Statement on the extension of the TRIPS waiver for diagnostics and therapeutics for COVID-19

9 January 2023

Developed countries have frustrated the initiative in the World Trade Organization (WTO) to extend the limited waiver of patents over vaccines for COVID-19 to cover the production and supply of COVID-19 diagnostics and therapeutics. This undercuts efforts to increase timely access to COVID-19 affordable testing and treatments for most of the world.

The Ministerial Decision on the TRIPS Agreement that was adopted on 17 June 2022 had set a deadline for reaching agreement on the extension by 17 December. The only agreement achieved, to extend the deadline, appears futile.

Once more, the interests of the pharmaceutical industry seem to prevail over global public health, ignoring that in the context of a global health crisis, a coordinated, rapid and effective response is needed to ensure access in equal conditions to the products that are required to address it.

Widening the global access to these products can reduce cases of hospitalization and long COVID-19, notably in developing countries where the rate of vaccination remains low and the risk of severe health effects for the vulnerable population is high.

While negotiations to extend the TRIPS Decision may continue for an undetermined time and with still unpredictable outcomes, developing countries can consider without any further delay other normative options to override any intellectual property barriers that may frustrate their efforts to expand access to COVID-19 vaccines, tests and treatments.

These options include:

i) use the compulsory license system, including government use for non-commercial purposes, as provided for in Article 31 of the TRIPS Agreement;[1]

ii) invoke the national security exception contained in Article 73(b) of the TRIPS Agreement, and suspend the obligations in relation to any COVID-19 related products;[2]

[1] See Carlos M. Correa, *Guide for the Granting of Compulsory Licenses and Government Use of Pharmaceutical Patents,* Research Paper, No. 107 (Geneva, South Centre, 2020). Available from https://www.southcentre.int/research-paper-107-april-2020/.

iii) provide for exceptions under patent law for the manufacture and export of such products consistently with a permissible interpretation of Article 30 of the TRIPS Agreement in accordance with customary international law;[3]

iv) allow for the parallel importation of products manufactured under a compulsory license, in accordance with the freedom to regulate on this matter recognized under Article 6 of the TRIPS Agreement;

v) implement measures for the compulsory licensing of technical know-how (trade secrets) needed to manufacture COVID-19 vaccines, therapeutics and diagnostics;[4]

vi) apply rigorous standards for the examination of patent applications relating to COVID-19 products in order to avoid excessively broad or unwarranted protection over products and manufacturing processes.[5]

Developing countries can count on the South Centre for expert assistance to consider these and other options consistently with the WTO rules.[6]

---

[2] See Frederick Abbott, *The TRIPS Agreement Article 73 Security Exceptions and the COVID-19 Pandemic,* Research Paper, No. 116 (Geneva, South Centre, 2020). Available from https://www.southcentre.int/research-paper-116-august-2020/.

[3] See Carlos M. Correa and Juan I. Correa, *Manufacturing for Export: A TRIPS-Consistent Pro-Competitive Exception,* Research Paper, No. 155 (Geneva, South Centre, 2022). Available from https://www.southcentre.int/research-paper-155-27-may-2022/.

[4] See Olga Gurgula, *Accelerating COVID-19 Vaccine Production via Involuntary Technology Transfer*, Policy Brief, No. 102 (Geneva, South Centre, 2021). Available from https://www.southcentre.int/policy-brief-102-september-2021/.

[5] See Srividya Ravi, *Patent Analysis for Medicines and Biotherapeutics in Trials to Treat COVID-19,* Research Paper, No. 153 (Geneva, South Centre, 2022). Available from https://www.southcentre.int/research-paper-153-26-april-2022/; see also https://us5.campaign-archive.com/?u=fa9cf38799136b5660f367ba6&id=98a5ad03b9.

[6] In order to receive support from the South Centre, refer to the dedicated website: https://ipaccessmeds.southcentre.int/ and reach out via email to Dr. Viviana Muñoz-Tellez (munoz@southcentre.int).