

Civil Society Letter to European Commissioners, Member State Ambassadors to the WTO and Members of the European Parliament

30 March 2022

Dear Commissioners,

Dear Ambassadors,

Dear MEPS,

We, the undersigned civil society organisations, call on the European Union (EU) and the World Trade Organization (WTO) Director-General to refrain from rushing WTO members to rapidly adopt a purported proposal on intellectual property rights and COVID-19. The text under consideration by some WTO members contains problematic and contradictory elements (see Annex) and remains largely insufficient as an effective pandemic response. Further negotiations are needed to ensure an effective outcome in a multilateral manner, responding to the needs expressed by many WTO members and civil society.

Throughout the COVID-19 pandemic, the EU has repeatedly ignored evidence of the effects of restrictive licensing practices on access to COVID-19 medical tools and resisted meaningful negotiations on a proposal for a temporary TRIPS waiver at the WTO to address limited production and shortage of supply. In recent months, the EU reportedly took part in confidential, closed-door negotiations with a few other governments facilitated by the WTO Director-General.

A text circulated among some WTO members has, at the time of writing, not been agreed by the negotiating parties, but is misleadingly labeled as a compromise outcome of quadrilateral discussions between EU, the US, South Africa and India. The text, leaked to the media, cannot be considered anything close to a TRIPS waiver but largely resembles the EU's communication to WTO. The text is largely a reiteration of existing TRIPS flexibilities with a narrow export waiver and additional cumbersome requirements. While we recognise the importance of an export waiver, overall the text remains legally unsound and contains problematic provisions that could undermine its effectiveness in contributing to a global COVID-19 response. At the same time, it erodes existing TRIPS flexibilities, and risks further aggravating inequities. The text also falls short of a comprehensive pandemic response, as it only covers COVID-19 vaccines, thereby ignoring the existing and growing inequity in access to COVID-19 therapeutics and diagnostics.

We are deeply concerned that the EU, after extensive attempts to stall negotiations on the topic, would aim at the hasty adoption of a problematic text by WTO members in order to close discussions. The large majority of WTO members have not been part of the negotiations. We recognise the urgent need to find an agreement among WTO members regarding a global response to COVID-19 that ensures equitable access to all related health technologies, but the current text cannot be regarded, considered nor treated as a final outcome. The actual negotiated and adopted outcome should particularly reflect the interests and safeguard the rights of those most affected by inequity in this pandemic.

Sincerely,

Signatories:

1. Access to Medicines Ireland
2. ACT Alliance EU
3. AIDES, France
4. AK EUROPA
5. Amnesty International
6. Asociación por un Acceso Justo al Medicamento (AAJM), Spain
7. Association Internationale de techniciens, experts et chercheurs (Aitec), France
8. Both ENDS, Netherlands
9. Bread for the World
10. CCFD-Terre Solidaire, France
11. CNCD-11.11.11, Belgium
12. Coalition for Research and Action for Social Justice and Human Dignity
13. Corporate Europe Observatory (CEO)
14. Ecologistas en Acción, Spain
15. Education International
16. Fairwatch, Italy
17. Global Health Advocates (GHA)
18. Handel Anders, Netherlands
19. Handelskampanjen, Norway
20. Health Action International (HAI)
21. Health Global Access Project
22. Human Rights Watch
23. Institute for Policy Studies, Global Economy Project
24. Italian Coalition for Civil Liberties and Rights (Coalizione Italiana Liberta e Diritti civili), Italy
25. Knowledge Ecology International Europe (KEI Europe)
26. KULU-Women and Development (KULU), Denmark
27. Médecins du Monde International Network
28. medico international

29. MSF Access Campaign
30. No Gracias, Spain
31. Oxfam
32. People's Vaccine Alliance
33. Public Eye
34. Salud por Derecho, Spain
35. Seattle to Brussels Network
36. Society for International Development (SID)
37. Test Achats / Test Aankoop, Belgium
38. Transnational Institute, Netherlands
39. Trócaire, Ireland
40. Viva Salud, Belgium
41. World Vision Deutschland e.V.
42. 11.11.11, Coalition of International Solidarity, Belgium

ANNEX: Summary of problematic provisions in the leaked text

The current text is narrow in scope, has considerable limitations, and could set a negative precedent if adopted as it stands:

1. It undermines and restricts existing TRIPS flexibilities, introduces burdensome, unnecessary and TRIPS-plus requirements for countries seeking to issue a compulsory license, including listing patents, notifying WTO and anti-diversions obligations.
2. It makes the interpretations of the TRIPS Agreement time-bound, applicable only to COVID-19 vaccines, and restricted to certain WTO members only.
3. It excludes therapeutics and diagnostics from the negotiation, ignoring the present access challenges caused by IP barriers for these medical tools.
4. Its problematic eligibility criteria may exclude multiple low- and middle-income countries (LMICs) from producing, supplying, exporting and importing.
5. It does not cover waiving the protection of undisclosed information as a stand-alone IP challenge for production and supply. The draft text also does not address barriers arising from confidential information/trade secrets held by corporations or contained in documentation submitted to regulatory authorities.
6. It creates more legal uncertainty compared to the existing TRIPS flexibilities due to textual ambiguity and a confusing structure.

For a full details and a technical analysis see: https://msfaccess.org/sites/default/files/2022-03/COVID19_TechBrief_MSF-AC_Waiver-Quad-text_briefing-doc_ENG_March2022.pdf