

**Agenda Item 15. Proposal for a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19  
Document IP/C/W/669 (COMMUNICATION FROM India and South Africa)**

We thank South Africa for its detailed and comprehensive statement.

We also thank UNAIDS, UNITAID, MSF, other academics, researchers as well as numerous civil society organisations who have expressed widespread support for our proposal.

Chair, let me also take this opportunity to thank the Secretariat for its report on the TRIPS Agreement and Covid19. We believe that it is not merely coincidental that this report came out [yesterday](#), more than 6 months into the Covid19 pandemic. At least our proposal could generate enough interest for action now. However, in our view, the measures listed in the report are not sufficient for an effective Covid19 response, which necessitates the need for our waiver proposal.

*Chair, at the outset we would like to emphasize that this proposal is, particularly important to cater for those who have insufficient or no manufacturing capacities in the health products required to combat the Covid crisis. In the past few months, India has supplied medical products and equipments needed in fighting the pandemic to more than 150 countries and resisted the attempts to corner the supplies by a few countries. We would like to remind the Members that in a global pandemic where every country is affected, we need a global solution. And our waiver proposal represents an open and expedited global solution to allow uninterrupted collaboration in development, production and supply of health products and technologies required for an effective Covid19 response.*

Chair, South Africa has very clearly explained the purpose and objective of our proposal. In this regard, we want to highlight following points:

1. There can be no denying the fact that the development of and equitable access to the tools – such as diagnostics, therapeutics, treatments, vaccines etc.– required to fight the Covid19 pandemic are limited by IP barriers. It is quite evident from an array of lawsuits filed by private companies in different parts of the world for IP infringement on Covid-19 products. In the past few months, we have also seen that IPRs do come in the way of scaling up production of test kit reagents, ventilator valves, N95 respirators, therapeutics, fluorescent proteins and other technologies used in development of vaccines etc.
2. Governments across the globe are supporting development of new health technologies, in particular vaccines by pouring billions of USD of public funds into research and development. The EU tracker of pledged resources for access to tests, treatments and vaccines<sup>[1]</sup> stands at 16 billion Euros. Therefore, the often-repeated argument that monopoly rights are needed to allow the inventors to recoup their investment does not seem to apply in case of development of health products and technologies required for handling the ongoing Covid19 crisis.

3. We have heard from some Members in the previous meetings that voluntary licenses are the most appropriate solution to scale up manufacturing in response to Covid19. However, the fact remains that not a single IP holder has shown willingness to commit to the COVID-19 Technology Access Pool (C-TAP) and the ACT-Accelerator voluntary initiatives launched under the aegis of WHO. In fact, the representative from WHO in this Council [yesterday](#) admitted in response to a question that no pharmaceutical company has committed to sharing its IP and technologies in the C-TAP pool since its launch more than 5 months ago. Given the refusal by pharmaceutical industry to routinely offer nonexclusive licenses with worldwide coverage to facilitate global access, clearly the solution to ending the pandemic does not lie in voluntary licenses.
4. With regard to existing flexibilities under the TRIPS Agreement, the same are not adequate to address the fast-changing landscape of COVID19. Of particular concern for countries with insufficient or no manufacturing capacity is Article 31-bis, which is limited to pharmaceutical products, and was not designed to address challenges arising from pandemics of this scale and magnitude. Medical devices like ventilators, dialysis machines etc. that are crucial for combating the ongoing pandemic, may not be covered under the scope of Article 31bis. There is a reason why the Special Compulsory Licensing system has been used only once. Requirements under this System that exporters and importers have to comply with, are extremely onerous and time-consuming, thereby rendering it of no practical utility towards handling the ongoing pandemic.
5. We have included four sections of TRIPS Agreement namely patents, copyrights, industrial designs and undisclosed information or trade secrets, in our proposal. This is because the health products and technologies like test kits, masks, medicines, vaccines, components of ventilators like valves, control mechanisms and the algorithms and CAD files used in their manufacturing are protected by these four types of IPRs. This ensures that our waiver proposal does not suggest a waiver from all TRIPS obligations, but only from these specific sections and that too only to the extent the same are essential for effective handling of the COVID-19 crisis.
6. It may be noted that the waivers granted to LDC Members with respect to obligations in Article 70.8 & 70.9 and their rights under Article 66.1 of the TRIPS Agreement are in no way impacted by this proposal.
7. Lastly, we want to clarify that the time period of 'x' years does not signify that we are seeking a waiver for an indefinite duration. The actual waiver duration will be negotiated and be limited to a period that this Council finds necessary to effectively handle the COVID crisis. Furthermore, the waiver will be reviewed annually by the General Council in accordance with the provisions of Article IX (4) of the WTO Agreement. We are flexible with regard to the scope and duration of the waiver. We look forward to constructively engage with Members having any questions or concerns regarding our proposal.

Chair, we believe that now is the time for WTO as an organization to rise up to the collective call for defeating the pandemic. It will not succeed in its efforts in rebuilding the COVID affected economies unless it acts now to first save those lives that are going to build these economies. *It's time for Members to take collective responsibility and put people's lives before anything else.* History will not judge us kindly if we do not act immediately to save large scale loss of human life and health and allow global dysfunction to prevail over global cooperation. We hope that Members will support our proposal that will ensure that vaccines and treatments become truly global public goods.