

Civil Society Open Letter to the WTO Director General
16 February 2022

Dr. Ngozi Okonjo-Iweala
Director General
World Trade Organization

Ms Anabel González
Deputy Director General
World Trade Organization

Dear Dr. Okonjo-Iweala and Ms. González,

COVID-19 has disrupted societies, wreaked economic havoc, and affected livelihoods, with developing and least developed countries disproportionately impacted. UNCTAD has highlighted that the damage from the COVID-19 crisis has exceeded that of the Global Financial Crisis in most parts of the global economy, but has been particularly draining on the developing world. The crisis has been exacerbated and continues to adversely affect many developing and least developed countries as promises of solidarity and collaboration towards equitable access to vaccines, treatments and tests have mostly failed to materialise.

We join co-sponsors of the TRIPS Waiver proposal and other developing countries in stressing that for a WTO response to the pandemic to be credible, it must deliver a bold and meaningful outcome on the TRIPS waiver proposal and address concerns about the impact of intellectual property on timely and affordable access to medical products. In this letter, we would like to highlight some key aspects that should guide consultations and negotiations on this matter to deliver a meaningful outcome.

The main purpose of the waiver proposal is the prevention, treatment and containment of COVID-19 and expanded and diversified supply, affordable prices, and more equitable access of the full range of medical products needed to achieve those goals. Of particular importance are diagnostics, therapeutics and vaccines. Some WTO Members have supported an IP waiver, albeit only for vaccines. However domestically, these same Members have emphasized the significance of testing and treatment in controlling COVID-19 infections. Dr. Anthony Fauci, chief medical adviser to the President of the USA and NIAID Director has stated that “New antivirals that prevent serious COVID-19 illness and death, especially oral drugs that could be taken at home early in the course of disease, would be powerful tools for battling the pandemic and saving lives,” while Dr. David Kessler, Chief Science Officer for the Biden Administration’s COVID-19 Response said “An easily administered oral antiviral drug would be an important part of our therapeutic arsenal that would complement the great success of our vaccine efforts.”¹ Testing and access to diagnostics, especially antigen rapid tests is essential to peoples’ knowledge of their health status, compliance with public health measures, connection to treatment and care, and surveillance.

The EU COVID-19 therapeutic strategy also states, “vaccines will not eliminate the disease overnight and therapeutics will still be needed for patients in hospitals and at home, including people suffering from ‘long COVID’ (the long-term effects of COVID-19 infection). For these reasons, therapeutics will continue to play a significant role in the response to COVID-19, complementing the successful EU strategy for COVID-19 vaccines.”² Notably WHO’s COVID-19 Strategic Preparedness and Response Plan has underlined the importance of diagnostics, therapeutics and vaccines for an effective COVID-19 response.³

¹ <https://www.hhs.gov/about/news/2021/06/17/biden-administration-invest-3-billion-american-rescue-plan-as-part-covid-19-antiviral-development-strategy.html>

² https://ec.europa.eu/info/sites/default/files/communication-strategy-covid-19-therapeutics_en.pdf

³ <https://www.who.int/publications/i/item/WHO-WHE-2021.02>

For these reasons, any credible waiver outcome must also equally cover the medical products essential to control COVID-19 and especially vaccines, therapeutics and diagnostics, including their materials and components. Addressing access to therapeutics and diagnostics must not be delayed.

It has previously been reported that some Members, such as the EU, oppose a waiver of IP barriers and instead are focused on the notion of compulsory licensing of patents only, especially in the context of Article 31*bis* mechanism (CL for exports).⁴ In addition, reportedly, some Members, including the EU in particular, are unwilling to consider unconditional waivers of other provisions such as Article 31(f), Article 28.1, Article 39, and Part III of TRIPS (enforcement requirements.)⁵ This position of the EU and others is absolutely unjustified and should not be accepted.

We recall that even prior to the pandemic, the challenges of using compulsory licensing mechanism for exports (Articles 31(f) and 31*bis*) and the ineffectiveness to deliver equitable access were well-known.⁶ In addition, these CL provisions are only relevant to patents and do nothing to address other intellectual property barriers. For example, information related to manufacturing and quality control processes are often claimed by industry as trade secrets, even when this information bears clear public interests to boost the diversification and scale of production. As such, a waiver of Article 39 of TRIPS on “Protection of Undisclosed Information” is absolutely essential and in the public interest. Further as elaborated in co-sponsors document [IP/C/W/684](#), copyright and industrial designs may also create obstacles for production and supply, and so these concerns also have to be addressed.

While the specific details of the current consultations/negotiations are not public, we would like to stress that any Waiver outcome has to create a clear pathway that provides potential manufacturers the full freedom to operate -- to manufacture, to import and export, and to commercialize needed COVID-19-related medical products -- without having to deal with procedural and legal IP requirements on a product-by-product basis. The waiver decision should also accord governments policy space to implement measures necessary to facilitate production, import and export of medical products and their components.

Further the duration for the waiver outcome should reflect the current unpredictable complex situation with respect to COVID-19. This includes the possibility of new, more lethal variants, uncertainty over the duration of vaccine immunity, vaccine effectiveness against new variants and the need to motivate diversified production and expand supply options especially in developing and least developed countries. In this regard, we support the proposal of TRIPS waiver co-sponsors in [IP/C/W/669/Rev.1](#).

The WTO should also learn from the mistakes of its past. The cumbersome requirements of the Article 31*bis* mechanism have resulted in an inflexible and unwieldy mechanism, unsuitable for promptly addressing urgent challenges of access. Hence, attaching conditions to the TRIPS waiver outcome under the pretext of transparency and that complicates the application of the waiver or limits its use to some Members will only further undermine the already rather fragile credibility of the WTO.

The time for excuses is over. Billions of people around the world are waiting for the WTO to deliver a bold outcome on the TRIPS waiver proposal that will effectively and concretely contribute to enabling production in and expanding supply options towards realizing equitable access which is the key to socio-economic recovery.

⁴ See https://www.huffingtonpost.co.uk/entry/european-union-covid-vaccine-intellectual-property-proposal_n_61664498e4b0f26084edbbff

⁵ See https://www.huffingtonpost.co.uk/entry/european-union-covid-vaccine-intellectual-property-proposal_n_61664498e4b0f26084edbbff

⁶ https://msfaccess.org/sites/default/files/MSF_assets/Access/Docs/ACCESS_briefing_NeitherExpeditiousNorSolution_WTO_ENG_2006.pdf

Signatories

Global

1. ACP Civil Society Forum
2. Amnesty International
3. Bread for the World
4. Building and Wood Worker's International (BWI)
5. Center for Economic and Social Rights
6. Civil Society Financing for Development Group
7. Corporate Accountability
8. Development Alternatives with Women for a New Era (DAWN)
9. Education International
10. Feminists for a People's Vaccine, Global South
11. Global Policy Forum
12. Health Action International (HAI)
13. Health Global Access Project (Health GAP)
14. Health Poverty Action
15. International Transport Workers' Federation (ITF)
16. International Treatment Preparedness Coalition (ITPC)
17. International Union of Food, Agricultural, Hotel, Restaurant, Catering, Tobacco and Allied Workers Associations (IUF)
18. IT for Change
19. LDC WATCH
20. Médecins du Monde International Network
21. Médecins Sans Frontières (MSF) Access Campaign
22. Open Knowledge Foundation
23. Oxfam
24. Peoples' Health Movement (PHM)
25. People's Vaccine Alliance (PVA)
26. Public Services International (PSI)
27. Regions Refocus
28. Social Watch
29. Society for International Development
30. Third World Network (TWN)
31. Trócaire
32. Women in Migration Network (WIMN)
33. Women's Working Group on Financing for Development

Regional

34. African Alliance
35. AIDS and Rights Alliance for Southern Africa
36. Arab Forum for the Rights of Persons with Disability
37. Arab NGO Network for Development (ANND)
38. Asian Pacific Resource and Research Centre for Women (ARROW)
39. Asian Peoples Movement on Debt and Development
40. Asia Pacific Network of People Living with HIV/AIDS (APN+)
41. Focus on the Global South
42. Gramya Resource Centre for Women
43. Health Action International Asia Pacific
44. Project Organizing Development and Education

45. Southern African Programme On Access to Medicines and Diagnostics (SAPAM)
46. Women In Development Europe+
47. Yolse, Santé Publique et Innovation

National

48. Access to Medicines Ireland
49. Access to Medicines Research Group, China
50. Africa Development Interchange Network (ADIN), Cameroon
51. Africa Japan Forum, Japan
52. Africa Young Positives Network, Uganda
53. AIDS Access Foundation, Thailand
54. All India Drug Action Network, India
55. All Nepal Peasants Federation
56. Alternative Budget Initiative- Health Cluster, Philippines
57. Ashar Alo Society (AAS), Bangladesh
58. Asia Pacific Forum on Women, Law and Development, Thailand
59. Asian Health Institute (AHI), Japan
60. Asociacion Mujeres Emprendedoras de Alta Verapaz, Guatemala
61. Associação Brasileira de Saúde Bucal Coletiva, Brazil
62. Association For Promotion Sustainable Development, India
63. Association for Proper Internet Governance, Switzerland
64. Attac Norway
65. Australian Fair trade and Investment Network, Australia
66. Bangladesh Nari Progati Sangha, Bangladesh
67. Bisan Center for Research and Development, Palestine
68. Both ENDS, Netherlands
69. Brot für die Welt, Germany
70. Bureau Pour la Croissance Intégrale et la Dignité de l'Enfant, Democratic Republic of Congo
71. CADIRE Cameroon Association, Cameroon
72. Campaign for Access to Medicines, Devices and Diagnostics, India
73. Campaign for Affordable Trastuzumab, India
74. Campaign for the Welfare state, Norway
75. Canadian Centre for Policy Alternatives, Canada
76. Center for Health Human Rights and Development, Uganda
77. Centre for Social Sciences Research and Action, Lebanon
78. Centre for the Development of People (CEDEP), Malawi
79. Centre National de Coopération au Développement (CNCD-11.11.11), Belgium
80. Changemaker Norway
81. Child Way Uganda (CWay-Ug)
82. Climate Watch Thailand
83. Coalizione Italiana Libertà e Diritti civili, Italy
84. COAST Foundation, Bangladesh
85. Collectif Brevets sur les vaccins anti-covid, stop. Réquisition, France
86. Community Forum (COFO), Malawi
87. Community Working Group on Health (CWGH) - Zimbabwe
88. Consumers Association of Penang, Malaysia
89. Delhi network of positive people, India
90. DIGNIDAD Movement, Philippines
91. Drug Action Forum-Karnataka, India
92. Drug System Monitoring and Development Center, Thailand

93. DUKINGIRE ISI YACU, Burundi
94. Econews Africa, Kenya
95. EKOTA, Bangladesh
96. Ensemble à Gauche (EàG), Switzerland
97. Environics Trust, India
98. Equidad de Género: Ciudadanía, Trabajo y Familia, Mexico
99. Equity and Justice Working Group Bangladesh (EquityBD), Bangladesh
100. Fairwatch Italy, Italy
101. Foundation for Integrative AIDS Research (FIAR), United States
102. Frente Nacional por la Salud de los Pueblos del Ecuador (FNSPE), Ecuador
103. FTA Watch, Thailand
104. Fundación Grupo Efecto Positivo, Argentina
105. Fundación para estudio e investigación de la Mujer, Argentina
106. Gandhi Development Trust, South Africa
107. Global Humanitarian Progress GHP Corp, Colombia
108. Global Justice Now, United Kingdom
109. Governance Links, Tanzania
110. Grupo de Incentivo à Vida, Brazil
111. Handelskampanjen, Norway
112. Heinrich Boell Foundation, Germany
113. HIV Legal Network, Canada
114. IFARMA Foundation, Colombia
115. Indonesia AIDS Coalition, Indonesia
116. Indonesia for Global Justice, Indonesia
117. Initiative for Health & Equity in Society, India
118. Initiative for Social and Economic Rights, Uganda
119. Institute for Agriculture and Trade Policy, United States
120. ILeft, South Korea
121. International Women's Rights Action Watch Asia Pacific, Malaysia
122. It's Our Future, New Zealand
123. Jamma Children Foundation, Gambia
124. Jesuit Justice and Ecology Network – Africa, Kenya
125. Just Treatment, United Kingdom
126. Kamukunji Paralegal Trust (KAPLET), Kenya
127. Kenya Legal & Ethical Issues Network on HIV & AIDS, Kenya
128. Kikandwa Environmental Association, Uganda
129. Korean Pharmacists for Democratic society, South Korea
130. Krishna Rabilall foundation, South Africa
131. Labor Education and Research Network, Philippines
132. Lebanese Union for persons with physical disability, Lebanon
133. Life Concern, Malawi
134. Low Cost Standard Therapeutics, India
135. Madhira Institute, Kenya
136. Malaysian Women's Action for Tobacco Control and Health (MyWATCH), Malaysia
137. Medical Action Group, Philippines
138. Medico International, Germany
139. Misión Salud, Colombia
140. Naripokkho, Bangladesh
141. National Alliance for Right to Food, Nepal
142. National Dalit and Landless Peasants Organisation, Nepal
143. Nepal Women Peasants Association

144. Network Lobby for Catholic Social Justice, United States
145. NGO Gender Coordination Network, Malawi
146. NGOs Platform of Saida, Lebanon
147. Nigerian Women Agro Allied Farmers Assoc, Nigeria
148. Non-communicable Diseases Alliance, Kenya
149. Observatório do ciCidadão para saúde, Mozambique
150. Pacific Asia Resource Center (PARC), Japan
151. Pakistan Fisherfolk Forum, Pakistan
152. Parlement des Jeunes Leaders de la Société Civile Guinéenne, Guinea
153. Patient and Community Welfare Foundation of Malawi
154. People's Health Movement, Canada
155. People's Health Movement Nepal
156. People's Health Movement South Africa
157. People's Health Movement, Zambia
158. People's Health Movement - Japan Circle, Japan
159. People's Health Institute, South Korea
160. People's Health Organization, South Korea
161. Positive Malaysian Treatment Access & Advocacy Group (MTAAG+), Malaysia
162. Public Citizen, United States
163. Public Eye, Switzerland
164. Research and Support Center for Development Alternatives - Indian Ocean, Madagascar
165. Réseau québécois pour une mondialisation inclusive (RQMI) :, Canada
166. Rethink Trade, United States
167. Right to Health Action, United States
168. Roots for Equity, Pakistan
169. Sahabat Alam Malaysia (Friends of the Earth Malaysia), Malaysia
170. Salud por Derecho, Spain
171. Sama Resource Group for Women and Health, India
172. SEATINI, Uganda
173. Sentro ng mga Nagkakaisa at Progresibong Manggagawa (SENTRO), Philippines
174. Sisters of Charity Federation, United States
175. Slums and Rural Health Initiative-Rwanda
176. Social Watch Benin
177. Social Watch Philippines
178. SODECA, Kenya
179. Solidarité Agissante pour le Développement Familial (SADF), Democratic Republic of Congo
180. South Sudan Women's Empowerment Network, South Sudan
181. Space Allies, Japan
182. SPECTRA, Rwanda
183. Spire, Norway
184. Spotlight Center, Lebanon
185. TEDIC, Paraguay
186. Temple of Understanding, USA
187. The Gender Studies Centre, Sudan
188. The Peninsula Foundation, India
189. Trade Justice Education Fund, United States
190. Trade Justice Network, Canada
191. Treatment Action Group, Unites States
192. UBINIG (Policy Research for Development Alternative), Bangladesh
193. Uganda National Health Users/ Consumer's Organisation, Uganda

194. Unis pour l'Education SocioEnvironnementale de la Femme en sigle UESEF, Democratic Republic of Congo
195. Veille Citoyenne Togo
196. Vietnam Network of People living with HIV (VNP+), Vietnam
197. Viva Salud, Belgium
198. War on Want, United Kingdom
199. WomanHealth Philippines
200. Women's Coalition Against Cancer (WOCACA), Malawi
201. World Vision Deutschland e.V., Germany
202. Youth Foundation of Bangladesh