**Indian statement for the TRIPS Council Informal Meeting on 20th Nov. 2020**

We thank Kenya, Eswatini and South Africa for their statements. We also thank the new co-sponsors of the Waiver Proposal.

With more than 55 million confirmed Covid cases by WHO and more than 1.3 million deaths[[1]](#footnote-1), Covid-19 pandemic is continuing to rage havoc throughout the globe. And far from the hopes of pandemic getting abated anytime soon, many countries are witnessing second or third wave whose impacts are being felt even more strongly than the initial outbreaks. No one can estimate how many more waves and how many more lives, will it take for this pandemic to end.

While there can be multiple reasons holding up the expansion of manufacturing capacity, intellectual property is certainly one of the most important barrier, as per the specific evidences presented by my colleague from South Africa suggest. COVID-19 pandemic being the greatest public health crisis of our time, creates an urgent need for new ideas across all dimensions of healthcare delivery and policy, including intellectual property rights. And WTO, as a key-pillar of the global multilateral architecture, has a responsibility to ensure that IP rights do not become a barrier to accessing vaccines, treatments, or technologies in the global response to COVID-19.

As the other co-sponsors have already explained the objectives of our Waiver proposal, and have addressed most of the concerns raised during the discussion in the TRIPS Council Session held on 16th October, we would like to touch upon two specific issues:

1. **Some Members argue that the TRIPS Agreement, strikes the right balance and provides for the necessary means and remedies to allow the use of protected products.**

TRIPS flexibilities, including those confirmed in the Doha Declaration on TRIPS and Public Health, have undoubtedly, played a crucial role in promoting access to medicines. However the present COVID 19 global pandemic presents exceptional circumstances. After all, countries all over the world have had to put in place extraordinary measures to contain COVID-19, ranging from putting in place emergency legislations and lockdowns to seeking military help. But, when it comes to IP, these same countries shy away from even recognising the evidence that IP is a barrier, let alone mustering the global cooperative effort required to scale up manufacturing by addressing the IP issues for ensuring timely, equitable and affordable access to COVID related therapeutics, vaccines and other goods for all.

In our view, though the TRIPS flexibilities do allow limited policy space for public health, they were never designed to address a health crisis of this magnitude. Invoking them for a range of health products and technologies, required for treatment and prevention of COVID-19, is not a feasible option, because –

1. Understanding of TRIPS flexibilities is usually in the context of patents. However, as explained before, various types of intellectual property rights i.e. patents, copyrights, industrial designs and trade secrets pose a barrier towards an effective response to the COVID-19 as the pandemic requires access to various commodities, involving multiple IP rights. Flexibilities in other categories of IPRs than patents, are less understood and rarely implemented before. Therefore, options available to Members through existing TRIPS flexibilities are limited.
2. Many countries lack the institutional capacities to utilize such flexibilities.
3. Moreover, compulsory licenses are issued on a country by country, case by case and product by product basis, where every jurisdiction with IPs would have to issue compulsory license, practically making collaboration among countries for the development and manufacturing of medical products (where different components are sourced from different countries) extremely onerous.
4. Further Article 31*bis* mechanism established to support countries with insufficient or no pharmaceutical manufacturing capacity has even in normal times been widely criticised for its cumbersome procedures. The mechanism includes procedures such as specific labelling or marking of products; special packaging and/or special colouring/shaping of products, making it practically meaningless.  The procedure being used only once, since its inception in 2006, itself testifies difficulties associated with its use.
5. Finally, very often the implementation and use of flexibilities is accompanied by pressures from trading partners as well as other stakeholders.

Chair, we encourage the use of TRIPS flexibilities by Members. Members that have the capacity to implement flexibilities in a timely manner should continue to do so. Furthermore, those Members who think that TRIPS flexibilities are enough for Covid19 response and they do not need the waiver, can choose to not implement the waiver in their domestic legislations, but they should not come in the way of international collaboration with respect to development, production and supply of needed healthcare products for Covid19 that we seek to achieve through the TRIPS Waiver. The waiver is more than just a legal mechanism, it is a statement of intent by all countries that they accord highest value to protecting human lives rather than protecting private profits.

1. **Some members argue that initiatives such as ACT-Accelerator (ACT-A) and Covax Advance Market Commitment (AMC) including donations to these initiatives are sufficient to address global need for vaccines and therapeutics**

We welcome the global cooperation initiatives, including ACT-A and Covax AMC and encourage funding by Members to these initiatives. Every effort towards achieving an equitable access for Covid19 products should be supported. However, in our view, these would not be sufficient to ensure timely and equitable access to Covid19 products and technologies. The aim of ACT-A including the Covax AMC is to provide 2 billion vaccine doses (for 1 billion people if we consider two-dose vaccine regimen) to the world by the end of 2021. It is designed to address only the initial, acute phase of the pandemic to forestall health service collapse and thus to deliver only 20% or less of LMICs’ need. Even these acute, minimal goals of the ACT-Accelerator may not be met because it has currently raised only about 15% of its funding needs[[2]](#footnote-2). These initiatives are obviously inadequate to meet the medium and long term needs of the 7.8 billion people of this world.

In the immediate term, even with these initiatives, there is visible disparity in access between the developed countries and the rest of the world. Developed countries have been able to leverage their financial position and enter into increasing number of bilateral deals securing preferential access creating uncertainty for universal timely and affordable access. As Kenya has pointed out, majority of the doses of recently announced effective vaccine, based on initial data, have reportedly been reserved by high-income countries. On one hand, these countries are buying up as much of the limited supply as they can, leaving no vaccines in the pie for developing and least-developed countries. On the other hand, and very strangely, these are the same countries who are arguing against the need for the waiver that can help increase the global manufacturing and supply to achieve not just equitable, but also timely and affordable access to such vaccines for all countries.

The global needs are massive and can only be addressed with global sharing of technology, knowledge and related IP, which is what our waiver proposal seeks to achieve. We believe it would be naïve for any country to think that it can win over a virus, which knows no boundaries, by simply vaccinating their own population. Chair, we would like to conclude by saying that we all need to rise up to the demands of this crisis and show to the world that WTO is still relevant and very much capable of responding to the global need of saving lives and livelihoods, at least during a health crisis like COVID. We are open to the suggestions from Members on the text of the Proposal, including its scope and coverage, duration or any other aspects and look forward to a constructive discussion.

1. <https://covid19.who.int/> [↑](#footnote-ref-1)
2. <https://www.who.int/news/item/13-11-2020-access-to-covid-19-tools-accelerator-commitments-reach-us-5.1billion-following-new-contributions-including-at-paris-peace-forum> [↑](#footnote-ref-2)