



Gender and Trade Coalition Statement on the 2020 COVID-19 Waiver Proposal¹

To Member States of the World Trade Organisation (WTO):

As feminist groups, we demand all WTO Member States to support the unconditional adoption of the proposed [“Waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19,”](#) (Waiver Proposal) which is critical for governments to ramp up production and make prevention and treatment options available and accessible to all. This will mitigate women and gender non-conforming people being forced to give up such access and bear a disproportionate burden of this pandemic.

We, the undersigned, are writing to request your support for the adoption of the Waiver Proposal, which has been submitted by Eswatini, India, Kenya, and South Africa at the WTO, and is currently under discussion at the Trade-Related Aspects of Intellectual Property Rights (TRIPS) Council. The next meeting to discuss this urgent proposal is scheduled for the 20th of November.

It is evident that open access to a range of medical products is critical to meeting the challenges of the COVID-19 pandemic. Many countries, particularly in the global South, are facing a severe shortage of products such as diagnostic kits, masks, and personal protective equipment. Ventilators are in short supply and most medicine options, such as Remdesivir, have so far been very expensive. Given the relative lack of power of women and gender non-conforming people economically, socially, and politically, including on the basis of race, caste, class, sexuality, ethnicity, religion, migratory status, whenever there is limited supply of essential products, including critical medical products, they face the greatest barriers to access. If medical diagnostics, treatment, and care are expensive, women and gender non-conforming people often give up use, voluntarily or involuntarily, in order to save household resources and ensure supply for the male members. Considering the economic cost of the COVID-19 pandemic, any constraints on access to medical products, will translate into a severe and prohibitive constraint for women and gender non-conforming people.

The only way to enhance the availability and affordability of these medical products is to promote competition through multiple producers. Considering access and affordability is critical to halting the COVID-19 pandemic, many global leaders have termed these medical products, especially vaccines,

¹ Endorse this statement here: bit.ly/EndorseCOVIDWaiver. For organisations interested in joining the Coalition, please sign our Unity Statement at bit.ly/JoinGenderTrade.

a global public good. The current global intellectual property (IP) regime poses a key challenge to translating the concept of a public good into action.

Under the current global IP regime, medical products required for prevention, containment, and treatment of COVID-19, especially newly developed ones, are governed by intellectual property rules that ensure successful vaccines or monoclonal antibodies (Mab) are likely to be very expensive and in short supply, as their patents will guarantee monopoly profits to pharmaceutical companies. This is already the case with Remdesivir. IP rules create a significant legal barrier to scaling up production through multiple producers and results in monopoly and high prices. The TRIPS Agreement considerably limits the policy space of WTO Member States to take measures to overcome these legal barriers and enable the local production of essential COVID-19 medical products.

Though flexibilities, like the issuing of compulsory licences (CL), are provided under the TRIPS Agreement, such mechanisms becomes ineffective when it comes to negotiating other forms of IP such as copyrights, trade secrets, and industrial designs. For instance, access to know-how, which is protected through trade secrets, is critical for the non-originator production of vaccines and Mab, two important products in the fight against COVID-19. We also need urgent action to address the IP barriers while CLs need time to be used.

Therefore, the adoption of the Waiver Proposal is critical to ensuring the access and affordability of COVID-19 medical products in the vast majority of WTO member countries, especially developing and least developed countries. This temporary waiver provides the critical policy space for WTO Member States to take measures to enable competition through multiple producers and ensure adequate supply at affordable rates. This would empower these countries to fulfil their human rights obligations on the right to health under the International Covenant on Economic Social and Cultural Rights (ICESCR) and the Convention on the Elimination of all Forms of Discrimination Against Women. Failing to do so will acutely harm women and gender non-conforming people.

It is also important to note that international obligations around the right to health also includes an obligation to desist from activities affecting the right to health in other countries. Hence, we request those countries who do not want to use the waiver not block the Waiver Proposal, which would compromise the fulfilment of the right to health in other, particularly developing and least-developed, countries.

We therefore demand that WTO member states support the unconditional adoption of the Waiver Proposal, which is critical to expanding the access of medical products vital to the prevention, containment, and treatment of COVID-19 in the global South, otherwise constituting a disproportionate burden on women and gender non-conforming people. This is a key opportunity for WTO member states to deliver on their promise to battle COVID-19 in the true spirit of multilateralism.