**India Draft Statement for informal TRIPS Council Meeting on 3 Dec 2020**

Thank you Chair for convening this informal meeting and giving us the opportunity to address some of the concerns raised by Members at the 20th Nov. informal TRIPS Council meeting. We also thank Members for their interest in engaging in constructive discussions on the proposal. Considering the importance of the issue and the impact it will have in saving human lives and livelihoods and world economy, we sincerely hope that Members will be able to reach at a common landing ground on the proposal. We once again want to reiterate that we are flexible with the scope and duration of the waiver and encourage all Members, especially those that have argued against the need of the proposal, to engage in fruitful discussions on the text of the proposal.

Chair, I would now like to touch upon some of the issues raised by US, UK and Brazil in their statements during the last informal meeting.

**US: What are the expected impacts on members’ commercial and economic interests as a result of the waiver? (Japan & EU also claim there would be a negative impact on investment and cooperation on future R&D)**

**US: Could the proponents explain how the waiver is a proportionate response to covid-19?**

**Brazil: What are the expected impacts on authors, inventors and other creators?**

**Brazil: We would like to ask the proponents to share their views on possible effects of a waiver on small and medium enterprises.**

**Response:**

Several questions were posed to the proponents as to how the waiver will affect WTO members’ commercial and economic interests as well as its impact on authors, inventors and other creators and SMEs.

COVID has wreaked havoc on national and global economies. As per WTO data, global trade is expected to drop by about 9% in 2020.[[1]](#footnote-1) While trade is expected to rebound in 2021, there is a lot of uncertainty as it depends on the evolution of the pandemic.[[2]](#footnote-2)

The COVID-19 pandemic has hit hardest the informal economy and hundreds of millions of enterprises worldwide. As per the ILO estimates global labour income has declined nearly 11% or US$3.5 trillion in the first three quarters of 2020 and as a result, the World Bank estimates that as many as 150 million people could be pushed into extreme poverty by 2021.[[3]](#footnote-3)

MSMEs are particularly exposed to COVID-19 pandemic’s economic impact because of their size and their prevalence in the economic sectors most affected by the pandemic, such as accommodation and food services, cultural and creative sectors, and wholesale and retail services. MSMEs in almost all countries have been and continued to be most severely hit by the pandemic. In developing countries, as per the World Bank estimates, sales fell for about 84% of firms relative to the same period in 2019. The average decline was 49% and has been strikingly persistent.[[4]](#footnote-4)

Even in the pharma sector, many MSMEs have manufacturing capacity but hindered by IP barriers they are not able to manufacture and supply Covid19 medical products.

With regards to the question on expected impacts on authors, inventors and other creators**,** it depends on what is the creation or invention being talked about. If it is not related to Covid19, then they will not be anyway impacted by this waiver, as the copyright being waived under the proposal is only in the context of rights hindering the response to Covid19.

Evidently the longer the pandemic continues, with governments having to continue with measures such as lockdowns and quarantine, national and global economies will continue to suffer, with many more millions pushed into poverty. Every country is trying to reduce the impact of pandemic and come out of it. Our proposal for waiver from certain provisions of TRIPS Agreement, is one part of this effort. It is, therefore, in our mutual interest to collaborate, to help diversify and expand the supply of vaccines, therapeutics and other Covid19 health products to curb this pandemic as soon as possible.

Some of the opponents of the waiver proposal may consider that they will be safe, since they have large quantities of vaccines pre-booked. But, Chair, if Covid remains unaddressed in any one country, it will affect all other countries, with serious consequences for society and the economy.

Some Members have argued that recent announcements from industry of the success of some vaccines, showed that the intellectual property system as a framework that provides incentives to invest and innovate has delivered. Chair, we disagree with this claim. We believe that without the huge state funding, these vaccines would probably not have been developed so speedily. Therefore, it is not the IP system that has delivered, but the public funding and institutional support in terms of research contributions by public universities and the global sharing of sequence and public health information that has led to the development of successful vaccines in record time.

We need to respond to Covid with cooperation, solidarity, and equity. The aim of the waiver is to restrain the spread of Covid19, and in the context of the current scale of devastation, the impact of the waiver would be positive. The current “business as usual” approach which is narrowly focused on supplying a few rich countries artificially limiting global supplies and competition is a greater threat to WTO members’ social, economic and commercial interests.

The proponents have been asked how the waiver is a proportionate response to covid-19. Every country has been taking extraordinary and unprecedented measures, unheard of before. This includes requiring weeks and months of lockdowns, imposing quarantine, nationalising private hospitals[[5]](#footnote-5), mandating wearing of masks, seeking military help etc. So, waiver is definitely a proportionate demand.

If we work together to waive relevant IP and enable access to knowledge and technology, we will swiftly bring the pandemic under control and save the world economy from further avoidable damage.

**Brazil: How members facing legal and institutional difficulties when using flexibilities would automatically and expeditiously overcome legislative and institutional barriers for the successful implementation of a waiver?**

**Whether a waiver could reveal instead to be cumbersome and difficult to implement considering that most members would have to submit it to their national parliaments and delve into the specific rights in each of the IP domains that would fall into the scope of the measure.**

**Brazil: A waiver would hardly be a global solution if we consider that several members may not implement it either because they choose not to or are unable to due to the already mentioned legislative and institutional difficulties or because they are also bound by bilateral or regional agreements.**

**UK: How would such a waiver even operate, how would it be implemented into national legislation?**

**Response:**

Proponents have been asked how the waiver can be a global solution if some countries do not implement it. If a waiver is adopted, all WTO members would be encouraged to utilise it. The proposal we have made follows what is allowed within the parameters of Art. IX of the WTO Agreement.

As to national implementation, we have addressed this issue at the last informal TRIPS Council. National implementation of the waiver depends on a country’s political and/or constitutional arrangement. There is no one size fits all approach to national implementation. However, once the waiver proposal is approved, emergency, disaster management legislations or any other relevant legislative methodology may be relied upon to provide for executive action to operationalise the waiver at the national level. Many governments are already using executive action to put in place lockdowns, quarantine and other measures to curb the spread.

With respect to institutional and legal difficulties when using flexibilities, this is a real challenge facing many countries. For instance, countries that have never utilised compulsory license or the Art. 31*bis* mechanism will have to consider what are the national procedures for doing so, what to do if procedures do not exists, who should request this license, who should issue the license, what would be the adequate remuneration to be paid, what are the requirements of Art. 31*bis*, can an importing country that has not implemented Art.31*bis* in its national law utilise the provision, what are the Art. 31*bis* requirements for the exporting country, what are the national law requirements in the exporting country. Many a times, countries also have to deal with pressures from other countries and from pharmaceutical companies while dealing with such issues. Moreover, compulsory licenses are to be issued on product by product and country by country basis, making collaboration between countries near impossible. Given the urgency to save lives and the time it takes to get a compulsory license implemented on ground in most of developing countries, use of this flexibility in context of Covid19 pandemic does not present an expedited solution. In any case, it cannot be any body’s case that such flexibilities were even designed keeping in view a crisis of this magnitude.

All of this can be avoided and millions of lives can be saved, if Members here agree to a temporary waiver from certain provisions, which can then be made use of by Member countries using emergency legislative provisions at their disposal to address the challenges posed by once in a millennium pandemic like COVID.

**US: How do proponents plan to suspend rights that exist without formal government registration such as copyrights?**

**Response:**

We have been asked repeatedly about how the waiver will be implemented including how proponents plan to suspend rights that exist without formal government registration such as copyrights.

As we have mentioned, national implementation should be left to national governments as each operates within its own legal system. One size does not fit all. We also think that in many cases implementation may be done through executive action, relying on existing national legislation or through use of emergency legislative provisions.

More specifically, if a IP right exists such as a patent has been granted or a person is entitled to copyright protection (with or without registration) which is related to prevention, containment and treatment of Covid-19, a country may take executive action suspending enforcement of the protection conferred by the patent or copyright law to it for the duration of the waiver.

Chair**,** to the countries who have argued against the need of the Waiver, we would like to pose the following questions:

1. Do the opponents have any data regarding how the waiver would demonstrably have negative impact on Members’ economies, if any?
2. Public funding has been driving COVID-R&D. In addition, billions of dollars are spent on purchasing the vaccine. Given the demand volumes, pharma companies will anyway make profits. So why is there a need for IP as an incentive, in a global pandemic situation?
3. Can the opponents provide data as to how voluntary licensing approaches and existing global cooperation mechanisms, including ACT Accelerator, the Covax facility and Covax AMC, would be sufficient to address the vaccine requirements of 7.8 billion people in the world?
4. If voluntary mechanisms work, why has the pharmaceutical industry collectively rejected participation in the WHO COVID-19 Technology Access Pool (C-TAP), an initiative that encourages voluntary contribution of IP, technology and data to support global sharing and scale-up of manufacturing and supply of COVID- 19 medical and pharmaceutical products?

Chair, we hope that our intervention addresses the concerns raised by Members. Moreover, the proponents are ready to engage with the Members, should there be any further questions. But the objective, as stated earlier, is to reach to a common ground as early as possible, so that a large proportion of world population is not left behind in the quest for a timely, equitable and affordable access to successful vaccines and therapeutics. WTO Membership needs to act now to ensure that the pandemic should not be needlessly prolonged, only because we fail to act collectively at this juncture.

1. <https://www.wto.org/english/news_e/pres20_e/pr862_e.htm> [↑](#footnote-ref-1)
2. <https://www.wto.org/english/news_e/pres20_e/pr862_e.htm> [↑](#footnote-ref-2)
3. <https://blogs.worldbank.org/psd/firms-struggle-stay-afloat-after-losing-half-sales-still-keep-workers> [↑](#footnote-ref-3)
4. <https://blogs.worldbank.org/psd/firms-struggle-stay-afloat-after-losing-half-sales-still-keep-workers> [↑](#footnote-ref-4)
5. <https://publicservices.international/resources/news/spain-nationalises-all-private-hospitals-uk-rents-hospital-beds?id=10645&lang=en> [↑](#footnote-ref-5)