

STATEMENT REGARDING COMPROMISED WAIVER OUTCOME AT THE WTO

A text has been leaked that purports to be a compromise TRIPS Waiver agreement by the WTO “Quad” (EU, US, India, and South Africa). In its present form the text does not address intellectual property monopolies and will not deliver equitable access.

WTO HAS TO GO BACK TO THE NEGOTIATING TABLE. IMPROVE THE TEXT!

The EU's inflexibility and the US's hard line position on a limited waiver are to blame for this weak document. The text reflects their failure to deliver on their promises of global solidarity.

The world needs a meaningful TRIPS Waiver outcome. The leaked proposal, which significantly waters down the original TRIPS Waiver proposal, falls short because it:

- 1. Includes new restrictive conditions on existing TRIPS Agreement rules.*
- 2. Covers ONLY vaccines, not therapeutics and diagnostics where there are also huge and devastating inequalities.*
- 3. Places very restrictive eligibility criteria knocking out potential producers, e.g. it will only apply to countries which have contributed less than 10% to global COVID-19 vaccine exports.*
- 4. Is silent about what is to happen to prevent such inequalities in future pandemics.*

Specific issues with compromised text:

- 1. The compromise speaks only of patented subject matter. However, pending patent applications can act as deterrents for developing- country manufacturers looking to enter the market.*
- 2. It goes beyond the existing TRIPS agreement by adding conditionalities to the use of patented products (without authorization from the patent holder, as stipulated by Article 31 in the TRIPS Agreement) which do NOT exist in the TRIPS Agreement i.e. listing of patents covered by the authorization.*
 - a. This is almost impossible to achieve because the patent landscape for COVID-19 technologies is constantly evolving and is not fully known - international patent applications are usually not published until after 18 months of filing.*
- 3. Other conditions for non-voluntary use of patented products without authorization of the patent holder (Article 31): Paragraph 5 of the leaked text and the notification in footnote 4, are presently not required by the TRIPS Agreement.*
 - a. Paragraph 5 requires the authorization to be communicated to the TRIPS Council*
 - b. Footnote 4 requires information on the entities, products, quantities and countries covered by the authorization to be communicated to the TRIPS Council.*
- 4. The compromise appears to continue to require product by product authorization:*
 - a. The freedom to operate for follow-on manufacturers continues to be hindered as it requires repeated action on the part of a government, entrenching a cumbersome process and erecting entry barriers.*
- 5. The leaked text does not lift protection of undisclosed information, although such information is an essential aspect for the manufacturing and supply of COVID-19 vaccines. In addition, the text fails to recognize that Article 39 of TRIPS - protection of undisclosed information - is a separate barrier irrespective of patent status.*

For all of the above reasons, we fear this proposed compromise will hardly move the needle on the access inequalities that have come to define this pandemic!

NOT GOOD ENOUGH! Please re-negotiate!