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Ensuring equitable access to COVID-19 vaccines: The case for lifting intellectual property rights at the World Trade Organization

The news that effective vaccines against COVID-19 would soon be available raised hopes that the end of the pandemic could be near. However, the global vaccine rollout has deeply inequitable so far.

At the current pace, a number of countries in the Global North will have achieved widespread vaccination coverage by 2021 while the least developed countries might only reach this milestone in 2024 or even later. This violates the right to non-discriminatory access to vaccines for all. Moreover, inequitable access to COVID-19 vaccines and other medical products will work to the detriment of all: viruses do not respect borders and as it continues circulating in some parts of the world, new variants that are resistant to the vaccines may emerge.

Vaccine nationalism' and restrictive intellectual property rules that treat vaccines as a commodity rather than a public good lie at the heart of the problem: efforts by countries in the Global South to secure a COVID-19 waiver on Intellectual Property Rights at the World Trade Organization (WTO) have been met with resistance from countries mostly in the Global North.

In a recent [statement](#) Education International expressed concern about the lack of political will to temporarily lift intellectual property barriers on vaccines and medical products.

This brief explains why a TRIPS¹ waiver is essential to contain the pandemic and how education unions can influence this process.

What is the role of intellectual property rules in the context of COVID-19 vaccines?

Intellectual property (IP) refers to the creations of the mind. Governments can protect the ideas that creators have developed including through patents, copyrights, trademarks and industrial

¹ Agreement on [Trade-Related Aspects of Intellectual Property Rights](#).

rights among others. However, protections have limits. Governments have the duty to balance the interest of intellectual property rights holders with the well-being of citizens. They need to guarantee the primacy of human rights, including the right to health, over private profits.

Proponents of restrictive intellectual property rules claim that intellectual property enabled a breakthrough of COVID-19 vaccines and medical products. In reality, pharmaceutical companies have massively benefited from public funding, research and other non-profit collective efforts to find quick solutions to this pandemic. Benefiting from Intellectual Property rules in their favor, pharmaceutical companies mostly based in the global North, have obtained monopoly power over the market. They are dictating prices and prevent other manufacturers from producing the vaccines.

Intellectual property rules are set at the national level, but are also influenced by international legal frameworks, which are now of particular importance as COVID-19 vaccines and other medical products are traded across borders.

The World Trade Organization and intellectual property

The World Trade Organization (WTO) is an intergovernmental organisation that regulates and facilitates trade between nations including the protection of intellectual property rights. The WTO's Agreement on [Trade-Related Aspects of Intellectual Property Rights](#) (TRIPS) is the most comprehensive multilateral agreement on intellectual property.

As part of the TRIPS agreement, governments are obliged to provide intellectual property protection for any invention including for products (e.g., COVID-19 vaccines) and processes (e.g., method of producing vaccines). At the same time, the TRIPS agreement includes exceptions that allow governments to refuse to grant patents essential for, inter alia, public health or the advancement of science and technology.

What is the issue with TRIPS?

Regrettably, governments often fail to make use of the TRIPS exceptions and flexibilities that would give human rights, including the right to health and to education, primacy over profit-making.

Acknowledging this issue in the face of the HIV/AIDS epidemic, the WTO adopted [The Doha Declaration on the TRIPS Agreement and Public Health](#), which encourages governments to make use of these exceptions. However, too many barriers remain.



One reason for this is that high-income countries including Japan, Switzerland, the US and the European Union have often asserted bilateral pressure on low-income countries to not use TRIPS flexibilities in order to protect the interest of pharmaceutical companies based in their territories.

In addition, making use of these flexibilities requires countries to undergo a cumbersome and time-consuming process with a “case-by-case” or “product-by-product” approach.

As a result, life-saving diagnostics, therapeutics, vaccines, and other medical products remain out of reach, including in the context of the COVID-19 pandemic. Given the urgency and scale of the pandemic it is, therefore, essential to – at least temporarily – lift intellectual property right protections stipulated in the TRIPS agreement.

The proposed TRIPS waiver: A way to ensure more equitable access to COVID-19 vaccines

In October 2020, South Africa and India proposed a [“Waiver from certain provisions of the Trade-Related Aspects of Intellectual Property Rights \(TRIPS\) agreement for the prevention, containment and treatment of COVID-19”](#) at the WTO. This waiver would temporarily lift certain TRIPS obligations related to COVID-19 medical products and technologies including the sharing of know-how for technology transfers essential for scaling up the vaccine production.

The proposal is currently supported by around two-thirds of the WTO members including all members of the African Group and the group of Least Developed Countries. Countries from the Global North, currently including representatives from the European Union (within the EU particularly Germany, Netherlands, France, Spain, Italy, Denmark), United States, United Kingdom, Norway, Canada, Japan and Australia are opposing the waiver.

Why do we need the TRIPS waiver in addition to COVAX?

COVAX is a global collaborative effort to ensure equitable access to vaccines for all countries². It is the vaccines pillar of the Access to COVID-19 Tool (ACT) Accelerator which is convened by the Coalition for Epidemic Preparedness Innovations (CEPI) and the World Health Organization (WHO).. Through COVAX, countries can gain access to a portfolio of vaccine candidates and avoid the risk of backing just one candidate. At the same time, low-income countries can get financial support and access to a vaccine once it is available.

² [COVAX \(who.int\)](#)



The biggest obstacle to COVAX's success is that a few countries have already secured most of the world's vaccine supply through bilateral deals with pharmaceutical companies. Current estimates indicate that COVAX will only be able to make 2 billion doses available by the end of 2021, which is a mere fraction of the 6.4 billion people in developing countries. While COVAX is an important effort to demonstrate global solidarity and secure vaccinations for the Global South, financial constraints and limited manufacturing capacity mean that it will not suffice. Instead, it is essential to rapidly scale-up vaccine production. The proposed TRIPS waiver would enable this by removing intellectual property barriers.

How can education unions support the adoption of the proposed TRIPS waiver?

It is crucial to exert pressure on WTO members who are opposing the waiver to change their position.

Education International will continue asserting pressure at global level and monitoring discussions at the WTO and, at the TRIPS Council in particular, together with other civil society organisations.

EI member organisations can engage and support this endeavour by sending letters to their government representatives at the WTO urging them to support the waiver. For this purpose, EI has developed a [draft template letter](#) that can be adapted to your context.

If you would like to be involved in EI's work on vaccine equity, [please sign up to our vaccine equity email list via this form](#). You will receive information about follow-up activities and on other vaccine related developments.

Interesting reads

- [WTO COVID-19 TRIPS Waiver Proposal: Myths, realities and an opportunity for governments to protect access to medical tools in a pandemic](#), Médecins Sans Frontières Access Campaign
- [Human Rights and Access to COVID-19 Vaccines](#), OHCHR
- [Third World Network](#) information documentation on the proposed TRIPS waiver
- [Vaccinating the World: Waiving Intellectual Property Rules on COVID-19 Products](#), Global Development Policy Center

