network
162. Malawi Network of Religious Leaders Living with or Personally Affected by HIV and AIDS (MANERELA+)
163. Malaysian Women's Action for Tobacco Control and Health
164. Milwaukee Fair Trade Coalition
165. National Alliance of People's Movements
166. national Alliance of women Human Right defenders
167. National Alliance of Women Human Rights Defenders (NAWHRD)
168. National Fisheries Solidarity
169. New Kashmir Women and Child Welfare Society
170. Non-communicable Diseases Alliance Kenya
171. Oxfam IBIS
172. Pacific Asia Resource Center (PARC)
173. People's Health Movement (PHM) Korea
174. People's Health Movement-Japan Circle
175. Perkumpulan Medialink
176. Perkumpulan PRAKARSA
177. Pertubuhan Persaudaraan Pesawah Malaysia (PeSAWAH)
178. PHM Kenya
179. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+)
180. Positive Men's Union (POMU)
181. Public Citizen
182. Red de Acceso a Medicamentos
183. Rural Area Development Programme (RADP)
184. Sankalp Rehabilitation Trust
185. Southern and East African Trade Institute - South Africa (SEATINI)
186. Servicios Ecumenicos para Reconciliation y Reconstruccion
187. Sotsium Association
188. Southern and Eastern African Trade Information and Negotiations Institute
189. Sukaar Welfare Organization
190. Tarangini Foundation
191. TB Proof
192. The Malaysian AIDS Council (MAC)
193. The People's Health Movement South Africa
194. Trade Justice Network Canada
195. Trade Justice Pilipinas
196. Trade Justice Prince Edward Island
197. Tusitukirewamu Group Bwaise
198. UFRJ
199. Uganda Key Populations Consortium Uganda (UKPC)
200. University Health Network
201. University of Naples Federico II
202. We Rise and Prosper (WRAP)
203. WEMOS
204. Women's Coalition Against Cancer- WOCACA
205. Women's Probono Initiative (WPI) – Uganda
206. Zimbabwe National Network of PLHIV (ZNNP+)